NO WAY TO TREAT AN ANGEL

How Utah's misreading of a federal law makes children less safe

A briefing paper from the National Coalition for Child Protection Reform

UPDATE: Thanks to the efforts of NCCPR and our allies, the law discussed in this report was, in fact, repealed and the new law strengthens the preference for kinship care. The Utah child welfare system no longer is under federal court oversight.

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September 25, 2007

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UTAH AND THE ADAM WALSH ACT: KEY FINDINGS

Utah misunderstood the federal Adam Walsh Child Protection and Safety Act.

The Division of Child and Family Services misconstrued the Act as requiring a time-consuming extra layer of background checks - over and above those done routinely for years - for prospective foster parents, including grandparents and other relatives, before children can be placed with them. In fact, explicit guidance from the relevant federal agency states that children can be placed with relatives while this new, extra level of check is completed.

We know of no other state which made this mistake – and neither does DCFS.

UTAH'S MISREADING OF THE ADAM WALSH ACT HAS MADE THE STATE'S CHILDREN LESS SAFE.

All decisions in child welfare involve balancing risks. Placing a child with a grandparent before the new, extra check is completed creates a slim chance something might be overlooked. Sadly, that risk has been exaggerated in the minds of some by widespread prejudice against extended families. That bias may explain why Utah uses kinship care at one of the lowest rates in the nation.

But leaving the child with strangers during this time creates bigger risks. Several studies have found alarming levels of abuse of children in foster homes with strangers and in institutions, rates of abuse far higher than reflected in official figures which involve agencies investigating themselves.[1] Furthermore, no matter how well-meaning the staff may be and how hard they try, institutionalization for weeks at a time can devastate young children emotionally. And it is emotional harm that often is the most crippling of all. In contrast, research shows that kinship placements are not just more stable and better for children's well-being, they also are, on average, *safer* than what should properly be called "stranger care."[2]

Indeed, Utah Department of Human Services Director Lisa-Michele Church told the Legislature's Health and Human Services Interim Committee that Utah has made about the same number of kinship placements this year - after the needless delays – as last year, suggesting that the new background checks are turning up few if any new cases meriting disqualification of a relative. No Utah official has actually cited such a case, preferring to conjure up hypothetical horrors.

So while DCFS keeps children in limbo for weeks because of the tiny chance a child might be harmed by grandma while an extra background check is completed, hundreds of children are *definitely* harmed by children's needless confinement to shelters. Indeed, DCFS is treating these children like inmates, even preventing them from *visiting* relatives overnight.[3] That is state-sanctioned child abuse. And while the children suffer, Utah officials repeatedly brag about the system's imminent exit from a consent decree. Such gloating is like rubbing salt in these children's wounds.

Utah officials repeatedly have offered explanations for their blunder which are evasive, disingenuous, and contradictory.

--*Utah officials have been contradicting each other:*

DCFS Director Duane Betournay has admitted that his agency misunderstood the Adam Walsh law and went too far in amending state law to conform to it. He personally pledged to ask the legislature to repeal the change in state law.[4] He is seemingly contradicted by his boss, Church, who still claims that the Adam Walsh Act requires completing the background checks before children can be placed with relatives. They both are contradicted by Thomas Vaughn, Associate General Counsel for the Utah Legislature who said: "The law on its face is not exactly clear what it requires when."[5]

It is precisely because of this ambiguity in the law that the federal government issued its clear, specific guidance.

--*Utah officials even have been contradicting themselves.*

Both Betournay and Church have claimed that Utah strongly opposed the change in federal law and that the state was forced into delaying kinship placements by the federal government. As noted above, Betournay even pledged to seek repeal of the state changes – next year. Yet when pressed to undo the damage sooner both have turned around and implied that the doing the new, additional checks before placing children with relatives is necessary to keep children safe. Church actually made these contradictory statements within minutes of each other, during the same meeting of the Interim Committee.

Right after conjuring up hypothetical horror-story scenarios, Church tells lawmakers that, of course, it's all up to them. It appears her real intent was to scare the legislature away from making any changes. The idea appears to be to set the legislature up for blame, no matter who really is at fault, in the extremely unlikely event that a child ever is harmed by a grandparent or other relative while the new, extra background check is pending. In fact, the legislature can be blamed either way. *Who is to blame, after all, if the legislature does nothing and then a child is hurt while placed with a stranger, when a grandmother was prepared to take in that child all along?*

Utah officials have exaggerated the fiscal impact of doing the right thing.

Initially, they implied that failure to perform the background checks before placing children might jeopardize all of the state's federal aid for foster care. Trying to have it both ways, Church raised that absurd claim again before the Interim Committee on September 19, but then admitted it's far more likely that the only aid that might be jeopardized is payments during the weeks between the placement and the completion of the background check.

Church neglected to mention, however, that it costs far more to house a child in a shelter than with a family. For example, Salt Lake City's "Christmas Box House" costs $140 per child per night. In 2005, the cost at the Christmas Box House in Moab reached an average of $800 per child per night, before its eventual closing, in part because it so often stood empty.[6] The additional costs of shelters might well outweigh any alleged loss in federal aid. Indeed, it may be that getting children out of the shelters and into homes with grandparents sooner will *save* the state money.

DCFS should act immediately. For the sake of the children, it should join what are, as far as we know, all 49 other states and hundreds of county-run child welfare systems, follow federal law and allow placements with relatives and close family friends while the new, extra level of background check is completed.

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OVERVIEW

Try to imagine the trauma for a young child. The child suddenly is taken from everyone he knows and loves by the state child welfare agency. Perhaps the move really was necessary to keep the child safe, perhaps not; either way, for a young enough child it can be an experience akin to a kidnapping.

First the child is institutionalized, his "care" in the hands of rotating shift staff. Every time the child gets used to someone, gets comfortable with someone, the shift changes and that person is gone. It is like undergoing multiple foster-care placements every day. Then the child is uprooted again to spend a couple of weeks with total strangers.

And all the while, waiting in the wings, is someone who was ready from day one to comfort this child and cushion the blow of substitute care: Grandma. But grandma is denied custody of the child for weeks on end.

This needless trauma, this inexcusable uprooting of children first to an institution and then to a stranger before the child winds up with grandma – turning what should have been one placement into a total of three – is happening routinely in one state: Utah. It's happening because of a giant bureaucratic blunder in a state that already was profoundly hostile to kinship care. And it's happening because those with the power to undo the damage in an instant, the director of the state's Division of Children and Family Services, Duane Betournay, and his boss, Department of Human Services Director Lisa-Michele Church, refuse to act. Although Church pays lip service to the value of kinship care parents, calling them "angels among us," to a greater degree than any other such agency in the country, DCFS treats these angels as suspects.

