

IN SEARCH OF MIDDLE GROUND

TOWARD BETTER SOLUTIONS TO THE
TEXAS CHILD WELFARE CRISIS

AN APRIL, 2008 UPDATE TO THE ENTRY-INTO-CARE DATA IN THIS REPORT
CAN BE FOUND AT: www.nccpr.org/reports/statsupdate.pdf

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TOWARD BETTER SOLUTIONS TO THE TEXAS CHILD WELFARE CRISIS

A PREVENTION FIRST ACTION AGENDA FROM THE
NATIONAL COALITION FOR CHILD PROTECTION REFORM
BY RICHARD WEXLER, NCCPR EXECUTIVE DIRECTOR
JANUARY, 2005

CONTENTS:

Overview	03	extended hostility	42	• Equal payments for kin care	60
Wrongful removal is not rare	06	Privatization: The		• Family to Family	60
<i>You're only damned</i>		Comptroller's blind alley	44	• Community Partnerships	61
<i>if you don't</i>	08	Blind alley #2:		• Drug treatment	62
Wrongful removal hurts		Accreditation	46	• Wraparound programs	63
children	11	Goody-two-shoes		• Raise caseworker pay	63
<i>The myth of due process</i>		prevention is not enough...	48		
<i>for families</i>	12	<i>Start with the kitchen</i>	49		
Wrongful removal is not		...and the wrong kind of		Part Two: Due Process	
inevitable	15	"prevention" is harmful	52	for families	
The price of panic	16			• Defense counsel for	
What the data really show	18			accused parents	63
<i>What Illinois can teach Texas</i>	19			<i>Leveling the playing field</i>	
The stakes	22			<i>in Washington State</i>	64
<i>Angela's story</i>	25			• Don't fund CASA	66
Forgotten fatality: The death				• Tape all interviews	66
of Eric Hernandez	27			• Open most case records	67
Overuse of institutions	29			• Raise the standard of proof	68
<i>Milwaukee vs. the</i>				• Abolish legal "ransom"	69
<i>"institutions lobby"</i>	31			• Adopt a standard of "least	
Drugs	33			detrimental alternative"	69
The limits of adoption	36				
Spend more –				Appendix A: A short course	
but spend smarter	37			in foster care statistics	71
<i>New Jersey's better idea</i>	39			Endnotes	76
Extended families –					

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 Gugenheim*, former Director of Clinical and Advocacy Programs, New York University Law School. **Vice President:** *Carolyn Kubitschek*, attorney specializing in child welfare law, former Co-ordinator of Family Law, Legal Services for New York City. **Treasurer:** *Joanne C. Fray*, attorney with extensive experience with litigation involving the care and protection of children and termination of parental rights, Lexington, Mass. **Directors:** *Elizabeth Vorenberg*, (Founding President) former Assistant Commissioner of Public Welfare, State of Massachusetts; former Deputy Director, Massachusetts Advocacy Center; former member, National Board of Directors, American Civil Liberties Union; *Annette Ruth Appell*, Associate Professor, William S. Boyd School of Law, University of Nevada, Las Vegas; former member of the Clinical Faculty, Children and Family Justice Center, Northwestern University Law School Legal Clinic, former Attorney and Guardian ad Litem, office of the Cook County, Ill. Public Guardian; *Marty Beyer, Ph.D.*, clinical psychologist and consultant to numerous child welfare reform efforts; *Ira Burnim*, Legal Director, Judge Bazelon Center for Mental Health Law, Washington, DC; former Legal Director, Children's Defense Fund; former Staff Attorney, Southern Poverty Law Center; Prof. Paul Chill, Associate Dean, University of Connecticut School of Law, Prof. 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, Greater Pittsburgh Chapter, American Civil Liberties Union Foundation of Pennsylvania. **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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Overview:

No one ever accused Dallas Helms of beating her infant, Sandra. No one accused the Corpus Christi mother of raping the child. No one said she tortured the little girl. No one said she locked the child in a closet and starved her to death. No one said she tried to sell the child on the street for drugs.

The one and only “crime” of Dallas Helms was this: She had a seizure disorder.

And so, it seems, does the agency now called the Texas Department of Family and Protective Services (DFPS), and its Child Protective Services (CPS) division.

Because rather than provide Dallas Helms with the assistance she would need to care for her child, they seized the infant when she was five months old. They held the child for at least six months, more than half of her life.

During some of the most important months of her life – her first – Sandra Helms was denied the crucial opportunity to bond with her own mother. No matter how good her substitute care may have been, that is emotional abuse, inflicted by the state.

Child Protective Services admitted in court that other loving mothers with similar problems are allowed to keep their children. They have extended family that can help them care for the child. Dallas Helms did not.

CPS might have added that any middle-class mother in Helms’ position could simply buy the help she needed, in the form of home health care. But then CPS would have to admit that it would rather tear a child from a loving mother than provide that kind of help; even though such help actually

would cost taxpayers less than foster care.

And, in fact, Dallas Helms already had plenty of help. A group of caring neighbors, who thought Dallas Helms was a wonderful mother, banded together to give her all the help she needed.

To which CPS replied: There’s no guarantee the neighbors will be there forever.

The fact that CPS can’t guarantee stable foster homes for the children who fall victim to its “seizure disorder,” and the fact that the rate of abuse in foster care is far higher than the rate in the general population apparently was irrelevant.¹

Rita Veitenheimer says she will never forget the day the white van pulled up in front of her home in Wichita Falls – with at least one police car right behind. Three police officers and two CPS workers emerged from the vehicles. They marched up to Veitenheimer, who was on the front porch with her four children. A CPS worker demanded that Veitenheimer give him her seven-week-old baby, Kimberly. When she refused, a police officer pulled her arms behind her and the worker took the infant. The other children, Ashley, 7, Christopher 6, and Steven, 5, began crying and screaming as the police and CPS workers hauled them away, put them in the van and drove off.

Before the best efforts of the State of Texas to protect them, all three had been “A” students who never missed a day of school.

After they were taken away, Steven became a child who never smiled. Christopher repeatedly beat his head against a wall,

and ran away from his foster home.

But perhaps such emotional damage is a small price to pay for protecting children from a “dangerous” mother. After all, look at what their mother had done:

She smoked marijuana while pregnant.²

Veitenheimer’s children are not the only ones in Texas to be punished for their mother’s pot smoking.

In Houston, newborn Sylvan Asher and her 15-month-old brother, Bishop, were torn from their parents, Angela Jenkins and Aaron Asher, because the mother smoked marijuana; she said, to ease the pain of labor.

But it wasn’t just that, CPS insists. The infant was medically fragile and the parents didn’t get prenatal care. (The parents couldn’t *afford* prenatal care. They had been turned down for Medicaid four times). And, CPS said, the parents changed jobs too often.

There was not a shred of evidence that either parent had ever abused either child. Yet the newborn was taken at birth. The older child was taken a week later. The *Houston Press* reports that a CPS worker came to the house, found a child who “seemed happy and well-nourished”-- and promptly removed him without a court order, on grounds that, after waiting a week, the child somehow was now in “imminent danger.”

CPS insists that poverty had nothing to do with their actions. “What being poor means is that you have less resources, less options,” spokeswoman Judy Hay told the *Press*. “It makes you more vulnerable. We really go to great lengths to not confuse poverty with child abuse.”

But rather than provide options or other help to make the family less “vulnerable,” CPS took an approach that can be boiled down to a single sentence: “Take the child and run.” Though CPS insisted pov-

erty was not the issue, at the first court hearing, much time was spent questioning the father about his wages and expenses. And, in still another indication of the great lengths to which CPS goes to avoid confusing poverty with child abuse – they filed a petition to terminate Jenkins and Asher’s parental rights. (Just a formality, they said, in case reunification doesn’t work out – apparently something done routinely in Texas).

"I have no problems with drugs, but if they want me to go to drug counseling, I'll go to drug counseling. I'm a very good mother, but if they want me to go to parenting classes, I'll go to parenting classes. I don't care. I just want my babies back. Just tell me."

--Angela Jenkins

CPS would not even let the children see their parents for five weeks. And when the court finally agreed to return the children, it required the father, who was never accused of using drugs, to take drug tests. It required the mother, who never was accused of poor parenting, to take a parenting class – and get “counseling.”

The judge threw in a lecture, warning mom and dad that if anyone smoked pot again, they could lose their children forever.

And the parents were too desperate to object.

"I have no problems with drugs, but if they want me to go to drug counseling, I'll go to drug counseling," Jenkins said. "I'm a very good mother, but if they want me to go to parenting classes, I'll go to parenting classes. I don't care. I just want my babies back. Just tell me."³

For Dorothy Watson, the issue wasn't pot. And there was no question about her medical condition. Watson's grandchildren were deprived of her love and care solely because her Fort Worth home was in very bad shape. According to the *Fort Worth Star-Telegram* there were "gaping holes in walls and ceilings, electrical and plumbing problems, a leaky roof and broken windows."

The agency that works so hard not to confuse poverty with child abuse took away all five children, and held them in foster care for nearly a year.

"My prayers were always to get my babies back," Watson told the newspaper. "It broke my heart to have them taken away."

"For the children's safety," the paper reported, "caseworkers ... said they had no other choice."

But they did have a choice. Fix the house.

Volunteers came forward to do what CPS would not. The renovation work cost \$35,000 – far less than the taxpayers of the State of Texas paid to traumatize Watson's grandchildren with nearly a year of needless foster care.⁴

Former Judge F. Scott McCown says Texas takes away children "in only terrible circumstances."⁵

Judge McCown's name will come up often in this report. He is a tireless champion of children, truly dedicated to trying to improve their plight.

But unless he believes that the worst thing any parent ever does to a child in Texas is smoke pot, have seizures or live in decrepit housing -- Judge McCown is flat wrong. And unfortunately, he is wrong about much else in child welfare. As a result, his well-meaning crusade on behalf of vulnerable children is backfiring.

If a huge increase in the number of children removed from their homes would fix child welfare, then child welfare in Texas should be fixed by now – because that's exactly what has happened.

Texas now removes proportionately more children than Illinois – yet Illinois is recognized as a national leader in keeping children safe.

Nationwide, since 1985, the number of children removed from their parents over the course of a year has increased by about 60 percent.⁶ In Texas, during the same time period, the number of children taken from their parents more than quadrupled, from 3,241 children in 1985⁷ to 13,431 in 2004.⁸

Indeed, in just the years since 1998, when Judge McCown published his famous *Petition in Behalf of the Forsaken Children of Texas*, a time when removals nationwide increased by only about two percent⁹ the number of removals in Texas soared by 91 percent. In fact, Judge McCown's 1998 petition was so "effective" that removals soared 27 percent in 1999 alone.¹⁰ Texas now removes proportionately more children than Illinois – yet, as is discussed in detail below and on page 19, Illinois is recognized as a national leader in keeping children safe.

The problem is compounded by where children go. The proportion of Texas foster children trapped in the worst form of substitute "care" – institutionalization – is 80 percent above the national average.¹¹

The entire child welfare debate in Texas has become polarized. There is an urgent need to find the middle ground between a skinflint right, that refuses to pro-

vide desperately needed funds to protect children and a “take-the-child-and-run” left, which wants to pour hundreds of millions more dollars into the same approach to child welfare that has failed all over the country.

The entire child welfare debate in Texas has become polarized. There is an urgent need to find the middle ground between a skinflint right that refuses to provide desperately-needed funds to protect children and a “take-the-child-and-run” left, which wants to pour hundreds of millions more dollars into the same approach to child welfare that has failed all over the country.

Middle ground means a commitment to spend more, but also to spend smarter.

Middle ground means a *prevention first* action agenda.

Middle ground means lots of new hiring – but not more investigators, at least not at first. Rather, it means hiring more workers for prevention programs that were eliminated by the legislature in 2003.

Middle ground means going beyond these politically-popular primary prevention programs and creating a full menu of family preservation services for families at imminent risk of losing children to foster care.

Middle ground means providing due process for families caught up in the child welfare system – something that now is virtually non-existent in Texas.

These must be the first priorities for

every new dollar that can be wrung from the legislature. By creating this full infrastructure of prevention, more children and families will be diverted from the CPS system. That will lower caseloads for the investigators now on the job. Those workers also should see an increase in pay, to reduce the debilitating turnover among such workers.

Only after this is accomplished should funds be used to hire more investigators. Simply hiring more investigators, without doing the rest, will only further widen the net of coercive intervention. In a few years, Texas will wind up with the same lousy system only bigger.

Wrongful removal is not rare

It's easy for cases like those discussed at the start of this report to go unnoticed. It's not that they didn't make headlines. Each made one or two – usually small ones that never got beyond the first page of the metro section. But none was pursued day after day, week after week by mainstream media. None of the children involved became household names throughout the state. No judge took time off to reflect on his mistake in taking away these children. There were no legislative hearings. No governor ordered a high-level investigation.

So it's easy to dismiss their suffering as rare.

But it is not rare.

Some parents who lose their children to foster care are indeed brutally abusive or hopelessly addicted. But far more common are cases in which a family's poverty is confused with neglect.

We know that because of research conducted across the country – and because of the words and deeds of CPS workers in Texas.

•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.¹²

- 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.”¹³

- A study of “boarder babies” -- children who spend months in hospitals, found that the biggest single factor causing their forced hospital stays was lack of housing.¹⁴

- Families struggling to keep their children out of foster care are stymied by two major problems: homelessness and low public assistance grants, according to two New York City studies.¹⁵

- A study of “lack of supervision” cases in New York City by the Child Welfare League of America found that in 52 percent of the cases studied, the service needed most was what one might expect -- day care or babysitting. But the “service” offered most often was foster care.¹⁶

- Courts in New York City and Illinois have found that families are repeatedly kept apart solely because they lack decent housing.¹⁷

- In Genesee County, Michigan, which includes Flint, the foster-care population has doubled since 2000 – and even the head of the county child welfare office says one of the main reasons is they’re removing children from women forced to leave their children with unsuitable caretakers while they go to jobs they must take under the state’s welfare laws.¹⁸

- In California, homeless children were given emergency shelter only on condition that they be separated from their parents, until a successful lawsuit put an end to the practice.¹⁹

- 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.²⁰

Of course, it’s possible that Texas, somehow, is different from everywhere else. Perhaps in Texas workers have all the time they need to avoid confusing poverty with neglect, all the knowledge they need to know the difference, and all the resources they need to avoid destroying families because of poverty.

Both common sense and the available data suggest otherwise.

Of all the so-called “confirmed” victims of child maltreatment in Texas in 2003, 14 percent involved sexual abuse. Another 27 percent involved all forms of physical abuse from the most minor to murder. In contrast, fully 52 percent of cases involved “neglectful supervision.”

This breathtakingly broad category²¹ can include the parent who deliberately leaves a child home alone for days at a time to sell drugs or hang out in bars. But it also includes the single mother who has to choose between getting fired from her minimum-wage night-shift job because the sitter didn’t show, and leaving the child home alone. As the *San Antonio Express-News* noted, “neglectful supervision” is “a catchall some say would be far less common if affordable child care was more readily available.”²²

But instead of child care, DFPS offered an ad campaign warning these desperate parents that if they leave children alone they’re committing a crime.²³

Confirmation of the extent to which DFPS confuses poverty with neglect, albeit in a backhanded way, comes from a top official in Texas CPS. Bruce McNellie is program director for Region 5 of the Texas Department of Family and Protective Services. In 1999, he posted the following comment on a child welfare listserv:

“I do not for a minute believe that poverty is mistaken for neglect in Texas. ... Many, many people believe that dirt, lack of running water, electricity, or gas means neglect. It is only neglect if the consequences of such result in the child's marked reduction

of health or safety."

In other words: It's not neglect to be poor in Texas unless being poor harms the child. Then it is neglect to be poor in Texas.

One veteran caseworker in San Antonio (she'd been on the job for four years) told the *Express-News* that

...she worries when she sees new caseworkers, recent college graduates, charged up by the prospect of saving children, snapping photos of unkempt kitchens. "I don't believe in removing (children) on (the basis of) dirty houses. I just don't," [she] said, joking that her own home is "practically a referral."

"I always think: 'Where will (the children) go for Christmas?'"²⁴

Two years later, another reporter for

the same newspaper wrote about a supervisor at a CPS office in Bexar County:

Sometimes, he has to reassure his childless employees that some parental behavior is normal. He recalls a caseworker appalled by a child's hamburgers-and-chips meals.

"Junk food's not a crime," Darrell said.

Another couldn't believe parents let their kids eat off the floor. That happens with kids, Darrell said. It's OK.²⁵

Other cases fall on a broad continuum between the extremes, the parent neither all victim nor all villain.

After an exhaustive, six-month examination of child welfare in Bexar County, the *Express-News* concluded that "availability of help for the mentally ill or victims of

You're only damned if you don't

CPS caseworkers are not jack-booted thugs who relish destroying families. By and large they are dedicated, idealistic people who want to do what's best for vulnerable children. They also typically are undereducated for the job – a bachelor's degree in anything is enough to get hired in Texas. They are undertrained for the enormous responsibilities they face. They are probably inexperienced, because turnover is so high. And they have crushing caseloads. All of this makes it almost impossible for even the best worker to make good decisions. They wind up making bad decisions in both directions, leaving some children in dangerous homes even as they take others from homes that are safe or could be made safe with the right kinds of help.

But in terms of what will happen to the caseworker personally, all wrong decisions are not created equal. The common argument from caseworkers that they are "damned if we do and damned if we don't" is disingenuous.

We are aware of no CPS caseworker anywhere in the country who has ever been criminally prosecuted, fired, demoted, suspended, or even slapped on the wrist for taking away too many children. All of these things have happened to workers who left one child in a dangerous home where something went wrong.

Similarly, agencies themselves sometimes try to duck scrutiny by applying what could best be called Goldilocks and the Three Bears logic: "If some people say we take too many children while others say we take away too few, then we must be just right."

But the logic of fairytales doesn't apply to the real world of child welfare. No child welfare agency comes under months of intense critical media scrutiny for taking away too many children. No heads roll over it. It is only the highly-publicized deaths of children "known to the system" that get top agency administrators into trouble.

When it comes to taking children from their parents, CPS and its workers are not damned if they do and damned if they don't. They're *only* damned if they don't.

domestic violence is thin in San Antonio. Caseworkers who want to help parents quit drugs or get out of abusive relationships sometimes end up removing their children instead.”²⁶ And that was before the “foster care panic” now sweeping through the county which has led to a gigantic increase in child removal.

Still another indication of the extent of the problem can be seen from the racism that permeates child welfare systems.

In Texas, 12 percent of children are African-American.²⁷ But they represent 30 percent of the foster care population.²⁸

Apologists for the take-the-child-and-run approach have tried to claim that the vast overrepresentation of minorities is simply a function of poverty (even as they also insist that they don’t confuse poverty with child abuse). But several studies show that there is more to it:

- 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.”²⁹

- 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.³⁰

- 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.³¹

- A comprehensive federal study of child maltreatment found that “even when families have the same characteristics, African-American children and Latino children, to a lesser extent, are more likely than white

children to be placed in foster care.”³²

- 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.³³

“[T]he child protection process is designed in a way that practically invites racial bias. Vague definitions of neglect, unbridled discretion, and lack of training form a dangerous combination in the hands of caseworkers charged with deciding the fate of families.”

--Prof Dorothy Roberts, author,
*Shattered Bonds:
The Color of Child Welfare.*

Prof. Dorothy Roberts, author of the definitive book on child welfare and race, *Shattered Bonds: The Color of Child Welfare* (Basic Civitas Books, 2002), and a member of the NCCPR Board of Directors has written: “[T]he child protection process is designed in a way that practically invites racial bias. Vague definitions of neglect, unbridled discretion, and lack of training form a dangerous combination in the hands of caseworkers charged with deciding the fate of families.”³⁴

Of course, in Texas one “expert” has come up with a different explanation for who winds up in foster care: “Bad gene pools.”

The comment came from Dr. Joseph

Burkett, medical director of the mental health and mental retardation agency for Tarrant County.

Dr. Burkett made his remarks before a committee of the Texas Legislature, on behalf of the Texas Society of Psychiatric Physicians, and he served on a Child Protective Services advisory committee which called for increasing the variety of psychotropic drugs that could be given to foster children.

According to news accounts, Dr. Burkett said:

"I should stretch and give you a little more medical perspective on mental illness. A lot of these kids come from bad gene pools. They don't have stable parents making good decisions or else many of them, most of them, would not be in foster care."

Dr. Burkett later said he was "not alluding to race." But if Dr. Burkett believes that children are in foster care because of "bad gene pools" and Texas foster children are disproportionately Black, it's hard to see how there can be no allusion to race, even if it was unintentional.

Dr. Burkett went on to explain he meant only that "there are pretty strong genetic factors in mental illness. The comment ... was really a comment about the fact that these children are in the foster care system because they don't have normal parents making good decisions. ... That's really the connection I'm making with genetics."

But this comment is just as scary as the one about bad gene pools. It is the ultimate in circular reasoning: All these foster care placements are justified because if the parent was "normal" the children wouldn't be in foster care.

Dr. Burkett never explained the mental illness – or abnormality -- from which Dorothy Watson, the grandmother in his home county, was suffering. Of course, he almost certainly didn't know about the case. If he did, would he conclude that mental illness caused her house to be in disrepair?

In an e-mail dialogue on October 29

and 30, 2004, we twice asked Judge McCown to denounce Dr. Burkett's comments. Judge McCown chose to remain silent.³⁵

That Dr. Burkett's attitude apparently is so accepted, is, in itself an indication that wrongful removal is a serious and widespread problem in Texas.

And the problem of wrongful removal worsens whenever a state or county is engulfed in a "foster-care panic" – like the one occurring right now in Bexar County.