The actions of DHS and DCFS have sewn confusion in the legislature and, more important, spread despair among vulnerable children trapped needlessly in institutions. Protecting bureaucracy has taken precedence over protecting children.

Not only do Betournay and Church refuse to act, they have issued evasive, contradictory statements, sometimes admitting the mistake, other times falsely claiming that the damage to children is necessary to keep them "safe." They have conjured up hypothetical horror-story scenarios to scare lawmakers away from correcting the mistake, using the scare scenarios to distract attention from the very real harm their error has caused to hundreds of children.

The actions of DHS and DCFS have sewn confusion in the legislature and, more important, spread despair among vulnerable children trapped needlessly in institutions. All because the agencies don't want to admit a mistake and act immediately to correct it.

Protecting bureaucracy has taken precedence over protecting children.

Most disturbing of all, these actions have made Utah's vulnerable children less safe. That's because kinship care is, in fact, safer for children than placements with

strangers in foster homes or institutions – what should properly be called stranger care.[7] Not only are children more likely to be physically abused in the care of strangers, institutionalizing children causes them enormous emotional trauma that can be worse, and last longer, than physical abuse. Utah's failure to correct its error is state-sanctioned child abuse.

Most disturbing of all, these actions have made Utah's vulnerable children less safe. Utah's failure to correct its error is state-sanctioned child abuse.

It is particularly sad to see this failure in a state that has made so much progress in recent years. Thanks to enormous effort and dedication by everyone from frontline caseworkers to Betournay's predecessor, Richard Anderson, the state of Utah significantly improved child welfare practice by implementing the Milestone Plan, designed by Paul Vincent, one of the most visionary leaders in child welfare. The plan was developed as part of the *David C.* consent decree.

The success indicates that DCFS is an agency filled with hardworking, creative, and insightful people. They deserve the same from their leadership. So far, they are not getting it, and that is alarming.

In child welfare, it is at least as hard to sustain reform as it is to achieve it in the first place. It's easy to fall back into old patterns when the court is no longer looking over everyone's shoulders. Sustaining reform requires bold, visionary leadership from the child welfare agency.

If the experience with the state's misreading of the Adam Walsh Child Protection and Safety Act is any guide, it is hard to see where that leadership will come from in Utah.

THE CONTEXT: UTAH'S HOSTILITY TO KINSHIP CARE

Over the past several decades an increasing body of research has documented the harm of foster care. Even when foster parents mean well, as the overwhelming majority do, the separation from everyone a child knows and loves can cause that child enormous harm. In infants, their actual physical development can be impaired.

University of Florida Medical Center researchers studied two groups of infants born with cocaine in their systems. One group was placed in foster care, the other with birth mothers able to care for them. After six months, the 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, being taken from their mothers was more toxic than the cocaine. That does not mean that children should be left with addicts – it does mean that drug treatment for the parent is almost always a better first choice than foster care for the child.[8]

More recently a study of outcomes for 15,000 children found that, on average, children placed in foster care fared significantly worse even than comparably-maltreated children left in their own homes.[9] This study did not look at the small proportion of cases of egregious maltreatment where any caseworker with time to investigate would agree the child needed to be taken; rather this study looked at the "in-between" cases, where there really was a problem but a variety of ways to deal with it; such cases make up the overwhelming majority of what DCFS workers see.

And the most harmful form of placement of all is institutionalization with rotating shift staff. No matter how pretty the institution or how well-meaning the staff,

the institutionalization itself is inherently damaging. It takes three single-spaced pages just to list the studies documenting the inherent harm of placing children in such institutions (and those pages are available, on request, from NCCPR).

Kinship care cushions the blow

The first implication of this research is, of course, that far more should be done to use safe, proven alternatives to removing children from their homes in the first place, both nationwide and in Utah. The rate at which children are taken from their parents in Utah is significantly higher than in systems that genuinely are models, such as Alabama and Illinois.[10] Betournay has admitted that a recent claim that such removals declined in recent years was wrong.[11]

But as the understanding of the inherent trauma of stranger care has grown, many states also have made an effort to cushion the emotional blow by placing children with extended families, usually grandparents – or with friends of the family or the child, perhaps a neighbor, or the parents of a classmate, for example. In common usage, the term "kinship care" includes these placements as well. In addition to keeping the child with someone she already knows and loves, such placements also are more likely to keep a child in the same neighborhood and the same school.

And kinship care works.

First and foremost, kinship care is safer than stranger care. Two major reviews of the scholarly literature have found that there is simply less risk that a child will be abused in foster care if that foster care is provided by relatives than if it is provided by strangers.[12] That's why suggestions by DCFS that delaying kinship placements while a new, extra background check is completed enhances child safety are so outrageous. In fact, this makes children less safe. This is discussed in more detail later in this report.

Those literature reviews also found that kinship care placements are better for a child's emotional well-being than stranger care. They also are more stable – once a child is placed with a relative she is less likely to be forced to move repeatedly from home to home.

The rate at which children are taken from their parents in Utah is significantly higher than in systems that genuinely are models, such as Alabama and Illinois. Betournay has admitted that a recent claim that removals declined in recent years was wrong.

And that is not surprising. Whether because of actual maltreatment or because of the trauma of separation, or both, foster children may have many emotional problems. They may tax the patience of their caregivers. But nothing builds patience like love. All of us will exert more effort and tolerate more problems to help a loved one than we will for a total stranger. So nationwide, kinship care placements are less likely to fall apart.

But even an angel can't go it alone.

Grandparents face enormous stress when they step in to take care of a grandchild; they also face considerable financial hardship. If a state offers them little or no help, they may be unable to cope.

So what does it tell us when we find out that in the rest of the nation, kinship placements are more stable than stranger care, but in Utah, more than half the time, kinship caregivers can't handle the stress and have to give up the children?

There are two possible explanations:

- Utah grandparents love their grandchildren less than their counterparts in other states.
- The Utah Division of Child and Family Services is failing to give grandparents the help they need, and failing to support kinship caregivers as well as its counterparts in other states.

First and foremost, kinship care is *safer* than stranger care.

Though Betournay has sought to shift the blame to the grandparents for supposedly not knowing what they're getting into,[13] the experience of other states shows that, clearly, the failure rests with DCFS, not the grandparents.

And the rhetoric about "angels" notwithstanding, Utah makes far less use of kinship care than most of the rest of the nation. Nationwide, about one-fourth of all foster children are living in kinship care placements, that is, with extended family or close friends.[14] In Utah, the figure is seven percent, one of the lowest rates in the nation.[15]

Utah's bias against kin

Why? Probably because, as in many states, kinship care runs into a wall of prejudice in Utah. That prejudice was on display at a meeting of the Utah Legislature's Health and Human Services Interim Committee in September.

While claiming he was simply providing an objective briefing on the pros and cons of Utah's refusal to place children until the new, extra background checks are completed, Thomas Vaughn, the Associate Counsel assigned to the committee, repeatedly stoked the fears of lawmakers and stacked the deck against relatives.

In a subsequent conversation with NCCPR, Vaughn said that was never his intent. He said he felt lawmakers had gotten one side in news accounts and he simply wanted to be sure they heard the other.[16]

But at the committee meeting, Vaughn acknowledged that some people think it's good to place children with relatives as soon as possible, but then added: "The other side of the coin is: People say, usually when a child is abused it's actually a family member who does it. And if these people are abusers, were their parents abusers? Well in some cases that happens; obviously that's not always the case."

That comment is misleading.

While reflecting a common prejudice, Vaughn's comment also reflects a misunderstanding of who is in the child welfare system and why. Only a tiny fraction of children are taken from sadistic, brutish parents – the kind who may have been mistreated by their own parents. Far more common are cases in which a family's poverty is confused with neglect.[17] Other cases fall on a broad continuum between the extremes, the parents neither all victim nor all villain. And in these cases, whatever caused a parent to fail may have nothing at all to do with that parent's own upbringing.

That helps explain why, prejudice notwithstanding, kinship care placements are, in fact, safer than stranger care placements.

Suppose a mother raises three children under circumstances of poverty and other hardships that most of us can hardly imagine. Two become happy, healthy adults. But the third is lost to the lure of the streets, succumbs to addiction and refuses treatment. If that grandmother, who has earned the right finally to rest and enjoy her remaining years, steps forward to care for that child's own children she should be welcomed by the state of Utah and treated as a hero – or at least an angel – not subjected to prejudice and treated as a suspect.

Utah's bias toward institutions

In our discussions with Duane Betournay we were startled at how little he knew about the research on the harm of

parking children in temporary shelters. He repeated as fact the long-discredited claims of shelter operators about their benefits. He also knew surprisingly little about who is in Utah's shelters and how they get there.[18]

And shelters almost always are sacred cows in their local communities, much harder to fight than unorganized, often impoverished grandparents and other relatives. The political stakes were made clear when someone in DCFS said that the costs of the Christmas Box House in Moab had become so preposterously high - $800 per child per night – that it would close.

Then-DCFS director Richard Anderson promptly slapped down that official, insisting the claim was a mistake. Instead DCFS would defer a decision and look for ways to cut costs – delaying its eventual closing. But the reason the average cost was so high is that the shelter was not needed; it stood empty for much of the year.[19]

Delaying kinship care placements is one way to "solve" such a "problem."

It is a fundamental tenet of communication theory that people tend to hear what they want to hear or expect to hear, and filter out what contradicts desires and expectations. So given the deeply-ingrained biases against kin and for institutionalization, it's no surprise that Utah was more likely than many other places to misunderstand a new law with some very ambiguous language.

THE ADAM WALSH ACT

Perhaps the most important thing to understand about the Adam Walsh Child Protection and Safety Act is that it did *not* impose a requirement to do background checks where none existed before.

Comments by Lisa-Michele Church to the Interim Committee repeatedly left the impression that the only alternatives were the current situation in Utah or no background checks at all. Thus, she told the

It is misleading to suggest, as Church did, that without the Adam Walsh Act requirements, DCFS would be placing children with grandparents of whom they had little or no knowledge.

Interim Committee:

"…we have been criticized for requiring background checks for kin placements…"

And:

"If you're willing to say: No, in Utah, we're willing to place without the background check…"

And:

"On this continuum of safety, how comfortable are we placing with relatives when we don't know their background?"

Those statements are misleading.

Federal law has required states to perform background checks on potential foster parents for nearly a decade. It is likely that many states were doing them for far longer. Thus it is misleading to suggest, as Church did, that without the Adam Walsh Act requirements, DCFS would be placing children with grandparents of whom they had little or no knowledge.

Indeed, were that true, one would have to wonder why, again according to Church and Betournay, they fought the new requirements.

Rather, the Adam Walsh Act added two new, extra requirements: an FBI fingerprint check via the National Crime Information Databases and, in some cases, a check of out-of-state central registries of alleged child maltreatment.

And nowhere does the law say that these new, additional checks have to be completed before a child is placed.

Central registries are, in fact, databases of rumor and innuendo.

At the committee meeting, Church said:

"I'm going to read from the law. It says: 'Before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child' you must do the child abuse registry background checks in the other states, and also the fingerprint checks. Now that's what the law says."

Except that's not quite what the law says, and that makes her statement, again, misleading.

Church is correct when she says the text of the law says that the FBI check must be done before a foster parent may be "finally" approved.[20] But it is hard to see why the law would modify the word "approved" with the word "finally" unless the law allows some form of preliminary approval before the checks are completed. But certainly this language was cause for doubt, anxiety and confusion in child welfare agencies.

The text for the new central registry checks is less ambiguous. It states that child welfare agencies must:

"check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and ***request*** *any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child,…"*[21] *[emphasis added].*

Note that the law says only that an agency must *request* the information before final approval of a placement, not that the agency must receive it. When Church switches from reading directly from the text of the law to paraphrasing, and says the law required agencies to *do* the registry checks, as opposed to requesting them, she was mistaken.

(It's also important to note that this particular information is likely to be of little use in most cases. Central registries are, in fact, databases of rumor and innuendo. People can be listed in them based on no more than a caseworker's guess that a child might have been maltreated, with no evidence. In most states, appeals mechanisms are clumsy and time consuming and people may not even know they've been listed. In some states, there is no appeal at all. The Adam Walsh Act does not require an agency to rule out a prospective foster parent based on the results of these checks. It would be alarming indeed if Utah were taking the results from these checks at face value without getting the potential caregiver's side of the story.)

Still, again, the language certainly is cause to start asking questions. And that is just what agencies across the country did. But unlike Utah, it appears that every other agency waited for a definitive answer before changing longstanding policies, much less amending their own state laws. And on January 31, 2007, they got it.

THE FEDERAL GOVERNMENT EXPLAINS THE LAW

Whenever there is a question about new federal law in child welfare, agencies turn for answers to the agency that enforces the law (usually by withholding some federal funds). That is the Department of Health and Human Services Administration for

Children and Families.

On January 31, 2007, ACF issued the following guidance concerning the new criminal record checks, which we present here in full:

[Question:] Must a State complete the finger-print-based check of national crime information databases required by section 471(a)(20)(A) of the Social Security Act before placing a child in the home of a prospective foster or adoptive parent?

Answer: No. The State is not required by Federal law to complete the fingerprint-based checks before placing a child in the home of a prospective foster or adoptive parent. Rather, section 471(a)(20)(A) of the Act makes a fingerprint-based check of the national crime information databases an integral part of a State's criminal records check procedures that the State must complete before licensing or approving a prospective foster or adoptive parent. [Emphasis added].