A special report, commissioned by 73rd District Court Judge Andy Mireles concluded:

"Cases entering the system through the Statewide Intake function in Austin are not always sufficiently screened. Although there are measures in place locally to 'close without assignment' based on the nature of the allegations, there are vast differences among local managers in the level of screening that occurs. In the present climate of fear of further tragedies and the fear of community condemnation, local managers are reluctant to close cases that, in less volatile times, would have been 'closed without assignment.' The impact of this reluctance falls on the caseworkers who are already overburdened with clearly high-risk cases, adding to their frustration and to the lack of credibility of their own managers, further contributing to the poor morale that exists today ..." [emphasis added].³⁶

And it's not just Bexar County. Consider this excerpt from a story in the *Dallas Morning News*:

On both days a reporter rode with her this month, [caseworker Candice] Tovar said that at least one of the new cases she spent time investigating should never have reached her. One was a neighbor vs. neighbor spat. Another was a lovers' quarrel.

"Rarely do they screen out many of them because if there's a child [mentioned], we want to go out and cover it," she said. If any child in the initial tip is younger than 5, "they're going to send someone out, whether it's bogus or

*not," she said. "Everyone's paranoid now. We have to take pictures of every child in every case. It's a lot of extra work."*³⁷

But this worker herself would go on to recommend removal in a case where it would be unnecessary in a system with a reasonable array of alternatives. (See "Start with the kitchen," Page 49).

Wrongful removal hurts children

Worse than assuming that wrongful removal is rare is the assumption that the harm it does to children like Saundra Helms or Sylvan Asher is inconsequential.

It is not inconsequential.

Even the very act of a needless investigation of child abuse can cause serious emotional harm.

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

*"Children react even to temporary infringement of parental autonomy with anxiety, diminishing trust, loosening of emotional ties, or an increasing tendency to be out of control. The younger the child, and the greater his own helplessness and dependence, the stronger is his need to experience his parents as his lawgivers, safe, reliable, all-powerful, and independent ... When family integrity is broken or weakened by state intrusion [the child's] needs are thwarted and his belief that his parents are omniscient and all-powerful is shaken prematurely."*³⁸

In discussing the problem of false reports during custody cases, a Bexar County caseworker herself acknowledged the emotional trauma to children of such an investigation. She told the *San Antonio Express-News* she couldn't understand how anyone could file a false report on purpose, and she described what she has to ask a child:

"Have you ever seen mommy or anyone else put white powder in their nose or stick nee-

*dles in their arms? Do you know the difference between a good touch and a bad touch? No? Well, a good touch is when someone gives you a hug or pats you on your back. A bad touch is when someone touches you in your private area. Do you know where your private area is? No? Do you know where your pee-pee is?"*³⁹

All of that harm is compounded when the child is removed from everyone loving and familiar. Young children may feel they have done something terribly wrong and now they are being punished. Thus, a three-year-old child dragged, literally kicking and screaming, from her mother calls out "I'm sorry, I'm sorry, I'm sorry."⁴⁰

The harm is compounded if the child is moved from foster home to foster home. The child may well emerge years later, unable to love or trust anyone. And instead of helping, the foster care system simply throws potent, sometimes dangerous psychiatric medication at the problem it created in the first place. As State Comptroller Carole Keeton Strayhorn put it in her exhaustive and insightful study of Texas foster care:

*[E]ven fundamentally normal children who have been taken from their homes and families can become aggressive and "emotionally reactive" due to a lost sense of trust and their conditions are only worsened by multiple placements and frequent caseworker turnover. As their feelings of instability increase, their emotions may erupt, and their caretakers then are, in the words of one child psychiatrist, "just chasing an untreatable problem with more medication."*⁴¹

And Strayhorn is not alone in her concern. One expert summed it up quite well: "I've seen kids go from foster home to foster home . . . and seen them turn into sociopaths. I think people who have seen what the system does to these kids once it takes them in are not opposed to family preservation."

That expert was Scott McCown.⁴²

Indeed, one year before Judge

McCown took his current job running the Center for Public Policy Priorities, that organization issued a scathing report on what happens to children who grow up in foster care.

The report found that nearly half had

no high school diploma, and 40 percent were on welfare. Nearly half had been homeless at least once. More than ten percent have done jail time.⁴³

So for at least six years Texans have been witness to a bizarre paradox: One of

The myth of due process for families

What may be most disturbing about Judge Scott McCown's *Petition in Behalf of the Forsaken Children of Texas* is what he writes about due process for families caught up in the child protection system. He says it exists.

The law will protect children from needless removal, he says, because every time a caseworker decides to remove a child on the spot, that decision "must be reviewed by a hard-nosed Texas Judge" within a day.

Not quite. Actually, it's the first working day after removal – and if there is no time then, the hearing can be delayed for two more days. So in fact, if a child is removed after 5:00pm on a Friday it may be up to five or six days before the hearing.⁴⁴

And it doesn't have to be a full hearing. Under Texas law "The initial hearing may be *ex parte* and proof may be by sworn petition or affidavit if a full adversary hearing is not practicable."⁴⁵ In other words, the hearing can be held without the accused even having a right to be present – and the "hard nosed Texas judge" need simply accept whatever Child Protective Services says at face value.

And even if the birth parent is given notice and is allowed to show up at the hearing, she is not yet entitled to a court-appointed lawyer if she is indigent.

So at best, at these hearings, on one side is a lawyer for the government who's had at least 24 hours to review the case and prepare the petition. On the other side is an overwhelmed, impoverished birth parent who will just have to fend for herself.

Presiding is a judge who knows full well that he can hold hundreds of children needlessly in foster care, and while the children may suffer terribly, the judge is safe. Let one child return to a dangerous home and have something go wrong, and the judge's career may well be over.

Perhaps that explains why a hard-nosed Texas judge took those five children from their grandmother in Fort Worth solely because of housing. Or why another hard-nosed Texas judge took the children of that Houston mother for smoking marijuana to ease the pain of labor. Or why still another hard-nosed Texas judge took the children of the Corpus Christi mother because she had a seizure disorder and was too poor to hire home health aides.

It seems some of those hard-nosed Texas judges get just as squishy-soft as their counterparts in New York City; the ones who freely admitted to a panel of national experts that they regularly approve the removal of children even when they don't think the child welfare agency has made a case – because they're too scared to do anything else.⁴⁶ When it comes to child abuse cases, judges are far more likely to wield rubber stamps than gavels.

As Judge McCown himself acknowledges, there is no *real* hearing for at least 14 days.

So in truth, CPS has a free shot at any child in Texas for at least two weeks.

By then it's too late. As Prof. Paul Chill, Associate Dean of the University of Connecticut Law School (and a member of the NCCPR Board of Directors), has written:

*"Once a child is removed, a variety of factors converge to make it very difficult for parents to ever get the child back. One court has referred to this as the 'snowball effect.' The very focus of court proceedings changes--from whether the child should be removed to whether he or she should be returned. As a practical matter, the parents must now demonstrate their fitness to have the child reunited with them, rather than the state having to demonstrate the need for out-of-home placement. By seizing physical control of the child, the state tilts the very playing field of the litigation. The burden of proof shifts, in effect, if not in law, from the state to the parents."*⁴⁷

And what actually happens at that 14-day hearing? Well, Judge McCown assures us, we shouldn't worry because "in most cases, indigent persons are entitled to a court-appointed lawyer."

It's hard to imagine any liberal in Texas saying: "Don't worry about how we administer capital punishment here in Texas. The accused is entitled to a court-appointed lawyer." But nothing makes a civil libertarian go weak in the knees and forget everything he stands for faster than whispering in his ear the words "child abuse."

And, in a more-recent document, Judge McCown himself contradicts his own claim. He notes that Texas law doesn't actually require appointment of counsel for indigent parents until the very last stage of a child welfare proceeding – when the state seeks to terminate parental rights. Until then, while their children languish in foster care, the birth parents may well have to go it alone. Judge McCown further says that because counties have to pay for these lawyers, judges often put off appointing them until the last possible moment. And, he says, they are underpaid, which "affects the quality of representation."⁴⁸

How does he explain the apparent contradiction? In response to an e-mail query, McCown said that it is so common for District Attorneys to seek termination of parental rights from the moment a case is filed (a highly questionable practice in itself) that, as a result, in most cases, indigent parents are entitled to a court-appointed lawyer.

But, McCown added:

"When the parent gets a lawyer is another matter. Some counties appoint from the beginning, so the parent has a lawyer at the fourteen-day hearing; others do not appoint until a few months before a trial on the merits. Practice varies from county to county and year to year depending on the financial health of the county and the inclinations of the presiding judge."⁴⁹

To his credit, Judge McCown calls for appointing lawyers at the very start of proceedings, regardless of whether District Attorneys immediately seek termination of parental rights. And he calls for raising the pay of those attorneys.

But he can't have it both ways: He can't credibly claim such changes are necessary, and then turn around and insist that there is no problem of wrongful removal because existing protections are adequate.

the state's leading child advocates engaging in a furious crusade to throw more and more children into a system he himself condemns for the harm it does to children.

Comptroller Strayhorn has written that “the heartbreaking truth is that some of these children are no better off in the care of the state than they were in the hands of abusive and negligent parents.” So imagine how much *worse* off the children are when their parents were not, in fact, abusive or negligent in the first place.

Judge McCown would say we don't understand – he's also in favor of prevention. But, as we discuss in more detail later in this report, his position is tantamount to waging a crusade to build more prisons while adding, “and by the way, we also should do more to prevent crime.” You can be sure the prisons will be built and the prevention efforts will never get off the ground.

The problem is compounded in cases where a parent, usually the mother, is herself a victim of domestic violence. Earlier we noted the finding of the *San Antonio Express-News* that Bexar County caseworkers sometimes have nothing to offer these mothers – so they tear away the children.

But all of the trauma of wrongful removal is compounded when the child has seen his mother being beaten and then is torn from her. The child may wind up blaming himself for his mother's abuse. One expert said the harm to children caused by tak-

ing them away under these circumstances is tantamount to “pouring salt into an open wound.”⁵⁰ In New York City, a class-action lawsuit led a federal judge to ban such removals.⁵¹

All of the emotional damage to foster children can happen, and often does happen, even when the foster homes are good ones. We are talking here about the *inherent* harm of the placement process – something that cannot be fixed by making foster care “better.”

We have not even reached the issue of the rate of physical and sexual abuse in foster care itself, the even higher rate of abuse in institutions, and the misuse and overuse of psychiatric medications in these institutions; all issues discussed later in this report.

Of course, the inherent harm that often accompanies an investigation or a removal does not mean that agencies should never investigate or never remove a child from his or her birth parents. It just means that CPS, and judges, need to be far more careful about weighing the alleged harm to the child of, say, staying in a loving home where mom smokes marijuana, against the harm to that child of taking him or her away. And CPS should be far more willing to solve the problem of a child living in an unsafe home by fixing the home, instead of breaking the family.

Comptroller Strayhorn has written that “the heartbreaking truth is that some of these children are no better off in the care of the state than they were in the hands of abusive and negligent parents.”⁵² So imagine how much *worse* off the children are when their parents were not, in fact, abusive or negligent in the first place.

No such balance of harms exists now. On the contrary, one Texas CPS spokeswoman proudly declared that: “I'd rather say I protected a child that wasn't abused than to say I didn't protect a child that was.”⁵³

That is the most dangerous mindset

in child welfare. It equates child removal with child protection and it is utterly oblivious to the harm done by removal itself. How in the world does taking a child who was not harmed in her own home, throwing her in with strangers and then repeating the process over and over until the child is scarred for life constitute “protection”?

Wrongful removal is not inevitable

But perhaps the worst mistake of all is to write off the trauma to children caused by needless removal from their parents as unfortunate, but somehow inevitable. There is nothing more cruel and callous than to dismiss these children’s pain as mere “collateral damage” that has to be tolerated to win the war against child abuse.

But Judge McCown appears to have done just that. For years, he simply insisted that children are never wrongfully removed because workers and judges supposedly are too busy with more severe cases. In his *Petition* he writes that “The cases of abuse and neglect are so serious and so numerous, that frankly CPS does not have now--and will not have even with significantly increased funding--the resources to consider the questionable or arguable case. ... CPS works at the core of abuse and neglect, not at the margin.”⁵⁴

How the holes in the walls of Dorothy Watson’s home became “the core of abuse and neglect” Judge McCown does not say.

More recently, as noted above, Judge McCown told the legislature that children are removed “in only terrible circumstances.”⁵⁵ He does not say what made the circumstances into which Kimberly Veitenheimer was born so terrible that they warranted confiscating the infant almost at birth.

When pressed on such points by NCCPR, Judge McCown amended his position, declaring in an e-mail exchange with the author of this report: “Certainly I agree that we sometimes take the wrong kids into

care who with better family preservation could be at home, but sadly that is far *offset* by leaving too many in dangerous homes,” [emphasis added].⁵⁶

One can only wonder how the “offset” works. Is it worth five children being needlessly sent into a system McCown himself acknowledges can do enormous harm if it saves one from a dangerous home? If two children are saved from harm in their own homes, is it worth having 20 needlessly drugged in institutions? Is the death of a child in a foster home less tragic than death inflicted by his birth parents?

Such a calculus would be inexcusable even if it were, in fact, possible to save some children’s lives by sacrificing scores or hundreds of others to needless foster care. But the truth is the opposite.

When he talks about cases that “offset” wrongful removal, Judge McCown is referring of course, to the tragedies that *do* make the front page day after day. He is referring to the deaths of children in their own homes, who were “known to the system,” children like Diamond Alexander-Washington in San Antonio, and Davontae Williams in Arlington.

And he is referring to documents like the report of the Health and Human Services Commission Office of Inspector General which found repeated instances of workers closing cases too soon and leaving children in dangerous homes.

But Judge McCown betrays a fundamental misunderstanding of why such tragedies occur. They don’t occur because CPS is trying desperately to preserve families and is refusing to remove children. Rather, they occur because workers are underqualified for their jobs, underprepared for those jobs and, most important, desperately overwhelmed.

It is now well known that Texas CPS workers carry an average caseload of more than 61 cases each. Some reports put the average at over 70.⁵⁷ That makes it impossible to investigate any case properly. No

case gets enough time. So workers are forced to make snap judgments – a practice sometimes referred to as “drive-by social work.”

Judge McCown’s premise, that workers remove children in only the most serious cases, requires that workers have the time and the preparation and the resources to figure out which cases are serious.

Clearly, they do not.

So in one case, a worker may see a spotless home and jump to the conclusion that a child is safe. In another she’ll see a home that is dirty and jump to the conclusion that the child is in danger. She may well be wrong in either case, or both.

Judge McCown’s premise, that workers remove children in only the most serious cases, requires that workers have the time and the preparation and the resources to figure out which cases are serious.

Clearly, they do not.

Indeed, it defies common sense to believe that overwhelmed undertrained workers will make all of their mistakes in only one direction. Instead of the rational behavior McCown posits, CPS is arbitrary, capricious, and cruel – leaving some children in dangerous homes even as other children are taken from homes that are safe, or could be made safe, with the right kind of help.

As a result, the problem snowballs. More wrongful removals further inflate caseloads, leaving less time to make good decisions, leading to still more wrongful removals and ever-higher caseloads.

Perhaps Sandra Helms was Case #12 on the load of some CPS worker in Corpus Christi. Perhaps the Veitenheimer children were case #25 on the load of a worker in Wichita Falls. Perhaps Sylvan and Bishop Asher were case #40 on the load of a worker in Houston. And maybe in Fort Worth, for some desperately overloaded worker, the grandchildren of Dorothy Watson were case #61.

Of course, we don’t know which number each of these cases really received, or even the exact caseloads of the workers.

But we do know this: All the time, money and effort that was wasted doing enormous harm to the children in each of these cases was, in effect, stolen from some child we may never know who was in real danger and may well have been overlooked. And right now, the next case like the Helms case, the Veitenheimer case, the Asher case and the Watson case is stealing time from another desperately overwhelmed worker somewhere in Texas. And that time may well be stolen from the next Diamond Alexander-Washington or Davontae Williams.

The price of panic

This isn’t just theory. All over the country, sudden upsurges in child removal not only failed to make children safer, they actually increased child abuse fatalities.

The pattern is the same all over the country: A child “known to the system” dies. The case generates enormous publicity. Politicians rush to scapegoat all efforts to keep families together. Caseworkers run scared. Every worker thinks: “I’m not going to have the next Diamond Alexander-Washington or Davontae Williams on *my* caseload.”

So they rush to remove even more children. Caseloads increase still further. That hypothetical half an hour to make a life and death decision becomes a hypothetical 15 minutes. So the workers make more mistakes – in both directions. And more chil-

dren wind up dead.

It happened that way in Florida after Kayla McKean died at the end of 1998. In 1999, Gov. Jeb Bush appointed a new head of the state child welfare agency who waged a holy war against family preservation.⁵⁸ A year later, the number of children taken from their parents had increased by 50 percent, and removals have stayed at that high level ever since.⁵⁹ An army of “nomad children” spent their days in child welfare offices, their nights sleeping on cots at day care centers and their mornings showering at homeless shelters. Foster homes and institutions became desperately overcrowded and abusive.⁶⁰

**All over the country,
sudden upsurges in child
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The entire system collapsed, as the nation discovered when it was revealed that a foster child had been missing for 15 months before anyone in the state child welfare system even noticed.

And total deaths of children “known to the system” increased from an average of 25 per year in the four years before the panic to 32 per year in the five years afterwards.⁶¹

Florida had failed to learn from New York City.

In New York City, the child’s name was Elisa Izquierdo. She died in late 1995. Again, politicians scapegoated family preservation. Again removals of children soared – increasing 50 percent over three years.

Thousands of children were forced to sleep, often on chairs and floors, in a violence-plagued, emergency makeshift

shelter created from city offices.⁶² A four-year-old foster child was beaten and starved to death in a foster home opened by one private agency, apparently desperate for beds, after another had closed it down.⁶³

And a multi-year decline in child abuse deaths before the panic came to an end.

Between 1996 and 1998, deaths of children previously “known to the system” increased by 50 percent.⁶⁴

New York City had not learned from Illinois.

In Illinois, the child’s name was Joseph Wallace. After he died, in April, 1993, family preservation became the scapegoat – even though one of the very few people to warn that Joseph should not be returned home was his family preservation worker. Once again the shelters filled to overflowing, abuse in foster care itself set a record. By 1996, Illinois had proportionately more foster children than any other state. But, once again, instead of saving lives, child abuse deaths increased.⁶⁵

Florida never learned from its own mistakes. But New York City did. It embraced family preservation, and removals dropped significantly – with no compromise of safety.

And Illinois also learned. The number of children in foster care in Illinois has plummeted. Independent court-appointed monitors say that as the number of children taken from their homes has declined, child safety has improved. And today, Illinois takes away proportionately fewer children than Texas. Illinois is a particularly instructive case study. It is examined in detail on page 19.

But none of the foster-care panics that swept through these communities was as bad as the one underway in Bexar County right now.

In Bexar County 82 children were taken from their homes in June 2003. One year later, the number was 212.⁶⁶ That’s an increase of more than 150 percent; far

higher even than the rate which collapsed the Florida system.

And Bexar County's children are paying the price of panic. They are being moved over and over again, cared for in the worst possible setting – temporary shelters; where, no sooner do they try to form an attachment to someone then they're moved to another shelter or some other makeshift placement.

Many are being sent out of the county, far from birth parents, making it even more difficult for impoverished parents to visit them.⁶⁷

And all that still didn't prevent still another tragedy in Bexar County involving still another child "known to the system," Daisy Perales.

Indeed, the Bexar County Foster Care Panic may have contributed to Daisy's death. The investigator who opened the most recent case involving Daisy, the one with the most serious allegations, left during the investigation. Whenever one worker quits, the cases must be picked up by others, so everyone's caseload gets even worse. And in this instance, according to Rep. Carlos Uresti, the case "might have sat on a desk."⁶⁸

And because so many children who didn't need to be taken away are filling all the foster homes, even Daisy's surviving siblings had to be split up when they needed each other most – and placed in separate shelters.⁶⁹

Children in Texas are suffering because Texas has not learned from Illinois, or New York City, or Florida.

The foster-care panics that swept through those communities illustrate why you can't end the Texas child welfare crisis just by throwing money at it. And they show why the massive increase in foster care proposed by Judge McCown won't just harm the children needlessly taken away – rather, it will harm all of the vulnerable children in Texas.

Despite his dedication and his noble

intentions, Judge McCown both misunderstands where many Texas foster children come from, and is blind to where many of them go.

There is more to child welfare than can be seen from any one judge's bench. Indeed, there is more to child welfare than can be seen from any one state.

Having once rushed to compare Texas to other states, now Judge McCown seems to feel there is no need to learn from anyplace else. Unable to make his case on the merits, Judge McCown concluded his e-mail dialogue with the author of this report as follows:

"I am a fifth generation Texan. This is my state. I have seen these kids and families with my own eyes. The data supports what I have seen."⁷⁰

But there is more to child welfare than can be seen from any one judge's bench. Indeed, there is more to child welfare than can be seen from any one state. As for the data, Judge McCown has misunderstood it.

What the data really show

How do you measure the propensity of a state to take children from their parents? That would seem to be as easy as question as "Who is buried in Grant's Tomb?" You count up the number of children taken from their parents, compare it to the total number of children in the state and then compare the proportions of children removed in each state.

Judge McCown used to like that approach. He devoted a significant section of his *Petition* to showing that, proportionately,

Texas took away far fewer children than other large states, specifically California, Florida, New York and Illinois. In the *Petition*, he makes clear that he felt these other states were doing the right thing, and Texas was getting it wrong.

(Indeed, Judge McCown still maintains that Texas takes too few children. He refuses to say how many the state should take,⁷¹ perhaps because, then, he would have to explain where they should go. But he has implied that Texas should take away children at a rate at least equal to the national average. Repeatedly, he has written that “If Texas *merely* had the average number of children in care per 1,000, our foster care

population would be 53,114. [Emphasis added].⁷²)

But there have been big changes in rates-of-removal since 1998. Thanks to its sweeping reform effort Illinois now takes proportionately fewer children than Texas.

In fiscal 2004, the most recent year for which comparative data are available, Illinois removed 4,662 children⁷³ – 1.44 per thousand.⁷⁴ Texas, in contrast, removed 13,431 children, according to DFPS spokesman Geoff Wool, who provided the data via e-mail, in response to a query from NCCPR.⁷⁵ That’s a rate of 2.15 per thousand.

What Illinois can teach Texas

In 1998, it would have been hard to find a child welfare system worse than the one in Illinois.

In April, 1993, three-year-old Joseph Wallace was killed by his mother. Like Diamond Alexander-Washington and Davontae Williams in Texas, Joseph was “known to the system.” “Family preservation” quickly became the scapegoat – even though one of the few people to realize the danger to Joseph was a family preservation worker. Family preservation was attacked relentlessly by politicians and much of the media -- even though most of the programs in Illinois at the time bore little resemblance to the safe, effective models that had succeeded elsewhere.

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

By 1996, a child was more likely to be placed in foster care in Illinois than in any other state. But instead of saving lives, child abuse deaths went up. They soared from 78 before family preservation was abandoned to 82 the first year after, to 91 in fiscal 1997.⁷⁶

That’s not surprising. The abandonment of family preservation led to a foster care panic that overwhelmed the system to the point that it created a backlog of more than 5,000 uncompleted investigations.⁷⁷ In the first two years after the panic, the number of children removed from their homes over the course of a year increased by 14 percent. Because judges also became terrified to return any child home, the Illinois foster care population (the point-in-time “snapshot number”) soared by 44 percent, overwhelming the system.⁷⁸ Child abuse deaths *in* foster care in Illinois went from zero in the year before the foster care panic to five in the first year afterwards -- an all-time record.⁷⁹

During the years of foster-care panic, there were other tragedies in Illinois.

• Having supposedly "put children first," Illinois officials soon found they had no place to put children at all. So they were jammed into a hideous shelter, then overflowed into offices. Streetwise teens were thrown together with vulnerable younger children; infants were jammed into urine-soaked cribs. An 11-year-old got hold of a gun and fired it.⁸⁰ The *Chicago Tribune* described the shelter in 1993:

"A surly teenager with a bad attitude struts and shouts swear words a few yards away from the abused and neglected little ones, so young they can barely tell you their names ... 16-year-old Harry is boasting: 'I stole 50 cars this week!' A few yards away is 5-year-old Michael, so very scared and trying with all his might not to cry. 'I'm the big brother,' Michael explains, gently stroking the hair of Christopher, 4, who gulps heavy, sleepy breaths and sucks his thumb on a cot in a corner. ... When a visitor tried to shake the little boy's hand, he threw his arms around her, starving for a hug ...

*"'I want my mom,' Michael said ..."*⁸¹

• Children were jammed into any foster home with a bed, with little screening of foster parents or foster children. As a result, according to Benjamin Wolf of the Illinois Affiliate of the American Civil Liberties Union, the Illinois foster care system became "like a laboratory experiment to *produce* the sexual abuse of children."⁸²

Abandoning family preservation took a bad system and made it, in Wolf's words, "unquestionably worse."⁸³

Of course, not everyone thought things were so bad.

In 1998, when the Illinois system still was at its worst, Judge Scott McCown suggested that Texas should emulate it. He pointed to the high rate of removal in Illinois and other large states as proof that "Perhaps most disturbing of all is the conclusion that Texas removes too few children from dangerous circumstances."⁸⁴

Fortunately, in Illinois they knew better. They realized that they could not continue to destroy children in the name of saving them.

So they tried again, and this time they got family preservation right, putting in place an array of services to keep children safely in their own homes – not just the kinds of primary prevention programs everybody favors, at least in rhetoric, but a full menu of help, including family preservation services when a family is in crisis.

When children must be placed, Illinois tries harder than most other states to find a relative, to at least cushion the blow by placing the child with someone he already knows and loves. Contrary to the prejudice that sometimes surrounds kinship care, Illinois found that these placements are, on average, safer than placements with strangers. In contrast, Texas lags behind in kinship care. (For details see "Extended families – Extended hostility," page 42).

And Illinois changed financial incentives to the scores of private agencies that provide most foster care in the state. Instead of simply paying the agencies for every day they held on to a child – thereby encouraging them to hold children in foster care for as long as possible – Illinois began paying for permanence, rewarding agencies both for getting children adopted and for safely returning them to their own homes. (To her credit, Comptroller Carole Keeton Strayhorn, in her comprehensive report, *Forgotten Children*, has recommended that

Texas do the same).

As a result, the Illinois foster care population plunged from more than 50,000 when the crisis was at its worst, in 1997, to 18,537 as of October, 2004. The number of children removed over the course of a year plunged from 9,037 in fiscal year 1995 to 4,662 in fiscal year 2004.⁸⁵

During all of this time, the Illinois system has been under extraordinary scrutiny. Independent, court-appointed monitors are overseeing everything, as part of a class-action lawsuit settlement.

And these independent monitors have reported that all this was accomplished while improving child safety. Indeed, reabuse of children left in their own homes has declined.⁸⁶ According to one monitor, Prof. Marc Testa, director of the University of Illinois Children and Family Research Center, children are safer now than they were when the state had far more foster children.⁸⁷

The Illinois system is far from perfect. Though fewer children are taken away, the system still doesn't do well by those who are removed, moving them too often from home to home. And there are still horror story cases in Illinois, just as there are in all systems.

Indeed, everything that goes wrong in the worst child welfare systems also goes wrong in the best – but it goes wrong less often.

Illinois has proven that a state can take away children at a rate that is, proportionately, the same or lower than Texas and still dramatically improve child safety.

Scott McCown wanted Texas to learn from Illinois when Illinois was at its worst. We think it would make more sense if Texas learned from Illinois today.

That's up from 12,050 in 2003, according to the Texas Department of Family and Protective Services *2003 Data Book*,⁸⁸ (In legislative testimony, Judge McCown gave a lower figure for 2003,⁸⁹ but that was based on a letter from one DFPS official to a legislative committee. It probably excluded certain types of removals.) As the chart below and in Appendix A shows, the latest figures are not aberrations. They continue a trend going back several years, in which removals in Illinois steadily declined, while removals in Texas steadily increased.

Furthermore, the latest data from both states show that, even when the higher poverty rate in Texas is factored in, Texas still now takes away proportionately more children than Illinois. (For a detailed discussion of foster care statistics, see Appen-

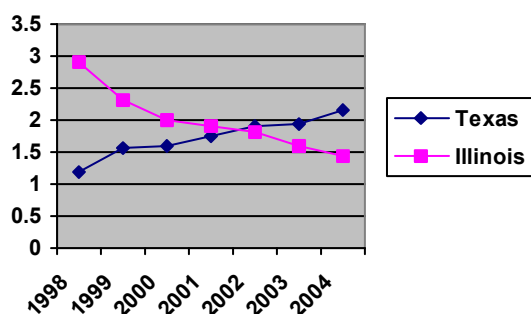
dix A).

The fact that Illinois takes a relatively low proportion of children and so does Texas does not mean the systems are equal in their ability to keep children safe. Far from it. Illinois reduced its placement rate by carefully rebuilding its system to emphasize safe, proven programs to keep families together. And even though family preservation is a money-saver, Illinois still spends far more per child than Texas.

As a result, Illinois reduced its foster care population while improving child safety— a fact confirmed by state data and by independent experts monitoring the system as a result of a class-action lawsuit. (See “What Illinois can teach Texas,” p. 19)

Texas can make no such claim.

Number of children per thousand removed from their homes 1998 to 2004



Sources: See Appendix A.

Texas is not taking away too few children; indeed, the latest data show it is taking away too many. And clearly, Texas is taking away the *wrong* children.

Illinois proves that it is *possible* to take away, proportionately, fewer children than Texas and still keep those children safe. Therefore, reform in Texas should be aimed at rebuilding the system the way Illinois did – so that Texas can make children safe, while taking fewer children from their parents.

Illinois proves that you don't have to take away massive numbers of children – as Judge McCown implies we should – in order to keep them safe. Any notion that a state should strive for the national average in child removal, when removal, in fact, does so much harm, is absurd.

The stakes:

There are those who would argue that, notwithstanding the independent monitors' conclusion, Illinois has it wrong. They'll argue for a take-the-child-and-run approach because that way "we're playing it safe." "We're not taking chances." As noted earlier, one Texas CPS spokeswoman said: "I'd rather say I protected a child that wasn't abused than to say I didn't protect a child that was."⁹⁰ Another Texas CPS spokeswoman used the most common version of

all: "We, of course, are going to err on the side of the child."⁹¹

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

We have already discussed the inherent emotional trauma when a child is removed from everyone loving and familiar, in the name of "erring on the side of the child." But no matter how often experts – and the children themselves – try to tell the world about this harm, too often it is written off with a shrug and a "yes, but..." response, as in "Yes, but at least the children are safe."

The problem is, often they are not.

Official data from child welfare agencies concerning abuse in substitute care are largely worthless. That's because for abuse in foster care to make it into those records:

- Someone, often the child, must come forward, perhaps revealing abuse to the very person who put him into the abusive situation, his caseworker.
- The caseworker must be willing to investigate with an open mind, even though substantiating the abuse will reflect poorly on her agency, and maybe herself.

There probably is no phrase in the English language that has done more harm to children than "err on the side of the child."

- Supervisors must pass the substantiation up the chain of command, again, with the knowledge this will not reflect well on them.

- Everyone will have to go through the trouble of finding the child another place to live.

When it comes to abuse in foster care, there is an enormous incentive to see no evil, hear no evil, speak no evil and write no evil in the case file.

So it is not surprising that when the State Comptroller's office took a much closer look at abuse in Texas foster care, it concluded that "the public database and published information underreport complaints, including abuse and neglect complaints and do not paint a true picture of the situation."⁹²

When it comes to abuse in foster care, there is an enormous incentive to see no evil, hear no evil, speak no evil and write no evil in the case file. So it's been left to academicians and others to probe beneath the surface and discover the true rate of such maltreatment.

Consider the evidence from across the country, and from Texas.

- National data on child abuse fatalities show that a child is nearly twice as likely to die of abuse in foster care as in the general population.⁹³

- A study of reported abuse in Baltimore, found the rate of "substantiated" cases of sexual abuse in foster care more than four times higher than the rate in the general population.⁹⁴

- Using the same methodology, an Indiana study found three times more physical abuse and twice the rate of sexual abuse in foster homes as in the general population. In group homes there was more than ten times the rate of physical abuse and more than 28 times the rate of sexual abuse as in the general population, in part because so many children in the homes abused each other.⁹⁵

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

In New York City, for example, where Children's Rights Inc. settled a lawsuit against the child welfare system, they found that "Abuse or neglect by foster parents is not investigated because [agencies] tolerate behavior from foster parents which would be unacceptable by birth parents."⁹⁶

That helps explain why studies not limited to official reports produce even more alarming results.

- Another Baltimore study, this one examining case records, found abuse in 28 percent of the foster homes studied -- more than one in four.⁹⁷

- A study of cases in Fulton and DeKalb Counties in Georgia found that among foster children whose case goal was adoption, 34 percent had experienced abuse, neglect, or other harmful conditions. For those children who had recently entered the system, 15 percent had experienced abuse, neglect or other harmful conditions in just one year.⁹⁸

- Even what is said to be a model foster care program, where caseloads are kept low and workers and foster parents get special training, is not immune.

When alumni of the Casey Family Program were interviewed, 24 percent of the girls said they were victims of actual or attempted sexual abuse in foster care. Furthermore, this study asked only about abuse in the one foster home the children had been in the longest. A child who had been moved from a foster home precisely because she had been abused there after only a short stay would not even be counted.⁹⁹ Officials at the program say they have since lowered the rate of all forms of abuse to

“only” 12 percent, but this is based on an in-house survey of the program’s own caseworkers, not outside interviews with the children themselves.¹⁰⁰

How does exposing children to all this constitute “erring on the side of the child”?

This does not mean that all, or even most, foster parents are abusive. The overwhelming majority do the best they can for the children in their care -- like the overwhelming majority of parents, period. But the abusive minority is large enough to cause serious concern. And, as the Indiana study makes clear, abuse in foster care does not always mean abuse by foster parents.

For example, a lawyer who represents children in Broward County, Florida, says in a sworn affidavit that over a period of just 18 months he was made personally aware of 50 instances of child-on-child sexual abuse involving more than 100 Broward County foster children. The official number during this same period: Seven -- because until what the lawyer called “an epidemic of child-on-child sexual abuse” was exposed, the child abuse hotline didn’t accept reports of such abuse.¹⁰¹

And if anything, DFPS is even more clueless about such abuse in Texas.

Some children really have been brutalized by their parents, and really must be taken away. In some cases that brutality takes the form of sexual abuse. And in some cases, such a child will re-enact what happened to him on others. So it is extremely important to separate such children from other vulnerable young people, such as those who may, in fact, have been taken away simply because their family’s poverty has been confused with neglect.

In most states, when these children wind up in the same home it’s because the child welfare agency didn’t know about a

child’s history, or because the system was so overcrowded and overwhelmed that workers had no place else to put the children -- another reason why a massive influx of children into any foster care system makes it an even more dangerous place.

But in Texas it’s worse. According to Comptroller Strayhorn’s report, in at least one Texas “therapeutic” camp, children with histories of sexual abuse or sexual offenses are mixed with other children on purpose. It’s part of the “therapy.”¹⁰²

And they’re not violating any Texas Department of Family and Protective Services policy either. Using the agency’s former name, Strayhorn reports that “DPRS policies do not require children with histories of sexual abuse, sexual predation or violent criminal records be separated from other children.”¹⁰³

How exactly is taking a child who was not abused in his own home and putting him in such an environment “erring on the side of the child?” How often does this lack of a policy actually lead to child on child sexual abuse? How about other kinds of abuse committed by one foster child against another?

DFPS doesn’t have a clue.

Strayhorn found that “DPRS does not track or report on the extent of child-on-child abuse in foster care.” In part that’s because the only method the agency would have to keep track would require caseworkers to enter the offending child’s name into the state’s central registry of alleged child abusers -- a label that would haunt the child for life -- and caseworkers don’t want to stigmatize the children.¹⁰⁴

And the people who run the institutions to which so many foster children are confined aren’t always forthcoming about such abuse. Again, from Comptroller Strayhorn’s report:

Angela's story

This case study is reprinted, in its entirety, from State Comptroller Carole Keeton Strayhorn's comprehensive report, Forgotten Children: A Special Report on the Texas Foster Care System. (The report uses the former name of what is now the Texas Department of Family and Protective Services).

Angela, (name changed to protect confidentiality), age 14, named the women she said had abused her and the other children at the facility. Angela said they punched girls in the stomach when they got mad at them, and that one of the women pushed her down the stairs. She said it happened after one of the other girls shoved her off a bench, which hurt her leg. She said she was moving slowly because her leg hurt and that one of the staff became angry with her for being slow. She said the staff member told the other girls to go in their rooms and close their doors.

When Angela finally reached the top of a flight of stairs, she said the staff member told her she was going to "teach her a lesson." According to Angela, the staff member pulled her injured leg up and pushed her down the stairs. Then a staff member sat her in a chair downstairs because she was unable to climb the stairs. She said she slept in the chair for the next week.

The facility's director, a registered nurse, said she took Angela to a medical clinic the next day, where a doctor said Angela's leg was not broken. A week later, she said she took Angela again to the clinic, and again the doctor said that her leg was not broken. The following day, the director took Angela to the clinic for a third time; the doctor then recommended sending her to an orthopedic specialist. Because it would take another week to see a specialist, the director took her to a hospital instead.

The hospital immediately found that her leg was badly broken, and that the lack of medical treatment had caused a severe bone infection. After surgery, Angela had to spend six months in the hospital, several months of it in traction. According to hospital records, Angela was malnourished when she arrived and required a feeding tube for several months.

The facility director reported Angela's injury to DPRS on April 2, shortly after she took her to a hospital. Her report indicated that Angela had injured herself "while playing" and would need surgery.

DPRS began its investigation of the director's report on April 4, 2003. The same day, the agency received a second call, reporting that Angela said that a staff member had pulled her up the stairs by her hair and pulled her injured leg up for being slow. On May 20, DPRS closed this complaint as "not subject to regulation." The report is not listed on DPRS' public database of reports and investigations.

In its investigation of the director's report, DPRS found that, since the facility had sufficient staffing when Angela was injured, sought medical treatment for her and documented it, that no breach of licensing standards had occurred. The agency closed this investigation on May 28.

Because DPRS did not investigate the second report, which contained Angela's allegation of abuse, no one asked critical questions. No one asked the other girls if they saw An-

gela climb the stairs on the evening of the alleged incident. No one asked the girls or staff members if they had seen Angela sleeping in a chair downstairs, or being unable to walk without crutches. No one asked hospital staff members whether the injury to her leg was consistent with a playground injury. No one reviewed her medical records to learn that she had been malnourished when she entered the hospital.

The facility and DPRS also failed to request an FBI background check of other states for the staff member Angela said pushed her, even though this individual had only recently moved to Texas before starting work at the facility. As it happens, this person had a criminal record in her state of prior residence, including a 1997 third-degree felony conviction for grand theft, a 1999 probation violation and a charge of battery in August 2001.

DPRS received yet another call about Angela's injury a few months later. This caller reported that children at the facility suffered from numerous medical conditions that may be related to abuse and neglect. DPRS investigated and ruled out abuse. According to DPRS' investigations to date, no one at the facility has done anything wrong, and the facility is in complete compliance with its standards.

On the DPRS Web site list of licensing investigations and violations, Angela's story is just one of the 90 percent of reports, complaints or allegations that DPRS does not find to be valid.

"At another therapeutic camp, the county sheriff charged a 17-year old and another teen with aggravated sexual assault of a younger boy in October 2003. The alleged rape was reported to staff; the camp director, however, did not report it to DPRS until after the younger boy ran away from the camp for the third time that week and contacted a sheriff's deputy."¹⁰⁵ How is placing a child in such a camp "erring on the side of the child?"

Strayhorn reports that investigators sometimes ignore available evidence of maltreatment, relying solely on interviews and documents prepared by the institutions themselves. And she found "instances of allegations of abuse and serious licensing violations that were administratively closed [without investigation] but did not meet the criteria for administrative closure. Here's one example:

[The child] was enrolled on Tuesday at [high school] by the foster mother. The foster mother repeatedly berated and warned [the child] not to be going to the nurse's office because "there's nothing wrong with you." However, [the child] has end-stage renal failure and

has dialysis three times a week. [The child] takes numerous medications.... [The child] "shuts down" however when the foster mother begins to berate [the child].

Today [the child] came to school, after having been absent yesterday, presumably for dialysis. [The child] became ill shortly after coming to school and began throwing up. [The child] was brought to the nurse's office and the foster mother was called. The foster mother came to the school briefly, but the foster mother merely berated [the child] for coming to the nurse's office and then flatly refused to take [the child] home or to take [the child] for medical attention....

At the time of the report [the caller] was considering calling 911. [The child] appears to be very ill. ... This foster mother continues to care for up to six children in her therapeutic foster home and has a clean record with [the Child Care Licensing Division of DFPS].

Still another example from the Comptroller's report is "Angela's story" reprinted in full on page 25. As you read it, consider how much harm was done to Angela in the name of "erring on the side of the child."

Like polluters writing environmental laws, the institutions themselves actually write their own contracts with DFPS.

Of course, DFPS might be able to prevent some of this abuse if it made surprise inspections of the institutions to which so many Texas children are sent. But DFPS doesn't do that. Instead, the institutions get at least 30 days advance notice.¹⁰⁶

In fact, the extent to which what could best be called the "institutions lobby" is in the driver's seat can be seen by one simple fact: Like polluters writing environmental laws, the institutions themselves actually write their own contracts with DFPS. According to Strayhorn's report, "each year DPRS gathers selected providers to write – not simply comment on or negotiate, but write – key provisions in boilerplate contracts they will sign for the coming year."¹⁰⁷

Forgotten fatality:

The death of Eric Hernandez

Sometimes, Child Protective Services will "err on the side of the child" until it kills him.

When Juana Olalde and her family saw the cars from child protective services driving up to her Dallas home, they thought it would be a time of joy. They thought the workers were bringing Juana's infant son, Eric Hernandez, home from foster care.

Instead, the workers were there to tell the family that Eric was dead.

Over the next several days CPS rubbed salt into the wound. For several days, the agency wouldn't allow the family even to see the baby's body. They were told that the foster parents had identified the body and no one else would be allowed to

see him. Three years later, the foster mother would be convicted of negligent homicide in connection with Eric's death. The foster father was acquitted.

"CPS was happy to go on TV and say this was a good foster family, but never once have they offered to sit down with my clients and tell them what happened," the family's lawyer told the *Dallas Observer* in 1999. "Basically, they've said: 'Your baby is dead, and there's nothing you can do about it.'"

Worse, CPS had reason to know the foster home was dangerous. The *Observer* described the foster home this way: "Cluttered. Filthy. Headed up by a lazy ... chain smoker who once told a state worker she was in foster care for the money..."

The *Observer* added: "No one will explain why the state took a child from an environment they suspected was unsafe and put him in a home they knew to be dangerous."