Although the State may place a child in the home prior to completing the required criminal records check, doing so prior to completing thorough safety checks has serious practice implications. Further, States must still meet other Federal requirements to claim title IV-E foster care maintenance or adoption assistance. Therefore, title IV-E foster care maintenance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any prohibited felonies in section 471(a)(20)(A)(i) and (ii) of the Act, and the foster family home is licensed. Similarly, title IV-E adoption assistance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any of the prohibited felonies, and all other adoption assistance criteria are met.

- **Source/Date:** 01/29/07
- **Legal and Related References:** Social Security Act – 471(a)(20)(A)

Identical guidance was issued concerning the central registry checks. Both answers can be found online here: *http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=62*

The importance of the ACF guidance cannot be overstated. The penalty for failure to comply with the Adam Walsh act is loss of some federal funds. The agency which would impose that penalty is ACF. So while there are a great many people one could ask about what the law means, it makes most sense to view an ACF interpretation as definitive – notwithstanding the laughably-bizarre scare scenarios given to the Interim Committee and discussed later in this report.

Apparently this assurance was enough for 49 states and hundreds of counties – in about a dozen states, individual counties run child welfare systems. Of course it is impossible to be certain that there is not somewhere another child welfare system that made the same mistake as Utah. But NCCPR has found none. And despite looking since last April, DCFS has not reported finding any either.[22]

Utah did not mistakenly amend state law because DCFS ignored the guidance. Rather, DCFS didn't know about it. The agency found out only when NCCPR called it to the attention of Duane Betournay in a letter, sent via e-mail and surface mail, and received via e-mail on April 3, 2007.[23]

But months after this guidance was issued, Utah officials still can't agree on what the law means.

Duane Betournay acknowledged that the ACF guidance means Utah got it wrong, telling *The Salt Lake Tribune* "'In hindsight, I can say, we may have gone too far."[24] And months earlier, he had gone further, pledging to seek repeal of the change in state law.[25] But the candor apparently was too much for his boss, Lisa-Michele Church. She continued to insist to the Legislature that the law doesn't mean what ACF says it means. She refers to doing what ACF says can be done as "bend[ing] the law." And Tom Vaughn appears to fall somewhere in between, declaring that "The law on its face is not exactly clear what it requires when."

But that's exactly why agencies went to ACF for answers, and that's why ACF

gave those answers.

Vaughn also said that even as he was drafting legislation to change Utah law, "we were getting a lot of very confusing signals from the federal government" which raises a crucial question: Why didn't Utah wait – as everybody else apparently did – for the confusion to be cleared up before locking the change, mistakenly, into state law?

Why didn't Utah wait – as everybody else apparently did – for the confusion to be cleared up before locking the change, mistakenly, into state law?

But it appears that DHS and DCFS, having jumped the gun, are too embarrassed, too desperate to save face, to accept those answers. Thus, Church told the Interim Committee that in August – months after the ACF guidance came out – she went to the office of Sen. Orrin Hatch to plead for permission to do what ACF already says can be done. (And, she claims, Hatch's office said no.)

Vaughn sought to dismiss the ACF guidance used by all other states, arguing that it's just an "opinion" and it could "disappear tomorrow." But such opinions are exactly how governments interpret laws all the time. Indeed, when DCFS first pondered what to do about the Adam Walsh Act it went to the state Attorney General's office and sought – an opinion. The difference is, the opinion most likely to be correct is the one issued by the agency actually enforcing the law. And, as of September 25, 2007, at least 237 days after the ACF guidance was posted, it's still there.

GRASPING AT STRAWS

In the months after NCCPR first pointed out ACF's guidance, DCFS repeatedly cited one sentence within the guidance, one that is not, in fact, binding on any jurisdiction. It's the sentence we have come to refer to as "the grasping straw clause" because that's how it's been used by so many in Utah. It's the clause that says: "Although the state may place a child in the home prior to completing the required criminal records check, doing so prior to completing thorough safety checks has serious practice implications."

Note, however that the caution speaks of "thorough safety checks" in general, not the extra checks required by the Adam Walsh Act in particular. And, as hundreds of other child welfare systems across the country understand, pointlessly delaying placements with loving relatives while children languish in institutions has far more serious "practice implications."

Yet at the Interim Committee meeting, Vaughn not only grasped the straw again, he exaggerated it. While emphasizing he was not literally quoting the guidance, he characterized the "grasping straw clause" as saying that if children are placed before the Adam Walsh checks are completed, "we think it's real risky if you do that."[26] That's a far cry from the actual language.

OTHER STATES *DO* MATTER

The states, it is said, are laboratories of democracy. But that only works if someone reads the lab results.

Lisa-Michele Church says Utah should simply ignore the fact that DCFS has not been able to find a single other place in the country that misread the law the way Utah did: "I can't speak to what other states are doing, and I don't think that's a particularly fruitful inquiry," she said. Yet, as noted earlier, e-mail correspondence with

NCCPR shows that DCFS did, in fact inquire. Perhaps had the agency been able to find even one place in the country that made the same mistake, the agency would have considered the inquiry more fruitful.

"I come to you with a heavy heart, this is going to delay some kinship placements and I'm not happy about it, but we have to do what the federal law requires."

--Duane Betournay, speaking to Utah legislators, as recounted by Lisa-Michele Church.

One can choose to take a cynical view, and assume that every other state, and hundreds of county-run systems simply don't care if children are safe. There are two problems with that argument:

First, DCFS didn't want to do these extra checks before making the placements either. Though now they use scare stories to suggest anything less would be unsafe, for more than a year, in fact, right up until their blunder became a public embarrassment, DCFS first urged Congress not to require that the new background checks be completed before placing children with kin and then claimed it was forced into harming children this way solely to comply with federal law.

But second, even if one is cynical enough to believe that all these other jurisdictions don't mind putting children at risk, that very cynicism must prompt the cynics to wonder why all those jurisdictions would put their *treasuries* at risk. Because if all those other places are wrong, they risk losing some federal money. Is it really likely that all these hundreds of jurisdictions would risk both lives and dollars? Isn't it more likely that they simply had the good sense to wait until ACF clarified the law and then accepted that clarification?

SPINNING A WEB OF FEAR

As noted above, for more than a year, DCFS and DHS knew full well that the new requirements of the Adam Walsh Act (whatever they are) were not necessary to keep children safe.

DCFS went on record as favoring changing state law to require completion of the new background checks before placing children with kin only because the agency felt, mistakenly, that the federal government had a fiscal gun to its head. Church described the scene:

"Duane [Betournay] testified last session when we talked about [the] bill to implement Adam Walsh. Duane said to you: 'I come to you with a heavy heart, this is going to delay some kinship placements and I'm not happy about it, but we have to do what the federal law requires.'"