But here's one possible explanation: Eric Hernandez was placed in foster care in February, 1999 – during a foster-care panic that followed the release of Judge McCown's *Petition*. At no time in the past six years has there been such a sudden statewide upsurge in removals – which means at no time in the past six years has there been so much pressure, statewide, to find more places to put foster children in a hurry. Indeed, according to an internal investigation after Eric's death, obtained by the *Observer*, a caseworker examining previous allegations of maltreatment by the foster parents, "felt foster care was anxious for the investigation to be over so another child could be moved into the home."

And what were those prior allegations?

- In September, 1998, the foster mother brought a child to CPS with a swollen jaw that was beginning to bruise. She said the child "just woke up with it this morning."

- A month before Eric was placed in the home, the foster mother brought two children to a CPS office for a supervised visit with birth parents. One child had a bruise on her thigh and the other had a bruise on her buttocks. The foster mother said the children had been jumping on a bed.

Then there were the issues that might not rise to the level of an abuse complaint, but alarmed workers monitoring foster children in the home:

- All of the caseworkers who placed children in the home noted that The foster mother “sits on the couch all day smoking at least two packs of cigarettes – so much that, according to one female worker, ‘the smoke in the house is so thick that it burns your eyes.’”

- One worker said that when the foster mother brought children to the CPS office for visits with birth parents, “they were dirty, their faces caked with mucous.” The birth parents never found out, though. The caseworker cleaned the children up before the birth parents saw them.

- The same worker said she once asked the foster mother why she cared for so many foster children at a time, since she always seemed to “negative” toward them. At first, the foster mother said she wanted to keep siblings together. But then, she said, “she needed to pay her house note.”

After Eric died, a neighbor revealed more about the foster mother. “She’d have those kids in their room 12 hours a day,” the neighbor told the *Observer*. CPS doesn’t allow foster parents to lock children in their rooms, so the neighbor said the foster mother would stack pet gates across the door, or barricade the entrance with an ironing board.

And then there was the case of the ten-day-old infant who apparently wouldn’t stop crying. The neighbor says the foster mother taped a pacifier to the infant’s face. But the foster mother was worried: The infant had a doctor’s appointment the next day

and the tape left red marks around the baby’s mouth. The doctor’s appointment wound up canceled.

There was, in fact, good cause for CPS to investigate the original injury to Eric Hernandez. Eric had a broken leg. The break was a spiral fracture; often, but not always, a sign of abuse. Eric’s mother said she fell while holding the baby, and eventually a second doctor would say the broken leg was consistent with the mother’s account.

But Eric’s mother had a large, loving extended family. No one seems to have raised the question of why Eric was not placed with a relative.

Instead Eric, whose leg was in a cast, was placed with a foster mother who, according to her neighbor, didn’t like to care for children whose injuries were in casts because the last time she had such a child he “messed his pants” and soiled the cast.

Eric died of suffocation after he was placed in his crib, face down on a pillow. He couldn’t breathe, and, because of the cast, he was unable to move to get air.

The hospital had warned the foster parents not to leave Eric sleeping on his stomach. But the investigator who examined Eric’s death for DFPS wrote that the foster mother “called me and left a message that she had remembered that she had gotten some discharge instructions from the hospital ... She said she had not taken them out of her van and so she had forgotten she had them.”

Why place Eric in such a home? Probably because there was no place else to put him. Even if there was cause to take Eric away while CPS investigated, all the good, caring foster homes probably were filled as a result of the foster-care panic. And it is likely that some of the children who filled them were children who never needed to be taken from their parents in the first place.

So now that we know what DFPS means by “protecting” a child, shouldn’t the

thought of an agency spokeswoman saying : "I'd rather say I protected a child that wasn't abused than to say I didn't protect a child that was"¹⁰⁸ send chills up the spine of every Texan?

Overuse of institutions

The enormous power of the institutions lobby in Texas may also explain another disturbing aspect of Texas foster care: The gross overuse of institutions – in effect, latter-day orphanages.

Nationwide, in 2001, the last year for which comparative figures are available, an average of 10.4 percent of all foster children were placed in institutions – a figure that is, in itself, too high. In Texas it was 18.7 percent.¹⁰⁹

Whenever the failings of foster care get attention, someone is sure to suggest that orphanages can't be worse. But not only can they be worse, they are.

Although there is an alarming amount of abuse in family foster homes, there is such a thing as good foster home care – and there is undoubtedly a lot of it in Texas.

There is no such thing as a good orphanage.

Even when the people running the institution mean well, institutions are inherently abusive. The very act of institutionalizing a child is an act of abuse, inflicting emotional harm that some children overcome -- and many do not.

Orphanages generally are suggested as an answer for two groups of children, those for whom there supposedly isn't room in foster care because of an alleged "shortage" of foster homes, and those children who supposedly have such severe behavior problems that there is no other alternative.

But the research is virtually unanimous: Orphanages are the least effective and most expensive option for children. They provide all the drawbacks of family

foster care, with none of the benefits.

The North American Council on Adoptable Children (NACAC) has reviewed the scholarly literature concerning children raised in institutions.¹¹⁰ The findings are grim:

There is no such thing as a good orphanage.

- 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.

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

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

- 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.¹¹¹ And a survey of teenagers with a history of long term out-of-home placement found that the teenagers found institutions to be a significantly worse option than their own families, care by relatives, adoption, or even foster care.¹¹²

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 institutional peer-group subculture, encompassing drugs, sex, and intimidation.”

A review of 100 years of research and medical knowledge concerning orphanages concludes:

*[I]nfants and young children are uniquely vulnerable to the medical and psychosocial hazards of institutional care, negative effects that cannot be reduced to a tolerable level even with massive expenditure. Scientific experience consistently shows that, in the short term, orphanage placements put young children at increased risk of serious infectious illness and delayed language development. In the long term, institutionalization in early childhood increases the likelihood that impoverished children will grow into psychiatrically impaired and economically unproductive adults. [Emphasis added].*¹¹³

The research on the harm of institutionalization is so overwhelming that the federal government now rates state child welfare systems in part on their ability to *reduce* the number of children under age 12 in institutions.¹¹⁴

In those cases where children really shouldn't be returned to birth parents, institutionalizing children also thwarts a much better choice: adoption. More than 80 percent of foster children who are adopted are adopted either by relatives or by foster parents.¹¹⁵ So when foster children are cared for by neither, their chances of ever finding a permanent home plummet.

Orphanage proponents often claim that institutions provide children with “stability” since the children don't have to move from foster home to foster home. But orphanage workers often work in shifts, the caretakers changing every eight hours. And even in institutions using a so-called “house parent” model, the house parents typically quit every year or so.¹¹⁶

A building in which children, most of them strangers to each other, are thrown together to be cared for by paid staff hired to dispense indiscriminate pseudo-love to whoever walks in the door – staff likely to change every year or two – is not a home. It's a dormitory. And a collection of dormitories is an orphanage.

That makes orphanages every bit as unstable as multiple foster home placements. The real way to promote stability is to get the children who don't need to be in foster care back into their own homes. That would eliminate overcrowding in foster care and leave room in good, stable foster homes for the children who really need them.

Orphanage proponents also say institutions keep siblings together. Not if they're brother and sister. And not if there's much difference in ages. It's not safe to institutionalize boys and girls or children of different ages together.

Changing the architecture doesn't change the result. Although policymakers and journalists sometimes confuse architecture with love, children do not. Children are not fooled because dorms are now called cottages and staff are now called “house parents.” They are not seduced by a fresh coat of paint or a well-manicured lawn.

A building in which children, most of them strangers to each other, are thrown together to be cared for by paid staff hired to dispense indiscriminate pseudo-love to whoever walks in the door – staff likely to change every year or two – is not a home.

It's a dormitory. And a collection of dormitories is an orphanage.

The other argument for institutionalizing children is that some of them are so emotionally disturbed – either because of what was done to them by their parents, the system, or both -- that they can be “treated” only if they all are assembled in one place in a “residential treatment center.”

But here again, the research shows that institutionalization is a failure.

A U.S. Surgeon General's report found only "weak evidence" of RTCs' effectiveness.¹¹⁷ Another study found that within six years, 75 percent of the children released from the centers were back to living in the only places they understood - institutions - either mental health facilities or jails.¹¹⁸

University of Chicago researcher Michael Little has found that “if you put children with behavior problems together, their behavior, on the whole, tends to deteriorate. It creates all kinds of new problems, and the emphasis becomes modifying problems caused by the placement and not focusing on the problems that led to the child being placed in the first place.”¹¹⁹

It is sometimes claimed that RTCs can offer more extensive help than a birth

parent or a foster parent. But that is true only if those foster or birth parents are left to fend for themselves. There is no law that says therapists can't make house calls. So can health aides and people who do whatever else an institution can provide – in shifts, around the clock if necessary.

A comprehensive survey of the literature by the University of North Carolina School of Social Work found that "when community-based services are available, they provide outcomes that are equivalent, at least [to RTCs]."¹²⁰

In Alabama, which like Illinois, is a national leader in child welfare reform, they call it “moving the system instead of the child.”

In Milwaukee, they call it “wrap-around.” And it has been an enormous success.

But, of course, community-based services can't be made available as long as large, powerful institutions are scarfing up all the money and opposing any diversion of funds to better, more humane alternatives.

In Milwaukee, the community was able to break the grip of the institutions lobby.

Milwaukee vs. the “institutions lobby”

The Westchester County, N.Y. *Journal News* devoted an enormous amount of time and effort to three separate multi-part series about Residential Treatment Centers in 2002. The series should be required reading for all policymakers involved in child welfare. It is available at www.nyjournalnews.com/rtc. Here's what the newspaper found in Milwaukee (excerpts from the *Journal News* 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."

"Residential treatment has had the luxury of basically being the sole tool out there for a very high-risk population, and they've convinced people that the only way to be safe is to have them locked up," said Stephen Gilbertson, clinical program coordinator for Wraparound Milwaukee. "We've shown that's simply not true. We've taken extremely high-risk kids and shown they can live successfully in the community."

Institutions have long argued that their role is crucial because most of the children 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.

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: *"I think, looking back on it now, what we're doing for kids today is far more helpful."*¹²¹

As for cost, child welfare consultant Charlotte McCullough told a Texas legislative committee that, between 1996 and 2000, Wraparound Milwaukee actually saved taxpayers \$8.3 million.¹²²

Milwaukee is not alone.

Patrick Lawler runs Youth Villages, one of the largest residential treatment programs in Tennessee. Several years ago, he began to get the feeling that what he was doing wasn't really helping children.

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

When a study he commissioned con-

firmed that his own program wasn't working, Lawler could have buried the study. Instead, he redesigned his program to keep more children in their own homes. He rebuilt his program to emphasize keeping families together, and finding foster and adoptive homes for children when that wasn't possible.

When children still must be institutionalized, families play an important role in treatment, with regular contact encouraged.

“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.”

-Patrick Lawler,
Executive Director, Youth Villages

Today, Youth Villages serves one-third more children for the same cost, and has far more success.¹²³

Says 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.”¹²⁴

The biggest problem, Lawler says, was getting the State of Tennessee to change its funding system to pay for the new approach.¹²⁵

In northern California, EMQ Child and Family Services went through an almost identical transformation. Finding that their program wasn't helping children, they abolished it. They cut their residential treatment

beds from 130 to 30. Children they used to institutionalize now are served at less cost and with better results in their own homes or foster homes.

And once again, the biggest obstacle was getting the State of California to fund alternatives, in the face of opposition from the “group home industry.”¹²⁶

But it's not necessary to look to other states to see a successful example of Wraparound. Comptroller Strayhorn's report cites a successful pilot program in Floydada, Texas.¹²⁷ But in Texas, as in most of the country, Wraparound is exception, warehousing children in residential “treatment” is the rule.

And there is still another irony in Texas: The very, very few children for whom an RTC may be the only reasonable alternative may not be able to get into one – or they may be thrown out.

That's because of a common treatment industry practice known as “creaming” – as in skimming the cream.

Residential treatment and group home providers can evaluate children and take only the ones with the *least* serious problems at the provider's “level of care.” And they can throw any child out with just 24 hours notice.

Strayhorn correctly recommends that Texas do what Illinois and other states have done: Put a “no reject, no eject” clause into all provider contracts.¹²⁸

Drugs

The harm of institutionalization occurs even in “good” institutions. But often, institutions don't stay good for long. Even facilities touted as models in one decade will be exposed as rife with abuse the next.¹²⁹ And the extent of the abuse in Texas is well documented – and vividly illustrated with photos – in Comptroller Strayhorn's report.

One of the most common problems when children are institutionalized is the misuse and overuse of potent psychiatric

medications. That also is a problem in some family foster homes.

No one knows exactly how often it happens in Texas, so Comptroller Strayhorn has launched an investigation to find out.

But there already are strong indications that the Texas Department of Family and Protective Services is an agency that never learned to “just say no to drugs.”

We already know that potent psychiatric drugs have been prescribed to Texas foster children as young as three. Says Strayhorn: “I can’t imagine prescribing mind-altering drugs to a three-year-old baby ... I also understand that no child needs to be on 14 different drugs, and I severely question ... a radiologist in San Antonio prescribing psychotropic drugs to children in El Paso.”¹³⁰

A study of all Texas children on Medicaid receiving psychiatric medications found that for half the children receiving antidepressants and nearly half those on antipsychotics, the symptoms described in the children’s own medical records did not justify the use of the drugs.¹³¹ There is no reason to believe that DFPS and its various contractors are any more careful with foster children.

Dr. Ben Raimer, a professor of pediatrics at the University of Texas Medical Branch, reviewed available data on medications prescribed for foster children and asked: “...to be perfectly blunt, have these children been ‘medicated’ into compliance for home expectations, or are these children’s behaviors sufficiently aberrant to warrant these medication practices?”¹³²

Raimer cited the case of four young children whose adopted father thought they had been needlessly overmedicated. Dr. Raimer agreed. He said “the adoptive father told me that he had noted it to be a fairly common practice...that ‘some’ foster parents sought out medications for children to 1. make them more submissive during care and 2. be able to draw down more financial reimbursement for their care.”¹³³

“Check this out,” says a former foster child – one who really did need to be taken from his parents because of years of sexual abuse. “You’re a kid and you’re going through all this stuff and of course you’re going to be angry sometimes. They call it a mood swing. They write everything down, and then they say, ‘this medication, this medication, that medication.’”¹³⁴

There already are strong indications that the Texas Department of Family and Protective Services is an agency that never learned to “just say no to drugs.”

“If these kids act out at all, then they medicate them,” says Vicki Camlin of the DePelchin Children’s Center in Houston. “I’ve seen this in several families where the kids are on medication, and once they’re returned to the family they don’t need it anymore.”¹³⁵

That’s exactly what happened to the Alvarez children, who were in foster care for more than two years.

“They got me to a doctor and he said you’ve got to be on medication,” one of the children told KEYE-TV in Austin. “Because they said foster kids need to be on medication. [The medications] made me feel weird. When I went to court I couldn’t even recognize my own mother.”

But as soon as the children came home, they were told by their doctor that they didn’t need the medication anymore.¹³⁶

All of the problems came together in the case of the 13-year-old daughter of Calvin and Aneke Gleason, told in several reports by KEYE.

The Gleasons’ daughter was taken because child protective services claimed

she was a suicide risk. Her parents, both mental health workers themselves, disagreed. And, apparently, so did the first doctor to treat her at Austin State Hospital. His records show the following statement: "Suicidal ideation: No."

"If these kids act out at all, then they medicate them. I've seen this in several families where the kids are on medication, and once they're returned to the family they don't need it anymore."

--Vicki Camlin,
DePelchin Children's Center

But that didn't stop CPS from keeping the child in foster care – and refusing to allow her parents any contact with her for more than three months.

It also didn't stop CPS from allowing the child to be doped up with 13 different medications, including four separate antidepressants and three anti-psychotics – each of which carries a "black box warning" -- the strongest possible warning from the Food and Drug Administration about dangerous side effects. One of the side effects from of the antidepressants is agitation. But when the child became agitated, the medications didn't stop. Instead, the child was restrained – 26 separate times.

"She said 'mama, I was so doped up, I didn't know where I was at,'" her mother recalls.

Pharmacist Lauren DeWitt, who reviewed the records for KEYE, was appalled.

The pharmacist noted that one of the medications caused an allergic reaction – a rash. When the child scratched the rash, it was labeled "self-mutilating behavior" – and another drug was added to the cocktail. Said

DeWitt: "It's hard for me to believe that any person ... can look at these drugs in a kid and in good conscience allow this to go on."

One defense against such abuses is supposed to be "informed consent." The child's guardian is supposed to be given detailed information about the risks of each medication – and must give permission.

Even the most loving parent may find it hard to understand the risks and weigh them against what she's being told by a doctor. But at least a parent's love – and detailed knowledge of her own child – may provide some protection. Foster children don't get that kind of check and balance. The consent is given by a caseworker, for whom the child may be little more than a number.

And how do the caseworkers make the decision? "Caseworkers are not trained to be medical doctors," says a CPS spokesman. "We depend on the medical profession to give us that expertise."

Gleason got more alarming news when a court ordered her daughter's medical records released: The child had been hurt in two different facilities while in foster care. Said Gleason: "Why call it Child Protective Services, if the child is getting hurt in their care?"

Until a formal study is done, the answer to the question of how often Texas children are needlessly given powerful mind-altering drugs requires an answer rooted in common sense:

The children have no parents to protect them. The caseworkers have no personal stake, the way a parent does. Those caseworkers also are desperately overwhelmed. The institutions that want to use the drugs so dominate the system that they write their own contracts. Using the drugs makes the children easier to manage. And a prominent defender of the *status quo* says the problem is the birth parents' "bad gene pools."

What answer does common sense suggest?

“Why call it Child Protective Services, if the child is getting hurt in their care?”

--Aneke Gleason

If the harm the misuse and overuse of institutions does to children isn't enough, consider the harm to taxpayers. It is a paradox of child welfare that the more harmful an option is to children, the more expensive it is to taxpayers. Thus, safe, proven programs to keep children out of foster homes generally cost less than foster homes. Family foster homes cost less than group homes, and group homes cost less than institutions.

In Texas, holding one child in one “residential treatment center” for a year can cost more than \$100,000.¹³⁷ The overuse of institutions in Texas is throwing away taxpayer dollars, as well as human lives.

The limits of adoption

Part of the reason the Texas system is in so much trouble now is because, for the past several years, DFPS seems to have put all its eggs in the adoption basket.

There is an important place for adoption in child welfare. Some children truly should never return to their birth parents; and for them, adoption often is the best choice.

But Texas, and the nation as a whole, were fooled into believing that it was possible to adopt our way out of the foster care crisis. In the process, the noble concept of “permanence” for children was perverted to mean adoption only. The best option for permanence for most children most of the time – keeping them in the permanent homes they were born in – was denigrated and, in some cases, forgotten.

It was said that children were languishing in foster care because of fanatical

efforts to keep families together. But that is not true, and it never was.

The whole point of the family preservation movement is to keep children out of foster care in the first place, and, when that is not possible, get them back home whenever it is possible to do so safely.

Children don't languish in foster care because agencies do everything for families. Children languish in foster care because agencies do almost nothing for families. Once in foster care the children are filed away and forgotten as workers rush on to the next case.

Compounding the problem: Another set of perverse financial incentives. The federal government pays states a bounty of anywhere from \$4,000 to \$8,000 for every finalized adoption over a baseline number. There is no comparable payment for returning children safely to their own homes.

Texas rushed to cash in.

But even as Texas increased adoptions, it apparently increased terminations of parental rights at a much faster rate.

Thus, in 2003, 2,444 Texas foster children were adopted. But another 3,786 were still waiting, parental rights terminated, but no adoptive home found.¹³⁸

As this continues, year after year, Texas risks creating a generation of legal orphans, with no ties to birth parents, and little hope of adoption either.

Furthermore, of all the foster child adoptions in Texas since 1997, nearly nine percent already have fallen apart. For these children, the “forever family” -- wasn't.¹³⁹ At this rate, in another five years, the percentage over a decade may be close to 18 percent.

The federal adoption bounties created both a rush to terminate parental rights and the increased the likelihood of quick-and-dirty, slipshod placements.

Texas must restore the real meaning of permanence. When the state gets serious about keeping families together, it will have a much better idea of which children truly

need to be adopted – and more resources to get them adopted.

Once those children are adopted, for the children truly to benefit, they must know that the law treats their adoptive parents exactly like birth parents – subject to no more, and no less, intrusion by government.

It would undermine the entire purpose of adoption in creating security for a child to require annual surprise inspections of any adoptive home in which the adoptive parents receive a subsidy, as some have suggested.¹⁴⁰ That would give them second-class status as parents, and it would make them and their children live in fear that they could be torn apart on a moment's notice should the caseworker not like everything she sees on a surprise visit.

Some may say that these adoptive parents should be subject to such scrutiny because they receive government aid. We doubt that these same people would accept it if government agents were allowed to enter their parents' or grandparents' home and intrude on every aspect of their lives in order to be sure they were spending their Social Security payments wisely.

Spend more – but spend smarter

Throughout this report we have been critical of Judge Scott McCown, and praised Comptroller Carole Keeton Strayhorn. But in one respect McCown is right and Strayhorn is wrong.

Strayhorn's report seems to suggest that Texas can fix its child welfare system without spending more money. In contrast, McCown says "I think kids are dying because of the unwillingness to recognize that we have to pay some additional taxes in Texas."¹⁴¹ He's probably right.

Based on a calculation which, to the best of our knowledge, was originally performed by NCCPR, using data compiled by the Urban Institute, McCown has pointed out that when the total amount of money spent on child welfare in each state is di-

vided by the number of children in that state, Texas ranks 48th in spending per child.¹⁴² The figure is for 2000. Data for 2002 have just been released – and Texas' dismal ranking remains unchanged.¹⁴³

Children don't languish in foster care because agencies do everything for families. Children languish in foster care because agencies do almost nothing for families. Once in foster care the children are filed away and forgotten as workers rush on to the next case.

That would not, in fact, be an indictment of Texas were there a model system somewhere in the country that did an excellent job while spending as little money.

But no such system exists.

Earlier, we pointed out that Illinois has proven it is possible to remove even fewer children than Texas yet compile an exemplary record for child safety. But they didn't do it on the cheap. The former head of the Illinois child welfare agency, Jess McDonald told a Texas legislative committee that the reforms "stabilized the once skyrocketing child welfare budget"¹⁴⁴ but they didn't bring it down much. While Texas spent \$132 per child in 2002 and the national average was \$306, Illinois spent \$425.

Other model systems can be found in El Paso County, Colorado, and Allegheny County, Pennsylvania. While we are aware of no county-by-county spending calculation, it is unlikely that these counties spent much less than their state averages. The state average for Colorado was \$320. For

Pennsylvania it was \$453.

Even the other model state system, Alabama, which has an exemplary record of keeping removals low and children safe, spent more than Texas. Alabama spent \$245 per child.

The Texas Legislature effectively pulled money out of poor people's pockets to help subsidize the system that takes their children and the middle-class strangers holding custody of them.

Comptroller Strayhorn cites Kansas as a model of efficient privatized child welfare. We think the Kansas record is far less sterling than Strayhorn does. But even if Strayhorn is right, the privatized system in Kansas was spending \$265 per child in 2002.

Even these numbers underestimate the Texas Legislature's assault on poor families. The other problem concerns priorities.

The current biennial budget calls for spending \$1.148 billion to investigate families, take away their children and hold those children in foster care. Another \$204 million will go to subsidies for adoptive parents and another \$19.6 million will be spent on "purchased services" for foster children and foster parents.

In comparison, less than one-tenth as much -- \$100 million -- will go to all forms of prevention -- including many prevention schemes, such as meaningless "counseling" and "parent education" programs that, in some cases, actually make problems worse. Only \$32 million will go to a program that is a pale shadow of a real family preservation

program. Another \$7.2 million in "purchased client service expenditures" help children in their own homes and their birth parents. These figures reflect a 26 percent cut in prevention dollars -- and a 15 percent increase for foster care and adoption.¹⁴⁵

And it gets worse.

Much of the prevention money actually came from the federal government, in the form of the Temporary Assistance for Needy Families program (TANF). This is the successor to Aid to Families with Dependent Children (AFDC) -- in other words, it's a program meant to support impoverished families.

But for years, Texas has used part of its TANF surplus to support child abuse investigations and foster care. And in the current budget, it got worse. The legislature eliminated TANF funding for several prevention programs, while increasing TANF funds for investigations and foster care.¹⁴⁶

In other words, the Texas Legislature effectively pulled money out of poor people's pockets to help subsidize the system that takes their children and the middle-class strangers holding custody of them.

So Step One in any attempt to ease the misery of children caught up in the Texas child welfare system is to throw money at the problem.

But Step Two is to be sure the money is thrown in the right place.

Because the data Judge McCown cites so often to condemn the rate of spending in Texas also leave him with some explaining to do. For example, he needs to explain Connecticut.

The Connecticut child welfare system is another national disgrace. It has all the same problems as Texas. Some children are left to die in dangerous homes¹⁴⁷ while others die in substitute care¹⁴⁸ and others are needlessly taken away.¹⁴⁹ And the problems are not isolated. The system has gotten so bad that it has been virtually taken over by a federal court.¹⁵⁰

New Jersey's better idea

For the past two years, no state has gotten more national attention as a result of the failure of its child welfare system than New Jersey.

First came the case of seven-year-old Faheem Williams. His body was discovered in a plastic bin in a fetid basement in Newark, his two emaciated brothers nearby. The family had been “known to the system” for years.¹⁵¹ Then came the Jackson family, whose four adopted foster children, ages 9 to 19, were found so grossly malnourished that their combined weight was 136 pounds. The children’s plight was discovered when the oldest was found rummaging through a garbage can for food. He stood four feet tall and weighed 48 pounds.¹⁵²

Children’s Rights Inc., which has sued child welfare systems all over the country, said New Jersey’s was among the very worst.¹⁵³ Workers caseloads averaged 42 children each – not as bad as Texas, but plenty bad enough. And 274 caseworkers were responsible for 75 children or more.¹⁵⁴

The publicity strengthened CRI’s hand in settling a class-action lawsuit the group filed in 1999. The result was a settlement which gave a panel of national experts final say over any reforms – and a requirement that the legislature fund them.

The state replaced the leadership in its human services agency. And that leadership came up with what is probably the most innovative child welfare plan in the country – an outstanding example of spending more and spending smarter.

In a state with at least 3.8 million fewer children than Texas, and a much lower child poverty rate, the plan calls for \$320 million in new spending over the next two-and-a-half years – with almost all of it added in a two-year period. That’s \$153 in new child welfare spending for every child in the state – in a state that already spends proportionately over 60 percent more than Texas. For Texas to add the same amount of new spending per child would require a commitment of more than \$900 million.

But instead of pouring the money into more of the same, the new money will be used to transform the system into one with a new emphasis on keeping families together.

- The plan repeatedly emphasizes that the system’s first priority is child safety, as it should, but it recognizes that the best way to achieve this goal is through a fundamental shift in approach from a take-the-child-and-run mentality to a system that emphasizes safe, proven programs to keep families together.

- The most important specific change any system can make is to change financial incentives, including incentives that encourage private agencies to hold children in foster care and discourage them from returning children safely to their own homes or, when necessary, getting them adopted. The New Jersey plan contains a commitment to change these incentives through performance-based contracting. This change was crucial to turning around the system in Illinois. And it is vital to ensuring that every new dollar is spent wisely.

- Recognizing the link between poverty – especially lack of housing – and neglect, the plan specifically allocates \$38 million in new money for housing programs – the first time we

know of, anywhere in the nation, that a child welfare plan specifically allocates money for housing.

- There is a clear understanding that when a parent has a substance abuse problem, treatment for the parent almost always is a better option *for the child* than putting that child in foster care. And it's not just lip service. The plan includes \$50 million in new money for drug treatment.

- The plan sends a clear signal that, unlike Texas, New Jersey won't be a captive of the "institutions lobby." There is a pledge to cut placements in congregate care (group homes and institutions) by 33% -- and stop putting most children under age 12, and eventually under age 10, into such placements at all.

- The plan reverses one of the most regressive aspects of New Jersey child welfare policy: its longstanding hostility to kinship care – a hostility it shared with Texas. Now, New Jersey provides at least as much aid to relatives to care for children as it pays to strangers – and kinship placements already have increased by 35 percent.¹⁵⁵

- The plan places a welcome emphasis on Family Team Meetings and neighborhood-based services, proven strategies to keep children safely in their own homes. An entire new Division of Prevention and Community Partnerships will be created to emphasize the need for a full menu of help for troubled families in order to avoid needless foster care. Twelve "Community Collaboratives" will be created to mobilize formal and informal supports in neighborhoods throughout the state. Adapting an innovation first tried in Alabama, the collaboratives will have "flex funds" – small sums of money that can be used in each case for whatever that particular family needs.

- The plan states explicitly that, when implemented, it "should enable *many* more children to remain safe at home..." [emphasis added]. Similarly, there is an acknowledgement that the agency needlessly opens cases on families solely because it's the only way to provide "services."

- The plan explicitly acknowledges that overwhelmed workers err in both directions, declaring:

"If a child protective service worker has an unreasonable caseload, inadequate training and job knowledge, insufficient support and supervision, and access to an inadequate array of services to keep a child safe and at home, she may err in both directions: removing some children unnecessarily (and anytime a child is removed from his home it is a traumatic experience) while leaving others home and impermissibly vulnerable. Our obligation to both the child and the worker is to ensure that these conditions do not exist, so critical decisions can be made thoughtfully and professionally."

- The plan also includes cutting-edge thinking on domestic violence. Even in New York City, another system which has dramatically improved in recent years, it took a class-action lawsuit to stop the child welfare agency from taking children from their mothers just because those mothers had been beaten in front of the children. As one national expert said, taking a child from a non-offending parent who has been beaten is, for that child, like "pouring salt into an open wound." In contrast, the New Jersey plan includes a clear acknowledgement of this problem and a pledge not to let it happen again.

The New Jersey plan calls for lots and lots of new hiring – at least 800 new employees,

including at least 416 new caseworkers. But these 416 workers won't be hired to do more of the same. As a result, New Jersey won't simply wind up with the same lousy system only bigger. Instead, the New Jersey workers will be hired to implement a new vision of child welfare – and they'll have the resources to do the job right.¹⁵⁶

The New Jersey plan is far from perfect. And having a plan is no guarantee it will be implemented (though a lawsuit settlement requiring that the plan be funded certainly helps).

If Texas is going to hire more workers, the hiring must be part of a coherent reform plan that emphasizes safe, proven programs to keep families together – with enough new money to give those workers a fighting chance to do the job right. And if there isn't enough money both to create a full prevention infrastructure and hire new workers, the prevention should come first.

But in 2000, Connecticut spent \$652 per child – more than double the national average, and the second highest per-child total in the country. (Connecticut failed to provide sufficient data to calculate per child spending in 2002). If just spending more were enough, Connecticut would be a national leader; instead it trails even Alabama, which spends far less.

Money to help vulnerable children is scarce, and it is precious. It is a sin to waste it.

Furthermore, Judge McCown must explain why his own success at boosting child welfare spending in Texas in 1999 accomplished so little.

In the news release announcing McCown's appointment to head the Center for Public Policy Priorities, the Center brags that after McCown published his *Petition* "the legislature approved an additional \$200 million, which included funds for 437 CPS staff."¹⁵⁷

Does anybody think the Texas child welfare system is any better as a result? The reason the new money did no good is because judge McCown's petition, and the at-

tenant publicity, had another effect: It appears to have set off a foster-care panic.

In 1999, removals of children from their homes jumped 27 percent over the previous year. So it's not hard to figure out what those 437 new workers wound up doing. Because Judge McCown's petition was accompanied by a call for a massive increase in removals of children, the new money left Texas with the same lousy system only bigger.

Though the *Petition* also called for doing more for prevention, that message was drowned out by his repeated, insistent calls for taking away more children.

And now Texas' lousy system is bigger still. Between 1998 and 2004, removals soared by 91 percent.

Judge McCown probably would offer two responses: First, the budget was cut again in 2003. That's true, of course. But does anyone think the Texas system was doing a wonderful job before those budget cuts, when the influence of the 1999 increases still should have been felt?

Second, he'd probably say that neither the increase in funds nor the increase in removals is enough – indeed, he did say that about removals, during our e-mail exchange.¹⁵⁸

But surely a two-year increase of \$200 million should have made a dent in the problem. And surely, if massive removal of children were the answer, Texas should have

seen *some* improvement by now.

A report from a leading Washington think tank, released just last month, offers clues to another possible explanation: Judge McCown may not have really increased spending much at all – just transferred it from impoverished families to child welfare – especially foster care, though that almost certainly was not his intent.

It seems that a lot of the “new” money McCown won came from TANF.

According to the study by the Urban Institute, “The majority of the increase in total spending [in Texas] resulted from an increased appropriation of TANF funds to the child welfare agency in response to a petition to the governor and state legislature written by a state district court judge.”¹⁵⁹

Someone once defined insanity as doing the same thing over and over and expecting a different result.

If Texas is going to spend more on child welfare – as it should – it is insane to expect a different result, unless this time, the money is spent differently. Money to help vulnerable children is scarce, and it is precious. It is a sin to waste it.

Therefore no new money should go to hiring more CPS investigators – unless the hiring it is part of a comprehensive plan that puts its primary emphasis, and a lot of new money, into safe, proven programs to keep families together.

In short, if Texas is going to spend more, as it should, it needs a plan like the one in New Jersey. (See “New Jersey’s better idea,” p. 39).

Extended families – extended hostility

While only too glad to institutionalize children, Texas has lagged behind in using one of the best ways to cushion the blow when foster care really is necessary: Placing a child with a relative, often a grandparent.

Nationwide, more than 23 percent of all foster care placements are “kinship care”

placements, in which the state or local child welfare agency has legal custody of the child but places the child with a relative instead of a stranger.¹⁶⁰ In Illinois, a national leader in kinship care, it’s 37 percent.¹⁶¹ But in Texas, only 19.8 percent of foster children are in kinship care.¹⁶²

**The prejudice against
extended families is
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The most extensive effort to
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less abuse in placements with
relatives than in placements
with strangers.**

The hostility is not all that surprising. It suggests a common, though largely unspoken, prejudice against extended families: If grandma raised the child who “neglected” the grandchild, it is believed, then there must be something wrong with grandma -- and grandpa, and all the other relatives in the family. In other words, “the apple doesn’t fall far from the tree.”

But that is not social work, that is bigotry. And that bigotry has denied loving placements to untold numbers of Texas foster children.

The real story of kinship care is the story of grandparents like Mary and Pete Sifuentes who took in a daughter’s four children, one of them severely handicapped.

They were part of a pilot program in Bexar County. Their caseworker, Lilly Cisneros, told the *San Antonio Express-News* she thinks the fact that the severely handicapped child could stay with family

...explains why Toni Marie, a 3-year-

old quadriplegic, defied the predictions of doctors by clasping objects with her hands and wiggling her stomach. ... "The doctors were insisting that we give her to the foster mom, saying, 'She loves her like a daughter'," Cisneros said. "I know, but she's got family who loves her, siblings who love her." ...

Mary Sifuentes quit her job of 31 years to stay home and take care of Toni Marie's medical needs. On a visit, she chatted calmly with Toni Marie as she changed her catheter with a practiced hand, reaching for pills in neatly labeled boxes of medicine, showing newly acquired nursing skills. ...

If his daughter never recovers, "we're going to keep them forever," Pete Sifuentes said. Nobody's going to take them away."¹⁶³

In poor communities all over America there are parents who have waged a battle for decades to save their children from poverty, despair, and the lure of the streets. They have been forced to call upon reservoirs of strength that most of us can only imagine. Is the mother who won the battle with three children and lost it with a fourth to be denigrated and discarded when she comes forward to take in that fourth child's children?

Judging by the state's kinship care statistics, the answer in Texas apparently is yes.

The prejudice against extended families is contradicted by the evidence. The most extensive effort to track relative placements is in Illinois. That state has found less abuse in placements with relatives than in placements with strangers.¹⁶⁴

In addition to the general state data, Illinois did a formal study, comparing kinship placements to a control group of what should properly be called "stranger-care" placements. According to one of the researchers who conducted the study, Prof. Mark Testa, director of the University of Illinois Children and Family Research Center, "we found that, actually, children were safer in kinship care and they had fewer rates of abuse/neglect in those homes, lesser

movement from home to home – so all in all, I think the stereotype is not in line with what the facts tell us."

Prof. Testa noted that grandparents who have one child who couldn't care for his or her own children often "have other children who are judges, who are teachers, and who are capable members of the community." Added Testa: "We say, thank goodness that a tree has more than one branch."¹⁶⁵

But tragically, Judge McCown is either unaware of these data, or is ignoring them.

In a "Policy Brief" for the Center for Public Policy Priorities Judge McCown dredges up every possible stereotype. He claims that "Relative placements raise issues such as 1) the risk of the relative enabling further abuse of the child by the perpetrator; 2) the risk of the relative forcing the child to recant an outcry about abuse; and 3) the risk of the relative enabling child abduction... Even with the *best* of relatives, court orders are *frequently* violated [emphasis added]."

Of course, every one of these problems probably arises – occasionally. But Judge McCown offers not a shred of evidence that any of these problems is widespread. One searches in vain for a footnote citing a single study or statistic supporting these claims. In contrast, as noted above, actual data and actual studies show that kinship care is, on average, safer than "stranger care."

But Judge McCown isn't done:

"Moreover," he writes, "many relatives have no emotional or physical ability to protect a child if the perpetrator arrives at their door."

Translation: Blood relatives just don't care about a child the way a total stranger will. The evidence? Again, none.

Judge McCown even suggests that if a foster child needs some kind of "treatment" and the relative doesn't have transportation to get the child to treatment, that's a good reason to throw the child in with a

stranger – instead of providing the transportation.¹⁶⁶

The real scandal in Texas kinship care is the pathetic lack of support for kinship caregivers. Unless they can meet all the licensing requirements to become foster parents – requirements that often have little to do with safety and everything to do with whether they can afford a middle-class lifestyle – they'll be lucky to get \$64 per month per child, and Medicaid coverage. Some low income grandparents also can get a one-time payment of \$1,000¹⁶⁷ and those lucky enough to be in a pilot project can get a little more help — day care, “counseling” “case management” and \$500 a year.¹⁶⁸

Judge McCown recommends only token improvements.¹⁶⁹

The result is what happened to the Sifuentes family:

*[Mary] and her husband signed up for food stamps for the first time in their lives. For the first time, they had a car repossessed and the phone turned off, not once but twice. She conserved creatively, buying generic shampoo and pouring it in a Mickey Mouse bottle. Pride didn't matter.*¹⁷⁰

Instead of putting loving grandparents through hell while offering far more help to strangers, Texas should do what New Jersey is doing: Reverse the longstanding hostility to kinship care and give relatives at least as much assistance as strangers. (See “New Jersey’s better idea,” p. 39).

Do it for the next Eric Hernandez. The apparent failure of Texas to consider extended family in that case suggests that Texas’ bias against kin can have fatal consequences.

Privatization:

The Comptroller’s blind alley

In New York City almost all foster care is provided by scores of private agencies. It’s been that way for about 152 years. For the past six of those years, there has

been significant improvement. For most of the previous 146, child welfare in New York City was lousy.

The real scandal in Texas kinship care is the pathetic lack of support for kinship caregivers.

It also was lousy in Illinois before the recent reforms, and for much of that state’s history, most foster care was provided by private agencies.

Throughout this report we have made clear our admiration for Comptroller Strayhorn’s work. Of all the documents recently issued by Texas public officials and advocates concerning the problems in the child welfare system, her report is the most thorough, and the most often on the mark. But privatization is the Comptroller’s blind alley.

Turning more child welfare services over to private agencies in Texas will solve nothing. It won’t make services worse, but it won’t make them better either. And, most important, it won’t save money.

That doesn’t mean it’s wrong to privatize. It’s all a matter of how you do it.

Comptroller Strayhorn spends a lot of time in her report discussing privatization in Kansas. But she paints too rosy a picture. In part, that’s because she relies on assessments from the trade association for child welfare agencies themselves, the Child Welfare League of America, and from one of the very agencies that got a huge contract under privatization.¹⁷¹

In fact, privatization has had mixed results. At best, it may have made a mediocre system a little less mediocre. One child welfare specialist in Kansas gave the system a grade of C+.¹⁷²

But the biggest lesson from Kansas

is ignored by Strayhorn: Privatization will not save a state any money. On the contrary, before privatization began in 1997, Kansas spent \$25 million on foster care and \$7 million on adoption. Today, the state spends \$91 million on foster care and \$33 million on adoption.¹⁷³

The biggest addiction problem in child welfare is not the one that afflicts some birth parents. The biggest addiction problem in child welfare involves well-heeled, well-connected private child welfare agencies with blue-chip boards of directors that are addicted to their *per-diem* payments. And sadly, these agencies are putting their addiction ahead of the children.

But that doesn't mean there is nothing to be gained from privatization. The key to making privatization work is one, simple concept, one which Comptroller Strayhorn understands: You get what you pay for.

In most of the country, private agencies are told that their first job is to return children safely to their birth parents or, if that is not possible, work to find the children adoptive homes. But the more they succeed at that, the more they are penalized financially. That's because, typically, agencies are paid for each day they keep a child in foster care. If they do what they're supposed to do – find permanent homes for the children – the payment stops.

Much has been said about the prob-

lem of addiction in child welfare. But the biggest addiction problem in child welfare is not the one that afflicts some birth parents, though that is serious and real. The biggest addiction problem in child welfare involves well-heeled, well-connected private child welfare agencies with blue-chip boards of directors that are addicted to their *per-diem* payments. And sadly, these agencies are putting their addiction ahead of the children.

We know this because of what happened in Illinois, where changing financial incentives was crucial to the state's successful reform effort.

Like many addicts, the Illinois agencies were "in denial." They insisted that *per-diem* payments had no impact on their decisions. They said they truly wished they could find permanent homes for children but, they said, the parents were so very, very dysfunctional and the children's problems were so very, very intractable.

But finally, the state worked up the political courage to force private agencies to kick the *per-diem* habit. Private agencies in Illinois now are rewarded for keeping children safely in their own homes. They also are rewarded for adoptions. But they are penalized financially if they allow children to languish in foster care.

When the financial incentives changed, an amazing thing happened. Suddenly the "intractable" became tractable the "dysfunctional" became functional, the foster care population plummeted, and child safety improved.

Illinois succeeded where Kansas did not partly because the two states used different models of privatization.

Illinois had scores of agencies already in place and used a competitive approach, in which agencies that performed poorly stopped getting referrals.

Kansas awarded what amounted to regional monopolies to a small number of agencies, which, in turn, subcontracted with other private providers.

This "monopoly franchise" ap-

proach, also called a “lead agency” model, is not necessarily an inferior approach. But in Kansas it failed for two key reasons:

- The state did not pay enough per child.
- The payment structure was complicated, with too little of the money provided at the start of the placement.

Because Texas is such a large state, with at least 89 private agencies already providing child welfare services,¹⁷⁴ it is in a good position to adopt the more successful, Illinois approach to privatization.

To her credit, Comptroller Strayhorn understands the crucial role of financial incentives, and she emphasized them in her report. But all Texans need to understand that privatization *per se* won’t improve anything, and it won’t save money. If it’s part of a comprehensive reform plan that includes a radical reform of financial incentives, however, it can help save children.