As recently as last May, Betournay himself acknowledged that this interpretation was mistaken, and as a result, he would ask the legislature to repeal the change in state law.[27]

It was only when, after stalling for months, DCFS was publicly embarrassed by a story in *The Salt Lake Tribune*, that Betournay and others began their scare campaign about how, supposedly, placing a child with grandma before the new, additional background check was completed somehow would jeopardize child safety. So suddenly Church was suggesting that if they allowed this one extra level of background checking to be completed after a child was placed "a child will be hurt unnecessarily. I'm not willing to do that."

In fact, DHS and DCFS are allowing hundreds of children to be "hurt unnecessarily," right now by forcing them to languish, needlessly, in shelters.

Church's claim is preposterous – and

everything DCFS has said and done before the agency's blunder became public shows that Church and Betournay know it.

DHS and DCFS are allowing hundreds of children to be "hurt unnecessarily" right now by forcing them to languish, needlessly, in shelters.

Indeed, although Church told the Interim Committee that it would be a good idea to ask what impact the new extra background checks actually have had on child safety, she never answered the question. Betournay said that 25 percent of background checks turn up something that might disqualify a relative. But that was a reference to *all* background checks, including those the state has been doing all along. At no time did anyone offer a figure as to how often the new, Adam Walsh-required checks turned up some serious problem that everything else missed.

But Church offered a clue. She noted that the number of children eventually placed with relatives so far in 2007, 680, is running at about the same rate as in 2006. That suggests that the new checks are not turning up much, and Utah's insistence on waiting until the new checks are done does nothing but delay children's chance for safe, secure homes.

All decisions in child welfare involve balancing risks. Placing a child with grandma before the new, extra checks are completed creates a slim chance something might be overlooked. Sadly, that risk has been exaggerated in the minds of some by the prejudices noted earlier about kinship care.

But also, as noted earlier, research shows that kinship placements are not just more stable and better for children's well-being, they also are, on average, safer than stranger care.[28] Furthermore, no matter how well-meaning the staff may be and how hard they try, institutionalization for weeks at a time can devastate young children emotionally.

Unfortunately, people tend to be quick to dismiss such trauma. They rarely say it out loud, but they may think: Well, that's only *emotional* harm, but at least the child is physically safe. (As noted above, given the high rate of abuse in foster care with strangers, that physical safety, in fact, is by no means guaranteed.)

But it's the emotional harm that may never heal. It is the wounds to the psyche that may make it impossible for a foster child to complete an education, get a job or love or trust anyone. One recent study of foster care "alumni" found they had twice the rate of post-traumatic stress disorder of Gulf War veterans and only 20 percent could be said to be "doing well."[29] Yet Utah's approach to the Adam Walsh Act prolongs the time children will spend in the most emotionally-harmful setting of all: institutions.

In truth, the Department of Human Services and the Division of Child and Family Services are using hypothetical scare scenarios to obscure the very scary reality their failure has created. While DCFS keeps children in limbo for weeks because of the tiny chance a child might be harmed by grandma, hundreds of children are *definitely* harmed by their needless confinement to shelters.

If anything, however, when it came to far-fetched scare stories, Church was outdone by Thomas Vaughn. While, as always, insisting he was not taking sides concerning whether to alter the law he drafted last session, he spun a tale in which tampering with that law supposedly could collapse the entire Utah system. (Again, in a subsequent phone call to NCCPR, Vaughn repeated that he really wasn't trying to take sides.)

In Vaughn's version, not only does

failing to do the extra background check cause a child to be seriously hurt, but then someone sues the state. And then not only does this person win, but a federal court strikes down the entire ACF interpretation of the law. And then Utah not only has to pay damages, it loses its entire allotment of federal child welfare aid – (and presumably, so does every other state).

While DCFS keeps children in limbo for weeks because of the tiny chance a child might be harmed by grandma, hundreds of children are *definitely* harmed by their needless confinement to shelters.

But one easily can conjure up an equally serious hypothetical horror story if Utah does nothing. In this scenario the child is seriously hurt while in stranger care. But weeks earlier, the child's grandmother had come forward and said she could care for the child. The placement was delayed because, unlike every other state, Utah would not place the child while the additional background check was pending. So the grandmother sues. A federal court can't understand why Utah ignored federal guidance, and the actions of every other state, and so upholds a huge judgment in favor of the grandmother.

Vaughn is a lawyer and he is simply doing his job. He is behaving like a good defense attorney. But his client is the Utah Legislature. It's his job to protect the legislators. The job of the legislators, however, is to protect children.

And that, it seems, is what everyone has forgotten. This is not supposed to be about protecting DCFS officials or protecting lawmakers. It's about protecting children. And the policy that Utah, and apparently only Utah, has put into effect jeopardizes those children. It's time DCFS, DHS and the legislature put the children first.

EXAGGERATING THE FISCAL HIT

Thomas Vaughn's own description of why Utah rushed to change its state law shows that safety had very little to do with it:

"When we drafted the bill for the Adam Walsh implementation, as is often the case with federal law, the way they enforce it is with [the threat to take away] money … When I drafted the Adam Walsh implementation for our state it was with the idea: Lets comply in the safest way possible to maintain federal funding."

So it appears that a profound fear of losing money may have prompted Utah to jump the gun. DCFS has tried to stoke that fear.

Betournay has made vague comments suggesting that tens of millions of federal dollars, provided under a program called Title IV-E, could be lost if DCFS did not complete the new background checks before placing children with relatives.[30]

The comment was made months after the ACF guidance made clear that, at worst, DCFS would lose funds only for the weeks that a child was with a grandparent before the check was completed.

After initially raising the scare scenario of losing all federal aid again, Church acknowledged that was extremely unlikely. But she went on to make comments that were, once again, misleading. First, she may have exaggerated Utah's reliance on federal aid, suggesting that Utah uses proportionately far more Title IV-E money than many other states. But this does not jibe with a rigorous comparison of state child welfare spending prepared by the Urban Institute. In FY 2004, the most recent year for which this comparison was done, Title IV-E dollars comprised 21 percent of Utah child

welfare spending. The national average was 25 percent.[31]

Church then suggested that the lost funds could total several hundred thousand dollars per year, (even as she also claimed that the delays had been whittled down to a week or two – still far too long for a young child.)

Shelters are exercises in adult self-indulgence and adult self-delusion.

Though down a bit from Betournay's estimate of tens of millions, even if the lower estimate is accurate, Church failed to factor a crucial element into her calculation: In addition to being the worst option for children, shelters are among the most expensive. Holding a child in Salt Lake City's Christmas Box House for just one day costs $140. That means keeping just one child in such a shelter for seven weeks costs nearly $7,000. Holding 680 children there that long costs $4,802,000. Even if the feds picked up three-quarters of the cost, which is highly unlikely, (for a variety of complex reasons it is likely to be 50 percent or less),[32] the cost of holding children in shelters to avoid the loss of federal aid actually may cost Utah more than the "lost" federal aid.