Blind alley #2: “Accreditation”

Regrettably the House Select Committee on Child Welfare and Foster Care, among others, has fallen for a gimmick that has swept through many mediocre child welfare agencies, public and private: “Accreditation.” The Committee erred in recommending that Texas pursue it.¹⁷⁵

That’s understandable. The former head of the Illinois Department of Children and Families, Jess McDonald, told the Committee that accreditation helped the Illinois reform process.

It didn’t – unless you count buying him some unearned good p.r. so he could have some breathing room to implement real reform.

The real reasons Illinois is now a success story are its emphasis on family preservation and the change in financial incentives for private agencies.

And the real catalyst for these reforms was not McDonald – it was the Illi-

nois Branch of the ACLU, which sued the state. We recommend asking *them* about accreditation before pursuing it.

When the financial incentives changed, [in Illinois] an amazing thing happened. Suddenly the “intractable” became tractable the “dysfunctional” became functional, the foster care population plummeted, and child safety improved.

Accreditation is insidious because it creates the illusion of reform without real reform.

The head of the Council on Accreditation, Richard Klarberg, told the House Committee that “Accreditation is also a recognized process for restoring credibility to the organizations that are charged with protecting children but that are all too often viewed as being uncaring and unprofessional.”¹⁷⁶

The problem is, “credibility” earned through accreditation is undeserved, and that makes it dangerous.

Accreditation is a way for agencies to get an unearned seal of approval by keeping their paperwork in order - and then throw it in the face of critics, in order to prevent real change. That’s why child welfare agencies rush to embrace the idea whenever the alternative is real reform.

Indeed, it is quite possible, depending on the circumstances, for an agency to become fully “accredited” without the “accreditors” so much as laying eyes on one real live foster child.

To understand the limits of accreditation, it’s important to understand the group

that is pushing it. The "Council on Accreditation" is a creation of the agencies themselves and their trade association, the Child Welfare League of America.

The name notwithstanding, CWLA is not a child advocacy organization - it is an agency advocacy organization. It is funded by the dues of its member agencies and exists to support them. It is to children as a hypothetical National Nursing Home Association would be to the elderly.

Of course there are some very good people at CWLA and sometimes the interests of the agencies and the children coincide. But when they don't, CWLA puts the interests of its members first - just as any trade association does.

Accreditation is insidious because it creates the illusion of reform without real reform.

This became apparent in 1999 when the *Dayton Daily News* exposed hideous conditions at an Ohio-based private agency, which also had at least one program in Texas at the time.

Among the findings:

- Foster homes that were wretched.
- Group homes that were worse.
- The head of the agency had a conviction for contributing to the delinquency of a minor - a foster child who had been in his care.¹⁷⁷

When the *Dayton Daily News* e-mailed its findings to CWLA's acting director, (who is not the current director) she *should* have said that such conditions would not be tolerated in a CWLA member agency. But she didn't. The *Daily News* describes what happened instead:

"After reading the series, Shirley Marcus Allen, the league's director, sent an

*e-mail to Joyce Johnson, the group's director of public relations, saying 'These are all horrible stories. I have no desire to talk to the reporters on this if I don't have to. Find something more positive for me to report on.' Although intended as an internal document, Allen sent the e-mail to the newspaper by mistake."*¹⁷⁸

One more thing worth knowing about the agency that was the subject of the *Dayton Daily News* series:

It was "accredited."¹⁷⁹

The Council on Accreditation is self-policing and the self-policeman is almost always the laziest cop on the beat.

As noted above, it is possible for an agency to be fully accredited without the accreditors actually even seeing a foster child.

That's because:

- The accreditors don't inspect foster homes.
- The accreditors don't do surprise inspections of anything. Group homes and institutions get "no more than" a month's advance notice. (There were no inspections at all until the *Dayton Daily News* exposed that fact).

As Travis Pearson of Pathways Youth and Family Services told the House Committee:

*"Substituting Accreditation for Regulatory inspections is not an even trade off. The Accreditation process of COA relies primarily on self-reporting, self-monitoring, self assessment, and volunteer peer reviews, all managed outside of Texas. Accreditation can mean not having an outside observer in the facility for two to three years at a time. The most effective way to 'promote health, safety, and well being of children in out of home care' is to have a DFPS employee in that facility checking the health, safety, and wellbeing of the children."*¹⁸⁰

- COA inspects group homes only if the agency seeking accreditation is running them directly.

This is particularly relevant in light of the fact that the House Committee wants to combine accreditation with the complete privatization of service delivery. That means that if DFPS sought accreditation after it no longer oversaw any group homes itself, then DFPS could win “accreditation” – and run around bragging about it -- without the accreditors having a clue about the actual care children received.

- The accreditation process does nothing to examine whether a decision to remove a child in the first place is appropriate.¹⁸¹

In short, the “Council on Accreditation” doesn’t really accredit agencies at all. It accredits file cabinets.

Goody-two-shoes prevention is not enough ...

Judge McCown insists we’ve misunderstood him. He says he’s not just in favor of taking away untold numbers of additional children (the number is “untold” because, as noted above, Judge McCown refuses even to estimate how many – though he implies tens of thousands). He says he’s also for prevention. And, indeed, his *Petition* does discuss some forms of prevention.

But everyone says they’re in favor of “prevention.” The problem is “prevention” actually means many different things.

Some forms of “prevention” are, relatively speaking, politically popular because they don’t threaten a child welfare establishment that is emotionally and financially invested in child removal. Indeed, they are so politically popular, at least in terms of rhetorical support, that we’ve come to call these programs “goody-two-shoes prevention.” Other forms of “prevention” call for real change in the status quo.

Fixing child welfare in Texas will require both kinds of prevention.

Within the child welfare community, prevention programs generally fall into two categories, “family support” and “family

preservation.” These actually are different concepts. Both are vital if a child welfare system truly is to keep children safe and reduce the number of children who must be placed in foster care. But while “family support” is politically popular within the child welfare community and, at least to some extent, the public at large, “family preservation” is not.

The “Council on Accreditation” doesn’t really accredit agencies at all. It accredits file cabinets.

Any new emphasis on “prevention” will fail if it embraces “family support” but ignores “family preservation.”

Family support is “net-widening” prevention. In other words, it expands the scope and reach of child welfare agencies into family life, and does not threaten anything those agencies do already. That’s part of why it’s so popular in the child welfare establishment. A classic example of family support is the “Healthy Families Texas” program, in which home visitors help “at risk” new mothers with weekly visits, on a voluntary basis. Such programs are excellent. They have received near-universal acclaim. Even Governor Jeb Bush increased funding for the Florida equivalent.

But in Texas, even goody-two-shoes prevention lost out to a skinflint legislature. It was funded in only 18 locations with a budget of under \$3 million per year.¹⁸² And in 2003, state support for the program was wiped out completely.¹⁸³

Not only should the cuts be restored, as DFPS recommends, the program should be funded sufficiently to reach every new “at risk” mother who needs it and wants it.

Start with the kitchen

A recent story in the *Dallas Morning News* began as follows:

Child abuse investigator Candice Tovar bustles into the two-bedroom apartment in this middle-class Austin suburb, sidestepping Budweiser empties, a minefield of Legos, three cats and seven kittens. The stench of urine is so strong, it burns her eyes. Cat waste, discarded food cartons and books cover the floor, furniture and kitchen counter.

The story goes on to say that the two children in the home, ages 13 and 11, are learning disabled and one parent has a history of mental illness.

The story says nothing about either child being battered, bruised or in ill-health. It does note that the children were so desperate to stay with their parents that one sneaked out to buy air freshener in a last-minute attempt to conceal the stench in the home.

The caseworker's solution: Take the children and run.

She removes them on the spot, and then argues forcefully and repeatedly that her supervisor should not let them go back home.

Ultimately, she is overruled. The parents sign a safety plan. Ms. Tovar, who has 69 other cases, must keep an eye on them. She ultimately gets them to give up the cats and clean up the house.¹⁸⁴

The case is a good example of the harm done by the absence of middle ground in Texas child welfare. Ms. Tovar did too much – she wound up adding to whatever problems already existed in the home by whisking away the children. And she was willing to place children who had not been abused in their own home at risk of abuse in Texas foster care. Her bosses did too little. Whatever problems contributed to making the home filthy were not addressed. No help was offered to the family – only surveillance by a worker who already had far too many cases. The family could easily get into trouble again, and the worker had to take time from more serious cases.

Compare this case to one described in Lizbeth Schorr's outstanding book, *Common Purpose*:

Once again, a worker comes to a filthy home. She knocks on the door. The mother answers. Clearly it's not the first time a child welfare agency has been there. "If there's one thing I don't need, it's another social worker telling me what to do," the mother says. "What I need is someone to help me clean this house."

To which the caseworker replies: "Should we start with the kitchen?"

The worker at the door is not a child protective services investigator. But she's not a housekeeper either. Rather, she works for an Intensive Family Preservation Services (IFPS) program, a program which combines "soft" services, such as counseling and parent education with whatever hard services a family might need.

Here's how it works, when it's done right:

- The intervention begins when the family is in crisis. An IFPS intervention is designed for families whose children otherwise face imminent removal to foster care. (Clearly the case above would qualify – since the worker did, in fact, remove the children on the spot). The worker will be in the family's home within 24 hours of referral.

- The intervention is short -- usually four to six weeks -- but extremely intense. Family preservation has been falsely characterized as a "quick fix." In fact, IFPS workers have caseloads of no more than three, so though they are with a family for no more than six weeks, they can spend several hours at a time with that family -- often equivalent to a year of conventional "counseling."

Furthermore, the end of the intervention does *not* mean the end of support for the family. The IFPS model requires that the family be linked to less intensive support after the intervention to maintain the gains made by the family.

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

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

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

- But perhaps most important, they'll "start with the kitchen;" that is, they put a strong emphasis on providing "hard" services, often services needed to ameliorate the worst aspects of poverty.

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

This has a number of benefits:

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

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

The income status of the family in the *Morning News* story is not specified, but the location is described as a "middle-class suburb." Providing concrete help in these cases is important as well.

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

IFPS programs also are money savers. Though the worker has only three cases at a time, the intervention at this level of intensity lasts no more than six weeks. Over the course of a year, an IFPS worker will see the same number of families as a worker with a typical caseload in much of the country – though not as many as the unconscionable caseloads carried by Texas caseworkers.

But even in Texas, since an IFPS intervention for an entire family costs about one-third the amount it usually takes to hold even one child in foster care for a year, the program is actually a money-saver.

But far more important than the savings in money is the savings in lives. These programs save children from the emotional torment of needless removal. And these programs have a far better track record for child safety than foster care.

For example:

The nation's first IFPS program, Homebuilders, in Washington State, has served 12,000 families since 1982. No child has ever died during a Homebuilders intervention. One child died afterwards, nearly two decades ago.¹⁸⁵ Michigan has the nation's largest family preservation program. The program rigorously follows the Homebuilders model. Since 1988, the Michigan family preservation program has served more than 100,000 children. During the first two years, two children died during the intervention. In more than a decade since, there has not been a single fatality.¹⁸⁶ In contrast, during a time when Illinois effectively abandoned family preservation, there were five child abuse deaths in foster care in just one year. That's one reason the state subsequently reversed course (see "What Illinois can teach Texas," p. 19).

Several rigorous studies have found that IFPS programs safely and effectively reduce foster care placements. Details concerning those studies are available in Issue Papers #1 and #11 at www.nccpr.org.

So imagine what would have happened if, instead of having to choose between doing too much or doing too little, caseworker Candice Tovar could have called in an IFPS worker.

That worker would have personally helped the family clean the house. While they were scrubbing the floors and getting rid of the cat waste, the worker would be learning about the family, finding out why things had gotten so bad, and what could be done to prevent it from happening again.

She would arrange help for the children's learning disabilities, and be sure that the parent with the "history of mental illness" was getting help for those problems as well.

At the end of four to six weeks, the family would be linked to less intensive help.

The odds that the children would have to come into foster care at some later date would be dramatically reduced – a good deal for both the children and taxpayers -- and caseworker Tovar would have more time to find children in real danger.

Although Texas has a program called “Intensified Family Preservation Services,” it does not even come close to matching the Homebuilders model.¹⁸⁷ That’s not unusual. Agencies often “dilute” the model. Caseloads are raised, less time is spent with each family, and the worker is not on call at all times. Then, when the diluted program doesn’t work, all family preservation programs are scapegoated.

And even the diluted Texas program reaches far too few families. DFPS spends only about \$16 million per year on the program¹⁸⁸ enough to serve only 2,096 families in 2003.¹⁸⁹ About the same number of families probably were served in 2004. And the family visited by Ms. Tovar wasn’t one of them.

The legislature also should restore and expand funding for the 11 other prevention programs it wiped out in 2003.¹⁹⁰

Unlike family support, family preservation programs take hold when a family already is in crisis. Most of the programs we include in our recommendations emphasize family preservation.

The very term “family preservation” actually was invented to describe one specific type of program, called “Intensive Family Preservation Services (IFPS).”

IFPS is a “last ditch” attempt to provide intensive help to a family on the verge of having a child taken away. It is remarkably similar to home visiting, but much, much more intensive. (It is discussed in detail in “Start with the kitchen,” p. 48.) But IFPS is “net-narrowing” prevention. It reduces the coercive role of child welfare agencies. That’s why the same child welfare establishment that loves family support often hates family preservation.

Thus, though judge McCown now says he also supports family preservation¹⁹¹ he says nothing about it in his *Petition*. Indeed, the words “family preservation” don’t even appear in the entire document.

...and the wrong kind of “prevention” is harmful

“Prevention” actually can be harmful if it is not geared to a family’s real needs.

That can happen when prevention programs are designed more to make the helpers feel good than to actually provide what a family needs to stay together safely.

Too often, states throw all or most of their limited prevention money at so-called “soft” services like “counseling” and “parent education” which at best may do little good in isolation and at worst actually add more burdens to parents whose real problem is getting enough to eat and a decent place to live.

For example, suppose a single mother is holding down two jobs to stay off welfare, is constantly worried about child care and health care, and is sleeping with the lights on so the rats don’t come out and bite her children at night. She just might conclude after a while that the world isn’t an altogether friendly place.

The typical response from agencies like DFPS might be to label the mother as mentally ill. (Because of those “bad gene pools,” perhaps?) They might label her as suffering from “apathy-futility syndrome,” – a real term in some child welfare circles,¹⁹² and demand that she get counseling.

So now, on top of all her other burdens, she must find the time to make her way to some counselor’s office once a week. This may well do a lot for the self-esteem of the counselor but it will only make things harder for the mother.

A decent, humane child welfare system includes soft services for the families that really need them. But such a system also would help this mother get one job with a living wage and help her find a decent apartment.

The problem is compounded after children are removed, when, instead of help geared to their real needs, families typically get cookie-cutter “service plans” that can easily make their problems worse.

Although losing one’s job or not having housing are not child abuse -- not in theory, at least -- and agencies repeatedly say they don’t confuse poverty with neglect, “service plans” nationwide often require parents to get jobs and get housing, or better jobs and bigger housing, before they get their children back. The plans generally don’t offer any help in this regard, however.

On the contrary, the same “service plan” often schedules visits between parents and children only during working hours. So if the parent misses work to visit her children and gets fired, it’s held against her at the next court hearing. If she stays on the job and misses a visit, that counts against her as well.

Consider some examples from Texas:

Recall how Angela Jenkins, whose newborn was taken because she smoked a marijuana cigarette, was forced to take a parenting class, though no one accused her of poor parenting, and forced into “counseling” even though she *wasn’t* accused of mental illness. Her husband was forced to take drug tests, though he was never accused of using drugs.

At least one judge actually puts birth parents through this kind of mill on purpose. In San Antonio, Judge Peter Sakai says he imposes “services” knowing they are not geared to parents’ needs to test their “dedication” by seeing how many hoops they’ll

jump through to get their children back.¹⁹³ Not only is that contrary to everything we know about what really works for troubled families, it also forces the children to suffer prolonged, needless foster care while the judge imposes his little test.

In the particular case the judge was discussing when he explained his strategy, leaving the child in limbo while the parents became his test subjects had profound consequences.

Though the child was only six, she wound up in a group home – a kind of placement considered especially harmful for any child under age 12. There the group home staff took it upon themselves to give the child a painful, scarring perm to straighten her nappy hair.

At another point the child was in a “shelter.” By then she was so unhappy she tried to poke herself in the head with a scissors. So the six-year-old wound up in a psychiatric ward – on medication, of course.

After six months of the best efforts of the state of Texas to “err on the side of the child,” the child was returned home. But she wasn’t the same child. According to the *San Antonio Express-News*, the parents

*... had hoped to get her off anti-depressants when she came home. Instead, as a first-grader, Loren was put in special education for behavior problems, sent home early and barred from field trips and assemblies because she would shut down, refuse to move or throw things.*¹⁹⁴

And how did this child ultimately come home? Judge Sakai stopped putting the family through the wringer “when he glanced at his scribbled notes and realized he had questioned the case all along.”¹⁹⁵

A PREVENTION FIRST ACTION AGENDA

Part One: Improving Services

How, then, can Texas find the middle ground – between those on the right who won't fund anything and those on the left who insist on massive funding for more of the same failed approach?

By demanding a reform agenda built around models with a proven track record. And all of those models emphasize safe, proven programs to keep families together.

To keep children safe, Texas must rebuild its system to emphasize a full menu of prevention and family preservation options.

So for starters, that's where every new dollar should go.

RECOMMENDATION 1: PREVENTION FIRST. All new money should go to prevention up to the first \$500 million in new spending.

Since the odds of getting that much money out of the legislature are exceedingly slim, this is a call to spend every new dollar on prevention and family preservation – not hiring more investigators. (Even \$500 million would be only about half the proportionate commitment New Jersey has made – and New Jersey was spending twice as much per child on child welfare in the first place).

This is a call to avoid repeating the mistake made when Judge McCown won more money from the legislature in 1999, but instead of improving the lives of children, it merely gave Texas the same lousy system only bigger.

Under this recommendation, there would be new hiring – but it would be new hiring in prevention and family preservation programs. Combined with other recommendations below, this would reduce caseloads by reducing the number of children who ever need to be reported to CPS, and reducing the number of children who need to be

removed from their homes.

Although no new investigators should be hired – unless the legislature is willing to spend more than \$500 million – some of the new money could go to raise the pay of investigators already on the job.

To find out how to spend new prevention and family preservation money, all the key players in the system should get a first-hand look at what really works.

RECOMMENDATION 2: Take a “best practices” tour.

The new director of DFPS, Carey Cockerell, already has an impressive track record for innovation. As Director of Juvenile Services in Tarrant County, he did something virtually unheard-of in local government – he turned down state money. The money would have gone to build more juvenile jails, and Cockerell was convinced that would do more harm than good.

Instead, he poured funds into innovative programs including treatment, community service, restitution – and family preservation (it works in juvenile justice, too). The result: Lower cost per child than Dallas County and a lower recidivism rate.

In other words, he saved money and improved outcomes. His efforts led to Tarrant County receiving a national award as a “guiding light” for juvenile justice reform. (That same year the same award went to Patrick Lawler of Youth Villages.)¹⁹⁶

We hope Cockerell will be bringing the same philosophy to DFPS, and to help we suggest that, as soon as possible, he leave town.

Specifically, if he hasn't seen them already, he should visit some of the few places around the country that have made huge strides in reforming child welfare. He should take his top aides with him, and key legislators as well. Reporters also should make such a trip, whether with Cockerell, or on their own, to see what really works.

The states, it is said, are laboratories of democracy. It's time for Texas to start reading the lab results.

One stop on this best practices tour should be, of course, Illinois. But they also should visit Alabama, where, as a result of a lawsuit settlement, counties rebuilding their child welfare systems to emphasize family preservation have slashed their foster care populations even as an independent court-appointed monitor has found that children are safer now than before the changes.¹⁹⁷ The monitor has said that in the counties that have adopted the new approach caseworkers are "practicing as well as we could find in the United States."¹⁹⁸ and the federal judge overseeing the settlement says "it's getting to be a pleasure" to hear quarterly reports on the child welfare agency's progress.¹⁹⁹

They should visit the county-run system in Pittsburgh and surrounding Allegheny County, Pennsylvania. In the mid-1990s, foster care placements were soaring and those in charge insisted every one of those placements was necessary. New leadership changed all that. Since 1997, the foster care population has been cut by 30 percent. When children must be placed, half the children in foster homes stay with relatives and siblings are kept together 82 percent of the time.

They've done it by tripling the budget for primary prevention, more than doubling the budget for family preservation, embracing innovations like the Casey Foundation's Family to Family program (see Recommendation 14 below) and adding elements of their own, such as housing counselors in every child welfare office so families aren't destroyed because of housing problems. And, as in Alabama, children are safer. Reabuse of children left in

their own homes has declined.²⁰⁰

They should visit the county-run system in El Paso County, Colorado, where, by recognizing the crucial role of poverty in child maltreatment, they reversed steady increases in its foster care population. The number of children in foster care is down by about 22 percent – and the rate of reabuse of children left in their own homes is below the state and national averages, according to an independent evaluation by the Center for Law and Social Policy.²⁰¹

The states, it is said, are laboratories of democracy. It's time for Texas to start reading the lab results.

RECOMMENDATION 3: DFPS should ask the Annie E. Casey Foundation²⁰² to appoint a panel of national experts to advise the agency on transforming child welfare in Texas.

Exactly this kind of panel led to another remarkable transformation in child welfare – the dramatic improvements in New York City, noted in the section on foster-care panics.

Another such panel played a crucial role in crafting the innovative reform plan in New Jersey discussed on page 39.

Those panels were created as a result of class-action lawsuit settlements. But there's no reason that an innovative administrator trying to turn around a deeply troubled agency can't ask for help on his own.

RECOMMENDATION 4: Make sure that every contract and every sub-contract with every "provider" of child welfare services contains financial incentives that encourage those agencies to find safe, permanent homes for children and discourage them from allowing children to languish in foster care. Every contract also must have a "no reject, no eject" clause.

Changing financial incentives in this way was crucial to the success in Illinois. Indeed, it is the single most important change that any child welfare agency can

make. The benefits are discussed in detail elsewhere in this report.

RECOMMENDATION 5: Texas should support efforts in Congress to limit aid for foster care and allow states to divert that money to prevention, and adoption.

In FY 2004, Texas received \$120 million in federal aid that could be used for foster care – and only foster care. Another \$51 million went exclusively for adoption.²⁰³ What's more, this aid came in the form of an entitlement; for every eligible child placed in foster care, the federal government reimburses Texas at least 60 cents on the dollar. Thus, although family preservation is cheaper in total dollars, foster care sometimes may be cheaper for the state, creating one more perverse financial incentive.

Not every child is eligible for federal reimbursement; only those from families which have incomes low enough to have qualified them for welfare in Texas – by 1993 standards. As a result, about 60 percent of Texas foster children come from eligible families, and that proportion declines every year. This is called the “eligibility lookback.”

In contrast, Texas received only \$61 million from the federal funding stream that can be used for prevention and family preservation – that that money also can be siphoned off for more adoption assistance and even some foster care.

Republicans in the U.S. House of Representatives have introduced legislation to change this. Their bill would allow much of that \$120 million to be spent on both foster care and alternatives to foster care, including prevention, family preservation and adoption.

Each state would get a specified amount of money, based on current spending plus inflation. The funds would increase each year. The eligibility lookback would be eliminated, saving states money in administrative costs. But the funds

would no longer be an open-ended entitlement. The perverse incentive that paid Texas 60 cents on the dollar for every eligible child the state took away, would end.

Thus, states that hold their foster care populations steady or reduce them gain under this plan both in total dollars and in flexibility. The only reason to oppose it is if you expect – or hope for – a huge increase in the number of children removed from their homes.

Of course, the devil is always in the details, and this bill could change enormously from week to week, even day to day. But, as this is written, if one promised change is made,²⁰⁴ the conservative Republicans who drafted this bill have the better of the argument. And too many of our fellow liberals have taken a position that boils down to “It's from the Republicans and the Bush Administration so whatever it is, we're against it.”

RECOMMENDATION 6: Texas should stop diverting TANF surplus funds from their proper purpose – helping families – to subsidizing child welfare agencies and paying strangers to take care of poor people's children.

Though such diversion is legal, it is a reprehensible transfer of scarce funds from the poor to the better-off. When TANF is used for foster care it should be for kinship care only.

RECOMMENDATION 7: Establish a careful, rational mechanism for screening calls to the Texas child protection hotline.

Under current law, any report which would, in fact, be child maltreatment were it true automatically is sent on for investigation.

Given how broad and vague the definitions of maltreatment are, this means that any caller's hunch, or guess about almost anything is screened in. Indeed, Texas screens out reports at a rate less than half the national average²⁰⁵ and the special report commissioned by Judge Mireles in

Bexar County noted that calls which should be screened out, even under these criteria, still are being passed on for investigation.

Hotline operators need a detailed protocol they can use to carefully question callers to determine if there is any reasonable basis for their allegations. And they need careful training concerning what does, and does not, constitute child maltreatment.

RECOMMENDATION 8: As part of a rational screening mechanism, Texas should strengthen its “flexible response” system by diverting cases deemed less serious to private agencies authorized to offer voluntary help.

Over the furious protests of Judge McCown, in 2002 Texas has joined the ranks of states that have created some sort of “flexible response” to hotline calls. This means that in cases deemed less serious, DFPS does not have to perform a traumatic, full-scale investigation.

Notwithstanding the judge’s fears, a federal review of these programs in 2001 found that in every state where they had been tried, child safety improved.²⁰⁶ In Texas, a pilot project in Bexar County, before the program went statewide, found no compromise of child safety.²⁰⁷

But the system still requires DFPS workers to respond to cases deemed less serious. This limits the amount of time saved for the workers so they can concentrate on more serious cases. It also makes it likely that families will be suspicious, since the agency claiming it just wants to do a family-friendly assessment also is the one that takes away children.

A better approach would be to divert less serious allegations as soon as they are evaluated at the hotline. These calls would be referred to private agencies which would be required to make face-to-face contact with families. But their mission would be solely to assess the problem and offer voluntary help.

When help is offered in this way, by an agency not associated with CPS, it is

usually accepted.

This would get more help to more families, and free up more time for DFPS workers to find children in real danger.

RECOMMENDATION 9: As part of a rational screening mechanism, replace anonymous reporting with confidential reporting.

There is at least one pending proposal to increase penalties for deliberate false reports of child abuse. But any such proposal is meaningless if a malicious reporter can simply go to a pay phone and make the call anonymously.

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.’”²⁰⁸

One Texas legislative committee appears to be recommending the automatic release of the names of reporters under certain circumstances.²⁰⁹ This goes too far the other way. There are times when reporters might legitimately fear repercussions if their names were made public. And this recommendation does not address the issue of people who simply don’t give their names to the hotline at all.

Once again, there is a need for middle ground.

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 a neighbor is abusing her 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.

And if the accused, in fact, suspects harassment, a mechanism should be available for the accused to seek release of the name of the accuser by petitioning a judge.²¹⁰

It is far safer for children if cases are screened rationally by eliminating the anonymous reports, rather than screen them irrationally based on which file floats to the top of the pile on a caseworker's desk.

Penalties for false reporting can include fines or jail time – but they should never involve limiting visits between a parent and child.

The purpose of visits is to cushion the blow of foster care for the child. Using visits as leverage over parents, whether to punish them for false reports or for not complying with a “service plan” or any other reason, punishes the child for the alleged failings of the parent. That is child abuse.

Of course, CPS is likely to object to any recommendation that calls for more screening in any form, arguing that some anonymous calls are legitimate, or that a rational screening mechanism and a stronger flexible response system might screen out come cases in which children are in real danger.

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.

And any kind of screening runs the same risk.

But *more* real cases are missed now by overloading the system. The more cases that cascade down upon investigators the less time they get for each one. So some get short shrift.

CPS workers will always screen cases. The real choice is between rational screening and irrational screening.

It is far safer for children if cases are screened rationally by eliminating the anonymous reports, rather than screen them irrationally based on which file floats to the top of the pile on an overwhelmed 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.”²¹¹

RECOMMENDATION 10: No more “white glove tests.” CPS should get out of the business of critiquing family housekeeping skills. Any reference to neatness, sloppiness, cleanliness, dirt or other home conditions should be excluded from workers' reports entirely, unless those conditions have a direct impact on children's health or safety.

There is no field on Earth in which the phrase “cleanliness is next to Godliness” is taken more literally than Child Protective Services – and no field where that obsession does more harm.

Over and over again, CPS workers have overlooked dangers to children because they were so impressed by the housekeeping skills of a parent or foster parent. It is a staple of news coverage: “We never suspected anything – the house was always so neat and clean.”

In one recent case, in another state, a caseworker was enormously impressed with the fact that the home was “practically im-

maculate, with clean and neatly folded clothing.” As a result, he didn’t notice that her child was starving to death.²¹²

Conversely, a messy home somehow equals a bad parent.

Since there is, in fact, not a shred of evidence equating neatness with love, there should be no mention of the cleanliness of a home unless conditions are so bad that they clearly jeopardize the health or safety of the children. And in such cases, there are almost always better alternatives than removing the children – such as helping to clean the home.

RECOMMENDATION 11: Make provision of hard services to ameliorate the worst aspects of poverty a routine part of the work of DFPS.

A crucial step toward keeping children safe and families together is ending the confusion of poverty with child “neglect.” Agencies like DFPS will not be able to do their jobs until CPS stands for child *poverty* services as well as child protective services. This does not mean Texas has to end poverty as we know it – though the first state to do so will come closer than any other to eradicating child maltreatment.

It does mean that DFPS must be ready to cushion poverty’s worst blows. It must have funds available to provide the first and last month’s rent and a security deposit when a family faces destruction because of lack of housing. It must be able to subsidize some of the rent in that new apartment, if that’s what it takes to keep the family together. It must be able to provide safe, subsidized day care to every parent who needs it to avoid a “lack of supervision” charge.

Frontline caseworkers need what, in Alabama, are called “flex funds,” a pool of money – perhaps \$1,000 per family -- to use on one-shot purchases for whatever that family may need.

Consider how the model child protection system in El Paso County, Colorado, put this approach into practice, as described

by the *Arizona Republic*:

An oft-repeated example involves a great-aunt in Colorado who took in seven nieces and nephews when their mother no longer could care for them because of drug addiction. Facing eviction, the loss of her car and \$5,000 in debt, the great-aunt called child-welfare officials to give up the kids.

A child-welfare supervisor asked [the head of the human services agency, David] Berns, “I can’t give her \$5,000, can I?” They worked out how much it would be to place the seven children in foster care for a year: \$168,000.

*They got her the \$5,000. It was a wise use of money.*²¹³

Contrast this to how DFPS handled the case of Dorothy Watson, the grandmother in Fort Worth. Or contrast it to Judge McCown’s contention that if a kinship caregiver doesn’t have the resources to transport a child to “treatment” the child should be placed with strangers.

RECOMMENDATION 12: Establish a statewide Intensive Family Preservation Services Program that is available to every family that needs it and rigorously follows the model established by the first such program, Homebuilders, in Washington State.

The term “family preservation” actually was invented to apply to this type of program. And when these programs rigorously follow the Homebuilders model, study after study has shown that they reduce foster care placement – and they do it with a better track record for safety than foster care. (For a detailed discussion of these studies please see NCCPR Issue Papers #1, 10 and 11 at www.nccpr.org. See also “Start with the kitchen,” p.48).

Texas does have something called Intensified Family Preservation Services. But it is only a pale shadow of a real IFPS program.²¹⁴ And even that program has a budget of only about \$16 million per year.²¹⁵ That was enough to serve only

2096 families in 2003.²¹⁶

RECOMMENDATION 13: Texas should use state funds to provide the same payments to kinship foster parents as now are given to strangers.

As noted earlier, kinship placements generally are safer and more stable than "stranger care."

RECOMMENDATION 14: Bring the Family to Family program to Texas.

This Casey Foundation initiative probably is best known for "Team Decisionmaking" (also called Family Group Decision Making) in which, either in an attempt to avert a placement or in the hours immediately afterwards, everyone who knows a particular family and may be able to help -- extended family, friends, neighbors, clergy, as well as child welfare agency staff -- meet together to develop a plan to help that family safely stay together.

DFPS has announced that Family Group Decision Making, now in 21 counties, "has been adopted as a statewide initiative"²¹⁷ though only about 40 to 45 counties are expected to be included by the end of the 2005 fiscal year.²¹⁸

That's a start -- or at least it will be a start if, in fact, the Texas program rigorously follows any of several good models.

An early attempt at Family Group Decision Making in Tarrant County bore no resemblance at all to those models. In the Tarrant County pilot, for example, a child could be trapped in foster care for 30 days before the conference was ever held, and a news account describing the program is filled with patronizing comments about families from the executive director of the very group running it.²¹⁹

DFPS now seems to have a much better grasp of how the program should be run, but it still can be up to 30 or even 45 days before the conference is held.²²⁰

In contrast, New York City, which already tries to hold the conference within 72 hours of removal, now has a new target: Holding most of the conferences before a

child is removed in order to try to avoid that removal in the first place, and make sure that, when a child must be taken away, there really was no other alternative.²²¹

On the other hand, DFPS reports one encouraging sign: Of the children already in foster care involved in 101 conferences in the pilot counties, nearly 69 percent were placed with relatives, and another 10.7 percent were returned home.²²²

But even a faithful replication of Family Group Decision Making is just one aspect of the Family to Family program, and not enough will be accomplished if only that one piece is adopted.

Family to Family emphasizes bringing foster care to the same neighborhoods as most foster children, so when a child must be placed, he doesn't lose all his friends or have to change schools. Visits between birth parents and foster children are much easier, and foster parents are encouraged to work as mentors to birth parents instead of seeing themselves as adversaries. Child welfare agencies themselves move from centralized downtown units to neighborhood-based centers. A key goal is reducing group home and institutional placements.

Compare this approach to how DFPS responded in this case, reported by the *Fort Worth Star-Telegram*:

The young boy was known around the neighborhood as "Teddy." His mother left him with a friend in July and never came back, so neighbors at the Manhattan Park Apartments on New York Avenue took turns feeding and caring for Teddy, hoping "Julie," or "Julie Ann," would return. They gave up on Sept. 14 and called authorities, who put him in foster care. ...

*"I knew I should report it. I just didn't want to turn him in for just anyone to have," said Belinda Smith, 57, whom Teddy lived with for a month. "He's such a special child."*²²³

Here you had neighbors, so concerned about a child -- and about the harm of the foster care system -- that they banded

together to help. Instead of welcoming that and recruiting a foster family from among the neighbors, DFPS whisked the child away.

One possible reason can be gleaned from the comments of a DFPS spokeswoman whose assessment was paraphrased by the newspaper as follows: “the east Arlington apartment complex has a lot of drug activity and a lot of people passing through...”

In other words, they’re almost certainly poor people, living in a “bad neighborhood.” And too often, at child welfare agencies, if the neighborhood is “bad,” they’ll pin that label on anyone who lives there.

So child welfare agencies often ignore all the help, formal and informal, that can be offered by good people and good institutions that happen to be in “bad” neighborhoods.

Family to Family reverses that mindset. An independent evaluation found that, where Family to Family was implemented, fewer children were taken away, placements were shorter, and there was less bouncing of children from foster home to foster home.

Most important: Even though cases in which children ultimately *were* taken away and placed in foster care were more difficult, there was no increase in the recidivism rate, that is, the rate at which children returned home had to be placed in foster care again, and in some locations recidivism decreased.²²⁴ That means all this positive change was done while making children safer.

RECOMMENDATION 15: Bring Community Partnerships for Child Protection (CPPC) to Texas.

Family to Family is one of two major national initiatives to rebuild child protective services. The other, similar initiative is called Community Partnerships for Child Protection.

Originally a project of the Edna

McConnell Clark Foundation, the partnerships now are overseen by America’s leading child welfare think tank, the Center for the Study of Social Policy.

Child welfare agencies often ignore all the help, formal and informal, that can be offered by good people and good institutions that happen to be in “bad” neighborhoods.

At the heart of the partnership is mobilizing residents of some of the poorest communities in the United States to support each other, watch out for each other, and build trust among themselves and with child protective services.

In Jacksonville, Florida, the partnership brought residents together by first showing that it could help them. Residents got concrete help to ameliorate the worst problems of poverty; then they could help each other.

So when a mother left her young children home alone and was arrested for child neglect, there already were neighbors taking in the children by the time police arrived. Partnership staff knew the neighbors, and they knew the people at the child welfare agency, so they could persuade the agency the children would be safe this way – and the neighbors would keep an eye on the mother and help her to keep the family together when she got out of jail.

In another case, a family in a housing project was about to be evicted because they couldn’t keep their house clean. Lack of housing often is a cause of child removal. Then a neighbor came forward.

“The two were not friends,” according to a report on the partnership, “but the

neighbor said she hated to see a family thrown out on the street.” So she and her son offered to help the mother clean her apartment.

It is extremely difficult to take a swing at “bad mothers” without the blow landing on their children. Therefore, if we really believe all the rhetoric about the needs of the children coming first, we must put those needs before anything – even our anger at their parents.

A committee of neighbors coordinates the Partnership’s version of Family Group Decision Making, called “Individualized Courses of Action.”

And the child welfare agency isn’t a remote bureaucracy. It’s based, along with many other social services, at a nearby high school. “Two years ago I was leery of going into these places,” says one child protection worker. “Now there’s a wave, a friendly face. I used to be treated like The Man, like the police, and I could not get any information. The attitude has really changed.”²²⁵

Contrast this to the case of Dallas Helms, the mother in Corpus Christi with a seizure disorder. In that instance neighbors acting entirely on their own organized to help the mother. Instead of celebrating this community spirit and backing them up, CPS insisted on taking away the child.

The approach is producing impressive results.

In Florida’s District 4, a multi-county region which includes Jacksonville, from 1999 through 2002 confirmed cases of child abuse increased by 94 percent. In Du-

val County, the county of which Jacksonville is a part, they went up by 60 percent. But in the Partnership sites the number of cases went *down* by 27 percent. Reabuse of children left in their own homes also went down and serious injuries to children declined by 12 percent.

And there have been similar successes elsewhere:

- Within three years of CPPC implementation in Linn County, Iowa, the reabuse rates dropped from 30 percent to six percent.

- In Jefferson County (Louisville), Kentucky, traditional foster care placement rates have been reduced significantly from 1999 to 2003. The largest change is found in the neighborhood where the Community Partnership program first began, with placement rates dropping by 70 percent.

- When the Partnership began in Peach County, Georgia, about half of the county’s substantiated reports of child maltreatment originated in the target community; by September 2003 this number was less than 25 percent. Countywide reports of child abuse and neglect dropped by nine percent with a 55 percent reduction in reabuse cases.

RECOMMENDATION 16: Texas must provide sufficient funding to make drug treatment geared to the needs of parents, usually mothers, available immediately to any parent who wants it. This must include in-patient programs where parents can live with their children.

There are many cases in which the key barrier to keeping a family together is a parent’s substance abuse. Some would argue that it is not worth even bothering with such parents. But the reason to provide treatment is not for the sake of the parents, but for their children.

In a University of Florida study of children born with cocaine in their systems, one group was placed in foster care, another

with birth mothers able to care for them. After six months, the babies were tested using all the usual measures of infant development: rolling over, sitting up, reaching out. Consistently, the children placed with their birth mothers did better. For the foster children, the separation 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. Therefore, if we really believe all the rhetoric about the needs of the children coming first, we must put those needs before anything – even our anger at their parents.²²⁶

RECOMMENDATION 17: Texas should move to redirect funding now used to institutionalize children into alternative programs similar to Wraparound Milwaukee.

These programs are better for children than institutionalizing them – and they cost less.

RECOMMENDATION 18: Raise pay for caseworkers and supervisors.

We believe that DFPS should hire more CPS investigators only as part of a comprehensive reform plan that embodies the other recommendations in this report and/or a plan like the one recently adopted by New Jersey. While it is essential that caseloads be reduced, simply hiring more workers to investigate more cases won’t reduce them. It will simply lead to more needless removal of more children.

The way to reduce caseloads is to build a complete infrastructure of prevention and family preservation *and* hire more CPS workers – but if there is only enough money for one or the other, build the prevention infrastructure first.

Therefore we oppose hiring more investigators until at least \$500 million is committed to prevention and family preservation.

But that doesn’t mean no more money should be spent on caseworkers. It is urgent to raise the pay of the ones already on

the job.

As we note elsewhere, most frontline workers are not jack-booted thugs who relish tearing children from their parents. Most of the time, they are underprepared, undertrained and inexperienced, but they usually want to do the right thing.

It’s essential to reduce caseworker turnover and that requires both lowering caseloads, and paying workers more than the absurdly low salaries they now receive – generally no more than \$30,000 per year.²²⁷

Part two: Due process for families:

RECOMMENDATION 19: 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 in Texas when their impoverished parents often are, literally, defense-less.

After a worker, acting entirely on her own authority, takes their children, the parents get no lawyer at the initial review. And the parents may not get a lawyer at all until and unless they are threatened with termination of parental rights.

Even when that lawyer is provided, it is likely to be a grossly overworked, underpaid attorney who probably just met the parent five minutes before the start of a crucial court hearing.

This system needs to be replaced with one which guarantees indigent parents a lawyer from the moment the child is removed. 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 district attorneys both from their own offices and from DFPS.

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 DFPS wants to return a child home, do you disagree? How many times, when DFPS wants to hold a child in foster care, do you disagree?)

Second, 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.

The problem actually is compounded if the child is assigned a Court-Appointed Special Advocate (CASA) – almost always a white, middle-class person investigating the life of a poor, often minority family.

Leveling the playing field in Washington State

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.

Between 2000, when the program began, and 2003, of 144 cases in the program in which families have been reunified, not one has been 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, who has to face the better-prepared lawyers, supports the project and wants it expanded.²²⁸

These volunteers are generally dedicated and mean well, but there is strong evidence that they have been unable to overcome biases built into the CASA model.

CASAs, who, the national study found, are 90 percent white, spent an average of 90 minutes less on a case if the children involved were African-American.

A major national study of the CASA program produced some disturbing findings:

- The only major differences between children who had CASAs and children who didn't is that the children with CASAs are far more likely to be torn from their birth parents and thrown into foster care, and far less likely either to be reunified with birth parents once in foster care or placed with relatives instead of strangers. *But this did not improve child safety.*

- In cases that had been closed by the conclusion of the study, children with CASAs were nearly five times more likely to be placed in foster care than children without CASAs. In cases still open during the study period, children with CASAs were more than twice as likely to be in foster care.

- Furthermore, in cases still open during the study period, children with CASAs were nearly four times *less* likely to be reunified with their birth parents than children without CASAs. And they were more than three times *more* likely to be in foster care with strangers instead of relatives.

Some might argue this is a good thing – that it's keeping the children safe; again, "erring on the side of the child." But that's not what the study found. Rather, the study found that children without CASAs,

who are far more likely to remain in their own homes, *are just as safe* as children with CASAs who are far more likely to be in foster care, and less likely to be reunified. That means the only thing CASA accomplishes, in most cases, is needless destruction of families.