As is often the case in child welfare, in addition to saving children, doing the right thing also might save money.

THE TROUBLE WITH SHELTERS

They are among the most sacred cows in all of child welfare, and no wonder. Donors love them. They can get a plaque on the wall for giving money or furniture or, if they're really rich, donating a whole building. The volunteers love them. They can turn real flesh-and-blood human beings into human teddy bears who exist for the volunteers' gratification and convenience, even as they convince themselves they're helping children. Whey they get bored with their human teddy bears, they simply hand them back to the shift staff.

In short, they're good for everyone but the children.

They are "shelters" - those first-stop parking place institutions in many communities where children are deposited for a few days or a week or a month or, often, longer, to be examined and "assessed" by "trained staff" in order to prepare them for exactly what they would have gotten without the shelters – usually a succession of foster homes.

And that's where hundreds of Utah children have been placed, needlessly, for weeks at a time, when they could be with loving relatives instead.

Shelters are exercises in adult self-indulgence and adult self-delusion. As with any form of orphanage, and that's really what shelters are, a whole rationalization industry has grown up around them.

"How can you call us an institution?" the people who work at the local shelter say. "We have 'cottages' and they're so pretty. We even have a cute name. We're so *homelike."* But children know the difference between "homelike" and home.

Certainly the two foster children now living with Shelley O'Connell know the difference. They were trapped in a shelter for six weeks, even though O'Connell, a family friend, was willing to take them in. The children were allowed to stay with O'Connell, but when it was time to return to the shelter:

"They'd cry and stand at the door, saying, 'We don't want to go back there,'" recalled O'Connell. "It's not a bad place. But it's not home. You don't have much privacy and you can't just make a peanut butter sandwich whenever you want."[33]

Odds are, were the children taken away now, they wouldn't even have been freed for the weekends. Again invoking the

Adam Walsh Act, DCFS now bans even visits with family friends and relatives while the background checks are pending.[34]

"Our shelter provides 'stability'" the operators will say, so children don't move from foster home to foster home. But it's the *people* in a child's life that create stability, not the bricks and mortar. A child in a shelter endures a multiple placement whenever the shift changes. She endures multiple placement when the weekend workers replace the weekday workers. And she endures multiple placement when the volunteer who seemed so interested in her last week has something better to do to this week and doesn't show up. In contrast, nationwide, the most stable placement of all, short of a child's own home, is the home of a relative.

"They'd cry and stand at the door, saying, 'We don't want to go back there,'"
--Foster parent Shelley O'Connell

"We must be doing good work," the volunteers say. "Look how the children come running up to us to hug us." One staffer at a shelter in Nevada told a local television station he loves working at the local shelter because babies and toddlers "grab my leg. They call me Mr. Lou. They tell me they love me."

But when a young child grabs the legs of anyone who will pay him a little attention and tells him "I love you" he's not getting better – he's getting worse. He is losing his ability to truly love at all, because every time he tries to love someone, that person goes away. It's even worse than the well-known problem of children bouncing from foster home to foster home. The extent of the damage depends on the individual child and the age of the child. But seven weeks is an eternity for a young child.

The shelters will come back with claims that they can "assess" children and "stabilize" them, so that they can find the right foster home for the child when he or she leaves.

That was the theory in Connecticut, when they set up a network of attractive, state-of-the-art shelters in 1995. But a comprehensive study of the shelters by Yale University and the Connecticut child welfare agency itself found that wasn't true either. On the contrary, the Connecticut study found that the children who went through the shelters tended to have worse outcomes than those who didn't. The only thing the shelters were good at was wasting huge sums of money.[35]

But in child welfare, research is no match for political clout and adult self-indulgence. Take away our human teddy bears? Never! As the *Hartford Courant* put it:

"Three years after a study that showed short-term group homes for first-time foster children are a costly failure, the state Department of Children and Families is still funneling hundreds of children through the facilities each year."[36]

The final rationalization is the one in which the shelter operators admit shelters are a lousy option but, they claim, there simply is no alternative. There just aren't enough foster homes, they say. But the current extra demand for Utah's shelters is entirely artificial, caused by Utah's misreading of federal law. These children *have* foster homes, DCFS just insists on delaying for weeks before using them.

One hundred years of research is nearly unanimous: Institutionalization is *inherently* harmful. And the younger the child, the greater the harm. No one who supports shelters would argue that shift workers and volunteers dispensing indiscriminate pseudo-love to any child who walks in the door are a substitute for *their* love for *their* own children. It's no substitute for somebody else's child either – and the child-

ren know it. That's why institutionalization does them so much harm.

Better child welfare systems know it as well.

In Alabama, the system has been rebuilt to emphasize keeping children out of foster care in the first place. It happened as a result of a suit brought by the Bazelon Center for Mental Health Law (co-counsel for plaintiffs is a member of the NCCPR Board of Directors) and thanks to the leader of the child welfare system in Alabama at the time, Paul Vincent.

The Connecticut study found that the children who went through the shelters tended to have worse outcomes than those who didn't. The only thing the shelters were good at was wasting huge sums of money.

The lawsuit led to a consent decree that puts strict limits on shelters. The following is from *Making Child Welfare Work*, The Bazelon Center's book about the consent decree:

"Because it is so traumatic to uproot a child, an important goal of [the Consent Decree] is to have the child's first placement be the only placement ... To minimize moves, the decree outlaws the use of shelter care except under unusual circumstances. Workers are not permitted to park a child in a shelter while they look for a more permanent placement, unless the child can receive the full range of necessary services while in the shelter and 'it is likely that the [child's] stay in foster care will not extend beyond his/her stay in the shelter.' [Emphasis in original]. What this meant was that counties had to develop a sufficiently large and flexible array of [placements] so they could place children directly…to the setting determined as most appropriate for meeting the child's needs."[37]

There are two key indicators that the "no alternative" argument is just one more rationalization.

The first is who the shelters take in and who they leave out.

Everyone in child welfare knows the group for whom it is hardest to find a foster home: Teenagers, especially teenagers with behavior problems. To the extent that there is ever a "need" for a shelter or some other form of "congregate care" it would be for teens. Younger children are easy to place and babies easiest of all.

But Salt Lake City's "Christmas Box House" shelter is only for children age 11 and younger. There is no better indication that shelters really exist to serve the adults who work and volunteer there. After all, a teenager who's been through removal from his or her home is as likely to spit in your face as to throw his arms around you. They make lousy human teddy bears.

The second indicator is what happens when child welfare agencies try to call the shelter operators' bluff.