CASA apologists would reply that CASAs often are assigned to the toughest cases. But the researchers accounted for that, coming up with a careful, exhaustive set of measures to be sure that the cases they chose for comparison were truly comparable in severity. When the results didn't come out the way they wanted, the National CASA Association and the researchers claimed these efforts must not have succeeded.

But even if that is true, the best that can be said is that the largest, most exhaustive study ever done of CASA found no evidence that it does any good.

Furthermore, the study found that CASA volunteers actually spend surprisingly little time on each case. According to the study, on average, CASAs reported spending fewer than four hours per *month* on the entire case. The results suggest that the notion that CASAs know far more than anyone else about a case because they spend enormous amounts of time on it is questionable at best.

Even more alarming, CASAs, who, the national study found, are 90 percent white, spent an average of 90 minutes less on a case if the children involved were African-American.

If that's how they subconsciously react to poor black children, imagine how CASAs react to poor black *parents* – particularly when the CASA's recommendation turns into "comparison shopping" between foster parents who look just like them and live in neighborhoods just like theirs and birth parents who don't.

And who commissioned this study, with such damning findings? Not CASA's critics. Rather, it was the National CASA

Association itself. The respected trade journal *Youth Today* says that the National CASA Association's attempt to spin the results "can border on duplicity."²²⁹ So it's best to read the full study, which is available at

http://www.casanet.org/download/casa-surveys/caliber_casa_report_representation.pdf

These problems, too, are compounded by the fact that, notwithstanding claims sometimes made by CASAs that they are "a child's voice in court," – they aren't. Like the law guardian, the CASA's mandate is to advocate for what the CASA thinks is best for the child, even if the child disagrees.

To the extent that judges and CASAs hand out awards to each other it creates at least the appearance that impartiality has been compromised. Many CASA chapters give "Judge of the Year awards," for example – with Texas CASA giving its 2003 award to Judge Sakai, the San Antonio judge who likes to see how many hoops he can make parents jump through.²³⁰

One can only wonder how it feels not only to have to fight the recommendation of an articulate, middle-class CASA volunteer, but also to know that the CASA's organization handed an award to the judge who will decide your family's fate.

In Dallas, CASA sponsors the annual National Adoption Day celebration. We are aware of no comparable celebration sponsored by any Texas CASA chapter – or anyone else in the state -- for children reunified with birth parents.²³¹

The same problem of at least the appearance of conflict-of-interest arises when child protection agencies fund CASA programs or arrange for them to get federal aid.

For all of these reasons:

RECOMMENDATION 20: The State of Texas should stop funding CASA programs and refuse to pass through any federal funds for these programs. Furthermore, judges should not appoint CASA volunteers to any cases unless that

particular CASA program can provide significantly better, independently verifiable statistics concerning effectiveness and impartiality than those found in the national study.

Currently, Texas uses at least \$4 million in federal funds to assist various CASA Programs.²³²

RECOMMENDATION 21: 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.

Texas law already encourages the taping of some interviews. But it has three huge loopholes:

- It applies only to cases of physical and sexual abuse, not neglect.
- It applies only to interviews with children, not the adults involved in the case.
- It says that interviews don't have to be taped whenever CPS finds "good cause" not to do the taping.²³³ That turns the requirement into merely a suggestion.

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 posi-

tion and ignored the rest. As one victim in another state, later effectively proven innocent, told a reporter: "They lie, they lie, they awfully lie."²³⁴

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.²³⁵

And a former family court judge on Staten Island, New York wrote this just last month:

*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.*²³⁶

If CPS thinks that kind of thing never happens in Texas, then let the agency prove it. Tape all the interviews, and then the people of Texas 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 other-

wise.

And 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. That's because such a requirement is the only way 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 22: Reverse the current presumption that most child welfare records are closed, and allow DFPS to comment freely on any case made public by any other source.

To its credit, Texas is among the approximately 13 states that allow the press and public into court hearings in child abuse cases.

This provides more accountability than 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. As long as the

records are sealed, parents who complain about wrongful removal still can be thwarted by CPS workers and bureaucrats who will tell a reporter: “Oh, there’s really *so* much more to it, and we *wish* we could tell you, but we just can’t – confidentiality, you know.”

Too often, reporters accept this “veto of silence.”

If almost all CPS records on a given case 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 would almost always remain confidential. 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.

DFPS would not even be allowed to *ask* for secrecy. That’s because DFPS has no interest in secrecy other than to cover up its own failings.

But DFPS should be free to comment on any case that has been made public by any other source. In other words, if a birth parent goes to a reporter and says “my child was wrongfully taken,” DFPS should be free to tell its side of the story, as well as to release records under the circumstances noted above.

At least four states have similar provisions in their current laws. 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.

Such a law serves two valuable pur-

poses. 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, and the agency have the right to vindicate itself.

RECOMMENDATION 23: The standard of proof in all court proceedings should be raised from the current “preponderance of the evidence” standard to “clear and convincing.” The standard also should apply when a worker decides to “confirm” 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 Texas and most other states apply the lowest standard of proof, “preponderance of the evidence,” 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.²³⁷

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, many 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.

RECOMMENDATION 24: Abolish legal “ransom.”

That’s not what it’s called, or course. But requiring impoverished birth parents to dig themselves deeper into poverty in order to help reimburse the state that took away their children for the cost of “care” is, in fact, a legal form of ransom.

It 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.

Indeed, the very few people who are really well off and easily could afford ransom almost always can avoid having their children taken away in the first place.

Because the burden 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 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.

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. Once again, you harm the child – and cost the state more money.

RECOMMENDATION 25: 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, 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.”²³⁸

“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.

Appendix A:

A short course in foster care statistics

Of course, as Mark Twain said, there are three kinds of liars--lairs, damn liars, and statistics.¹ With regard to removal rates, to avoid being fooled, you have to be careful.

*--Judge Scott McCown, *Petition in Behalf of the Forsaken Children of Texas*, 1998.*

Judge McCown is absolutely right. But a close look at foster care data from Illinois and Texas shows that, in recent years, it is Judge McCown who has been fooled; or, perhaps, fooled himself.

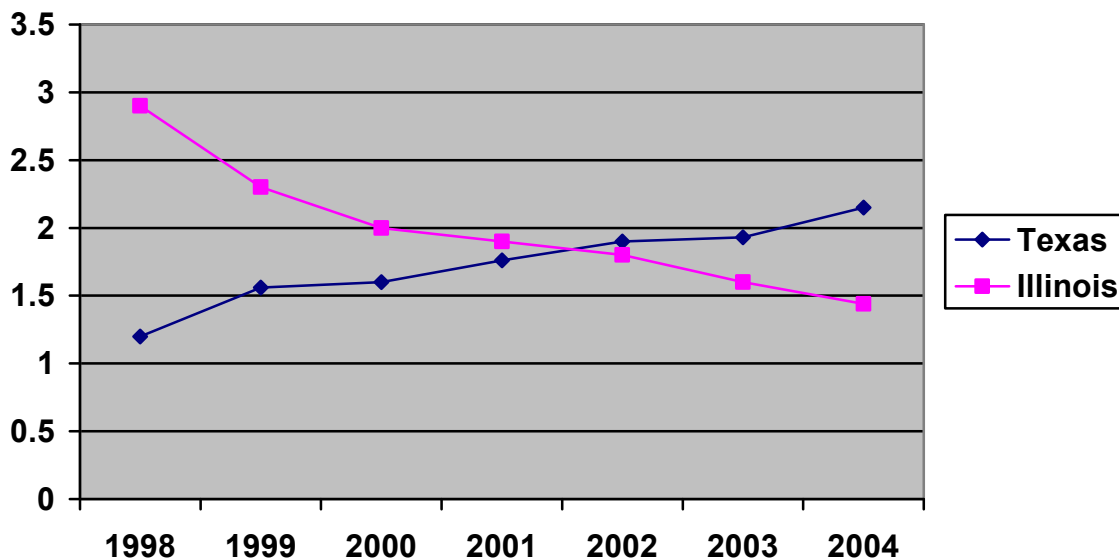
As noted in the main body of this report, the best way to measure a state's propensity to remove children is the simplest: Examine the number of children actually removed over the course of a year.

This is, in fact, the measure Judge McCown used in his *Petition*. He found that, by this measure, when comparing the number of children removed to the total child population, Texas took fewer children than other large states, and he concluded, therefore, that Texas should take away many more.

But times have changed. Today, when one looks at the number of children taken in Texas and in Illinois and compares those numbers to the number of children in each state, *Texas takes away proportionately more children*. And, as the chart below makes clear, the gap is widening.²

As foster care has plummeted in Illinois, child safety has improved. So it is possible to remove children at a rate even lower than Texas, while improving child safety.

CHART 1:
Number of children per thousand removed from their homes
1998 to 2004



¹ Actually, it's "lies, damned lies and statistics" and the quote often is attributed either to Twain or to Benjamin Disraeli.

² Judge McCown used a different, lower figure for removals in Texas in 2003 in some recent legislative testimony and other documents. But his figures, which come from a letter written by DFPS to a legislative committee, apparently excluded some removals. The 2003 figures in this chart come directly from the Texas Department of Family and Protective Services *2003 Data Book*. The 2004 figures come directly from DFPS public information officer Geoff Wool. And indeed, in at least one publication, his CPPP Policy Brief on kinship care Judge McCown uses both the lower number, on page one, and the figure in this chart for 2003, on page seven.

	Texas: Children Removed	Texas: Rate of Removal (per thousand children)	Illinois: Children Removed	Illinois: Rate of Removal (per thousand children)
1998	7,025	1.24	9,229	2.9
1999	8,938	1.56	7,325	2.3
2000	9,869	1.6	6,607	2.0
2001	10,680	1.76	6,350	1.9
2002	11,766	1.91	5,973	1.8
2003	12,050	1.93	5,074	1.6
2004	13,431	2.15	4,662	1.44

Sources:

Population:

1998, 1999, U.S. Census Bureau, *Population Estimates for the U.S., Regions, and States by Selected Age Groups and Sex*, available online at <http://www.census.gov/popest/archives/1990s/ST-99-09.txt>

2000 – 2003: U.S. Census Bureau, *Annual Estimates of the Population by Sex and Age* for Illinois/Texas, available online at: <http://www.census.gov/popest/states/asrh/SC-EST2003-02.html>

Substitute Care:

1998: Administration for Children and Families, AFCARS database, no longer available on the ACF site, but available through the Child Welfare League of America's National Data Analysis System by going to http://ndas.cwla.org/data_stats/access/predefined/Report.asp?ReportID=388 and following instructions to create the relevant table.

1999-2002: Administration for Children and Families, AFCARS database, *FY 1999, FY 2000, FY 2001 and FY 2002 Foster Care: Entries, Exits, and In Care on the Last Day*, available online at <http://www.acf.hhs.gov/programs/cb/dis/tables/entryexit2002.htm>

2003, Texas: Texas Department of Family and Protective Services, *2003 Data Book*, p.63. See the note between the charts stating that in 2003 "A total of 12,050 children entered substitute care."

2004, Texas: Personal Communication, Geoff Wool, Texas Department of Family and Protective Services, December 8, 2004.

2003, 2004, Illinois: Illinois Department of Children and Family Services, *Executive Statistical Summary*, October 2004, available online at <http://www.state.il.us/DCFS/docs/execstat.pdf>

This measure – number of children removed compared to total child population – was not our choice, it was Judge McCown's. And in computing it, we used annual U.S. Census Bureau estimates for the total child population, in order to take account of the large increase in the child population in Texas.

But because we believe in providing data in as full a context as possible, we will make an argument on Judge McCown's behalf that he has not yet thought of:

Texas has a higher child poverty rate than Illinois. Judge McCown often has pointed this out, arguing, correctly, that poverty exacerbates stresses that can cause child maltreatment. (The solution, however is to alleviate the stresses, not take the children. And Judge McCown neglects to discuss how often poverty itself is confused with neglect).

But since poverty clearly is an important factor, it could be argued that a better comparison is number of children taken from their homes compared to the total number of children *living below the poverty line*.

But even by that criterion, in 2004, Texas took proportionately more children than Illinois. Exactly how many more depends on how you use the Census Bureau's data for child poverty. If you simply use the most recent year's data available, 2003, Illinois took 8.4 children for every thousand impoverished children, while Texas took 8.87.

But because there can be a significant margin of error in child poverty data, the National Center on Children and Poverty, at Columbia University, calculates child poverty by averaging the most recent three years of data from the Census Bureau, in order to reduce distortions because of sample size. When that method is used, in 2004 Texas removed 9.74 children for every thousand impoverished chil-

dren while Illinois removed only 8.6. **Bottom line: Even when the state's higher poverty rate is factored in, Texas still takes away proportionately more children. And, again, these numbers are not an aberration, they continue a trend over the past several years.**

Confronted during an e-mail dialogue with the fact that measuring removals no longer yields the results that it used to, Judge McCown insisted on using a different measure: the "point-in-time" measure – a snapshot of the total number of children in foster care on any given day.²³⁹

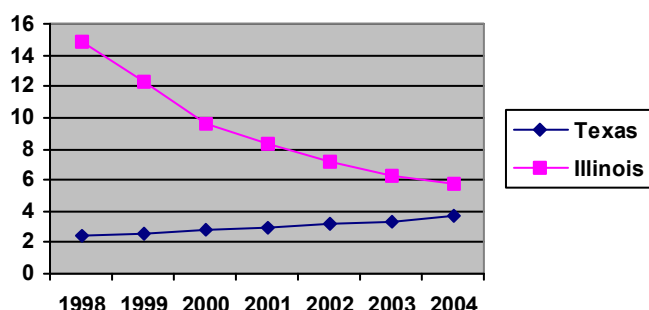
But this is, in fact, a far less accurate measure of a state's propensity to remove children, for several reasons:

- If a state keeps children in care for a very long time, this figure will be higher, regardless of whether the state takes many children or few.
- Conversely, if a state keeps children in foster care for a very short time, the snapshot number will be artificially low. For example, if the "snapshot" is taken on August 31, as it is in Texas, it will exclude every child taken since January who was released from foster care before August 30.
- If a state took a great many children into foster care in the early 1990s, and then forced them to languish in foster care through their entire childhoods, those children now would be "aging out" of the system as they become adults. That will lower the snapshot number, but it is no credit to the child welfare system.

Nevertheless, since Judge McCown now wants to use these data, they are presented below in Chart 2. And though by this measure, Texas has proportionately fewer children in foster care on any given day, once again, the gap is closing – quickly.

CHART 2:

Point-in-time "snapshot" number of children in substitute care on one day of the year, 1998-2004



	Texas: Children in substitute care	Texas: Children in substitute care (per thousand children)	Illinois: Children in substitute care (last day of fiscal year)	Illinois: Children in substitute care (per thousand children)
1998	13,768	2.4	47,029	14.8
1999	14,880	2.6	39,064	12.3
2000	16,540	2.8	31,316	9.6
2001	17,801	2.9	27,009	8.3
2002	19,635	3.2	23,282	7.2
2003	20,663	3.3	20,508	6.3
2004	22,803	3.65	18,537	5.7

Sources on following page.

Sources:

Population Data: Same as Chart 1.

Foster care:

Texas, 2004: Personal Communication, Geoff Wool, Texas Department of Family and Protective Services.

Texas, 2000 to 2003: Texas Department of Family and Protective Services, *2003 Data Book*, p.65, 66. Available online at http://www.tdprs.state.tx.us/About/Data_Books_and_Annual_Reports/2003toc.asp

Texas: 1998, 1999: Texas Department of Family and Protective Services, *2000 Data Book*, p.65, 66. Available online at http://www.tdprs.state.tx.us/About/Data_Books_and_Annual_Reports/2000data/CPS_FY00.pdf

Illinois: 2000 to 2004: Illinois Department of Children and Family Services, *Executive Statistical Summary*, October, 2004, available online at <http://www.state.il.us/DCFS/docs/execstat.pdf>

Illinois: 1998, 1999: Illinois Department of Children and Family Services, *Executive Statistical Summary*, March, 2000.

But this still isn't the end of the story. In an e-mail dialogue with Judge McCown, we initially used a slightly higher figure for Texas than the one in chart 2 – because Texas reports such a figure to the federal government.

Judge McCown said that was the wrong number, because it included some children for whom the state has legal custody, but who live in their own homes.

Judge McCown insisted the real number is much smaller, about 16,000 in 2003.

He is not entirely wrong. The federal figure did include some children living in their own homes.

But he is mostly wrong. Because the number he prefers excludes not only these children, but also many more children who are in kinship placements with relatives. Though this is a far better option for most children than what should best be called “stranger care,” it is still a form of foster care.

The number Judge McCown prefers also excluded pre-adoptive homes. While adoption is the intent in these placements, until it is a reality, it is still foster care.

The number Judge McCown prefers also excludes foster children in “independent living” programs, nursing homes, jails and “unauthorized absence.” Does Judge McCown really believe a foster child shouldn't be considered a foster child because his placement was intolerable and he ran away?

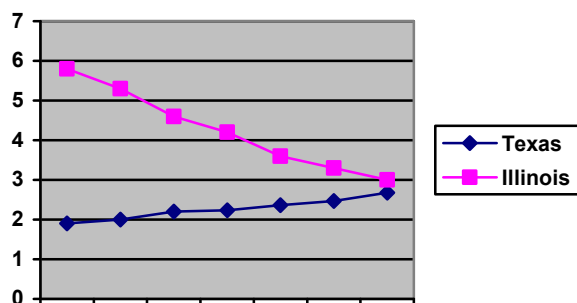
Judge McCown is making an artificial, semantic distinction between “foster care” and “substitute care.” The federal government includes all of these categories as “foster care” – and that is how the term is commonly used. Illinois also includes all of these categories.

But again, let's do it Judge McCown's way – let's see what happens when you take all these other categories out. The result is in Chart 3.

Because Texas lags behind the nation in kinship care, while Illinois is a national leader, when you take kinship and the other categories out, Illinois actually looks better – and Texas looks worse.

CHART 3:

Point-in-time “snapshot” number of children in substitute care on one day of the year, excluding kinship care, independent living, institutional placements children in jails and hospitals and runaways.



See table on following page.

	Texas: Children in substitute care	Texas: Children in substitute care (per thousand children)	Illinois: Children in substitute care (last day of fiscal year)	Illinois: Children in substitute care (per thou- sand children)
1998	10,822	1.9	18,377	5.8
1999	11,793	2.0	16,711	5.3
2000	12,857	2.2	14,856	4.6
2001	13,481	2.23	13,483	4.2
2002	14,552	2.36	11,761	3.6
2003	15,454	2.47	10,647	3.3
2004	16,783	2.68	9,600	3.0

Sources: Same as Chart 2.

ENDNOTES:

- ¹ Deborah Martinez, "Mom with disorder fights for her baby," October 19, 2000 "Helms child welfare case placed on hold," October 20, 2000, *Corpus Christi Caller-Times*.
- ² Cathy Zollo, "When policy meets reality" *Times Record News*, Wichita Falls, Tx., November 7, 1999.
- ³ Melissa Hung, "Reefer Madness?" *Houston Press*, Nov. 4, 1999, "Mother who smoked pot during labor regains custody of kids," *The Houston Chronicle*, November 19, 1999.
- ⁴ Bechetta Jackson, "Places to call home," *Fort Worth Star-Telegram*, May 24, 2001.
- ⁵ F. Scott McCown, *Comments on the 2006-07 Legislative Appropriations Request of the Texas Department of Family and Protective Services*, July 20, 2004.
- ⁶ 1985: Department of Health and Human Services, Administration for Children Youth and Families, Office of Planning and Management, *Child Welfare Statistical Factbook, 1985: Substitute Care*. 2003: Administration for Children and Families, AFCARS database, chart: *Trends in Foster Care and Adoption*, available online at <http://www.acf.hhs.gov/programs/cb/dis/afcars/publications/afcars.htm>
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- ¹⁰ For a full discussion of these data and a detailed listing of sources, see Appendix A.
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- ¹⁷ New York: Decision of Justice Elliott Wilk, *Cosentino v. Perales*, 43236-85, New York State Supreme Court, New York County, April 27, 1988. Illinois: Rob Karwath, "DCFS Hit on Family Separation," *Chicago Tribune*, Jan. 19, 1990, Sec. 2, p.2. See also: Juanita Poe and Peter Kendall, "Cases of Neglect May be only Poverty in Disguise," *Chicago Tribune*, Dec. 24, 1995, p.1.
- ¹⁸ Ron Fonger, "Foster care number swells; welfare-to-work one reason: Official," *Flint Journal*, September 9, 2003.
- ¹⁹ Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction, *Hansen v. McMahon*, Superior Court, State of California, No.CA000974, April 22, 1986, p.1; California Department of Social Services, *All County Letter No. 86-77* ordering an end to the practice.
- ²⁰ National Commission on Children, *Beyond Rhetoric: A New American Agenda for Children and Families*, (Washington, DC: May, 1991) p. 290.
- ²¹ It is defined as "placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or substantial risk of immediate harm to the child." (Texas Department of Family and Protective Services, *Frequently Asked Question: How old must a child be to be left alone?* Available online at http://www.tdprs.state.tx.us/child_protection/about_child_protective_services/faqchildalone.asp)
- ²² Jeanne Russell, "More cases than hours," *San Antonio Express-News*, February 17, 2002.
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- ²⁷ Census data via Annie E. Casey Foundation KidsCount database, www.kidscount.org
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- ³¹ Daniel R. Neuspiel and Terry Martin Zingman, "Custody of Cocaine-Exposed Newborns: Determinants of Discharge Decisions," *American Journal of Public Health* 83 (1993), p.1726, cited in Roberts, Note 30, supra.
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- ³⁹ Cathy Frye, "Watching out for the littlest ones," *San Antonio Express-News*, December 20, 2004.
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- ⁵⁸ For details, see NCCPR's three reports on the Florida child welfare system, available at www.nccpr.org.
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