In Moab, in late 2006, the Christmas Box House was standing empty for more than half the year, according to former DCFS Director Richard Anderson. Clearly alternatives were available, and had been found. Yet instead of seeing this as cause for celebration and an indication that Utah's child welfare reform efforts were bearing fruit, shelter backers protested even the possibility it would close, delaying its eventual closing, even as the daily cost for holding a child there reached $800.[38]

It is less than encouraging to read that, while Betournay reportedly has named a "work group" to study the shelter issue, a prominent member, Prof. Hank Liese, claims responsibility for being "involved in developing the Christmas Box House shelter model."[39] Indeed, he co-authored a journal

article about the Christmas Box Houses – with the president of Christmas Box House international.[40]

Prof. Liese mentioned the work group in an op ed column defending DCFS concerning the Adam Walsh Act and repeating the myth that DCFS had to do what it did, based solely on what he described as "my understanding."[41] One has to wonder how objective Betournay's "work group" will be.

If shelters were the best option for children removed from their parents, then even $800 per night would have been money well spent. But it is ludicrous to throw all that money away when there are far better alternatives. And it is obscene to waste even the more typical $140 per-night-per-child on a bed at a "Christmas Box House," when a child already has a bed at grandma's house – if only DCFS would let him go there.

THE PAST AS PROLOGUE

Though the recent behavior of DCFS and DHS is disappointing, it comes as no surprise. NCCPR worked for months behind the scenes to try to get these agencies to do the right thing. We were met with months of evasion and non-answers. The experience raises questions about whether any assurance from these agencies can be believed.

NCCPR learned about the new requirement in the Adam Walsh Act through news accounts and a discussion with a Congressional staffer early in 2007. We learned that all over the country child welfare agencies were asking about the requirements – and we discovered that, as early as February, Utah already had jumped the gun and assumed, wrongly, that it had to delay kinship placements.

Other advocates were hearing similar concerns from child welfare agencies. It was the Children's Defense Fund that found the answer in the form of the guidance on the ACF website.

NCCPR wrote to Betournay on April 3, to tell him about the ACF guidance. It was the first DCFS knew of it. We assumed Betournay would simply reverse his agency's blunder.

It is obscene to waste $140 per-night-per-child on a bed at a "Christmas Box House," when a child already has a bed at grandma's house – if only DCFS would let him go there.

Instead, we got one evasive, bureaucratic response after another. (The full chain of e-mails is available from NCCPR on request.) It soon became clear that the agency was, in fact, desperately searching for ways to justify its decision, including searching for other agencies that made the same mistake.

So we asked for help from the Youth Law Center, an outstanding public interest law firm that has been particularly aggressive on the issue of curbing the misuse and overuse of shelters. They have successfully curbed shelter use in Arizona in part by threatening to sue that state. YLC Executive Director Carole Shauffer arranged a conference call with Betournay, some of his deputies, and NCCPR in early May.

Only then did Betournay tell us information withheld to that point. Until then neither he nor his deputy, Patti Van Wagoner, let on that Utah already had changed its state law.

Ultimately, we reached agreement with Betournay on three specific points:

- He would make available statewide technology called Livescan, which, he claimed was shortening the timeframe for the new checks to 48 to 72 hours in Salt Lake City.

• He would return to the legislature when it reconvenes in January 2008 to seek repeal of the change in state law.

• He would gather more data on the use of shelters and begin looking at ways to reduce shelter use, including creating "gate-keeping mechanisms" so it is not simply the easiest choice for a caseworker in a hurry.

Once again, however, weeks went by before Betournay finally would confirm these commitments in writing.[42]

We believe that, if not for the *Tribune* story, DCFS simply would have ignored its promises to vulnerable children. In the absence of sustained pressure from lawmakers and the public, it still may.

After that, hearing nothing further, we assumed that the problem had at least been ameliorated by the techno-fix, and the rest would be solved in January.

But then *The Salt Lake Tribune* ran a story on a separate, but related topic: the fact that Utah finally would be exiting from the *David C.* consent decree. The lawsuit was brought by the National Center for Youth Law (which should not be confused with the Youth Law Center). The settlement was monitored by the Child Welfare Policy and Practice Group, the agency created by Paul Vincent, the reformer who did so much to transform child welfare in Alabama.

Even as children continued to be trapped in the shelters, Betournay and others at DCFS did lots of bragging about getting out of the consent decree, including a claim that, as a result of the improvements under the decree, Utah had significantly reduced the number of children taken from their parents each year.[43]

But NCCPR tracks entry-into-care data very closely. We knew that wasn't true. We contacted Vincent, who passed our concerns on to Betournay. Betournay admitted the information his agency gave the *Tribune* was wrong – they had mixed up two databases, he said[44] – and the *Tribune* ran a correction.

The mistake prompted us to try to find out if the fix promised in May really was working. We contacted the *Salt Lake Tribune* and explained the entire controversy. The newspaper did some digging and came up with the answers:

• The Livescan technology often failed; background checks still were taking weeks.

• Shelter officials were even discouraging placements in those ultra-temporary foster homes with strangers, holding children in the worst form of placement even longer.

• DCFS actually had made the children's trauma worse. Again, citing the Adam Walsh Act, the agency was refusing to allow even overnight visits between the children they had institutionalized and their grandparents or other relatives, while the background checks were pending.[45]

And then in late September, we learned something else:

Thomas Vaughn said he was unaware of Betournay's promise to seek repeal of the change in state law.[46] More than four months after making this promise, Betournay had not mentioned it to the key legislative staffer on the issue – not even after a legislator introduced his own bill to accomplish the same thing.

That raises serious questions about whether Betournay ever intended to keep his promise at all.

We believe that, if not for the *Tribune* story, DCFS simply would have ignored its promises to vulnerable children. In the absence of sustained pressure from lawmakers and the public, it still may.

ACTION STEPS

The Utah Division of Child and Family Services could solve this problem in the blink of an eye. Duane Betournay is on record admitting that the change in the law was a mistake. Even Lisa-Michele Church has said that DHS didn't want the change (although she made seemingly contradictory comments within minutes).

Betournay is on record saying he will ask the legislature to repeal the change in January. But his recent behavior raises questions about exactly how he'll phrase the question. Will he aggressively seek to undo the damage, or, much as Church did before the interim committee, will he say something like "If you really want to put children at risk, you're free to undo the change you made; but of course you'll be to blame if a child is hurt"? Betournay should be held accountable for living up to the spirit as well as the letter of his commitment.

Utah should not be let out of the consent decree until the children are let out of the shelters.

But there is no reason to force children to wait another day needlessly in shelters.

The sad fact is that state child welfare agencies fail to follow rules, regulations and laws all the time. Usually that happens for the wrong reasons. But the relevant legislative committees should tell DCFS they realize this was a huge mistake, and make clear they would have no objection if DCFS simply followed the federal law, as interpreted by ACF, instead of the state statute that was changed by mistake.

If DCFS refuses this common-sense solution, then the Governor should call the Legislature into special session to do it. Yes, that would cost money. But it would prove that all the pious pronouncements about "children are our future" etc. are more than just empty rhetoric. And the cost of the session might even be made up in savings from reduced use of shelters.

But undoing the Adam Walsh blunder is only a beginning. Betournay also promised a series of steps to curb the misuse and overuse of shelters in general. The man who may have more power than anyone to be sure these promises are kept is the independent monitor still overseeing the Utah child welfare system, Paul Vincent.

Vincent should recommend that the courts not let Utah out of the *David C.* consent decree until all of the promises Betournay has made to curb the use of shelters are kept. In other words, Utah should not be let out of the consent decree until the children are let out of the shelters.

CONCLUSION

For nearly a year now, the State of Utah has been treating hundreds of children as though they were prison inmates. They are treated as though they are being punished for some crime, denied the chance to live with loving relatives for weeks at a time, and denied even the opportunity to visit with them overnight.

But these are not inmates for whom such contact is a privilege. These are children, for whom such contact should be a right.

Utah should begin, immediately, to respect the right of its most vulnerable children to safe, loving homes. And when remaining in their own homes truly is not an option, DCFS' top priority should be to move heaven and earth to find a safe home with relatives or close family friends.

And it should happen without delay.

ENDNOTES

[1] To cite just one example, a large study of foster-care alumni found that one-third reported being abused by a foster parent or another adult in a foster home. (Casey Family Programs, *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study*, (March 14, 2005), available online at http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/300/nw_alumni_study_full_apr2005.pdf See also, NCCPR's analysis of this study, *80 Percent Failure*, at www.nccpr.org.) Full citations for several other studies on rates of abuse in family foster care and in institutions are in NCCPR Issue Papers #1 and #15, also available at www.nccpr.org

[2] Mark Testa, et. al., *Family Ties: Supporting Permanence for Children in Safe and Stable Foster Care with Relatives and Other Caregivers*, (University of Illinois School of Social Work Children and Family Research Center, available online at http://www.fosteringresults.org/results/reports/pewreports_10-13-04_alreadyhome.pdf) See also: Generations United, *Time for Reform: Support Relatives in Providing Foster Care and Permanent Families for Children,* Washington, DC: 2007, available online at http://kidsarewaiting.org/reports/files/timeforreform.pdf

[3] Kirsten Stewart, "Law puts abused kids with strangers, not kin," *The Salt Lake Tribune*, September 4, 2007.

[4] E-mail from Duane Betournay, May 16, 2007. This e-mail and all others cited in this report, are available from NCCPR.

[5] Utah Legislature, Health and Human Services Interim Committee, meeting of September 19, 2007, audiotape available at http://www.le.utah.gov/ASP/Interim/Commit.asp?Year=2007&Com=INTHHS. Unless otherwise noted, all quotes from Church and Vaughn are from this hearing.

[6] Lisa J. Church, "Moab abused-child haven wins temporary reprieve," *The Salt Lake Tribune*, Nov. 2, 2006.

[7] Testa and Generations United, note 2, supra.

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

[9] Joseph J. Doyle, Jr. , "Child Protection and Child Outcomes: Measuring the Effect of Foster Care" *American Economic Review*: In Press, 2007. This study is available online at http://www.mit.edu/~jjdoyle/doyle_fosterlt_march07_aer.pdf

[10] Using official federal data, NCCPR compares the rate at which children are taken from their parents over the course of a year to the total number of impoverished children in each state. (DCFS sometimes tries to fudge the figures by failing to account for child poverty).

[11] E-mail from Duane Betournay, July 23, 2007, available from NCCPR.

[12] Testa and Generations United, note 2, supra.

[13] Betournay told the Salt Lake Tribune, "They're coming into it from the standpoint, 'I love my kin and will take care of them,' without recognizing the behavioral issues that come into play." Kirsten Stewart, "Report: Place more foster kids with kin," Salt Lake Tribune, July 29, 2007.

[14] U.S. Department of Health and Human Services, Administration for Children and Families, *The AFCARS Report: Preliminary FY 2005 Estimates as of September 2006*, available online at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report13.htm

[15] Stewart, note 13, supra.

[16] Personal communication, September 25, 2007.

[17] Case examples and full citations for studies on the confusion of poverty with neglect can be found in NCCPR Issue Papers 5 and 6, available at www.nccpr.org

[18] Conference call with Duane Betournay, May 4, 2007.

[19] Lisa J. Church, "Abused children haven in Moab wins reprieve," The Salt Lake Tribune, October 13, 2006, and Church, note 6, supra.

[20] The "finally approved" language was in the law before it was amended by the Adam Walsh Act. See 42 U.S.C. 671 (a)(20) available online at http://www.law.cornell.edu/uscode/search/display.html?terms=before%20the%20prospective%20foster%20or%20adoptive%20parent&url=/uscode/html/uscode42/usc_sec_42_00000671----000-.html The Adam Walsh Act did not change this, it only added an additional criminal records check.

[21] Adam Walsh Child Protection and Safety Act, available online at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h4472enr.txt.pdf

[22] E-mail from Patti Van Wagoner, Deputy Director, DCFS, April 11, 2007, available from NCCPR on request.

[23] This e-mail, and an e-mail from DCFS Deputy Director Patti Van Wagoner confirming that they found out about the ACF guidance from NCCPR are available on request.

[24] Kirsten Stewart, "Law puts abused kids with strangers, not kin," *The Salt Lake Tribune*, September 4, 2007.

[25] E-mail from Duane Betournay, May 16, 2007, available from NCCPR.

[26] Ibid.

[27] Betournay, note 4, supra.

[28] Testa, Generations United, note 2, supra.

[29] Casey Family Programs, *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* (March 14, 2005), available online at http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/300/nw_alumni_study_full_apr2005.pdf See also NCCPR's analysis of this study, *80 Percent Failure*, at www.nccpr.org

[30] Stewart, note 3, supra.

[31] Cynthia Andrews Scarcella, et. al., *The Cost of Protecting Vulnerable Children V* (Washington, DC: The Urban Institute, 2006) Chart, p.38.

[32] The federal government reimburses states from 50 to 83 cents on the dollar for most costs of holding a child in substitute care, if the child is eligible, based on a complex formula. Typically, about half of foster children's cases are eligible. So even if Utah is get-

ting reimbursed at the highest possible rate for half its cases, that still means the federal government is covering less than half the cost of their institutionalization.
[33] Kirsten Stewart, "Closer look at foster care," *The Salt Lake Tribune*, September 19, 2007
[34] Stewart, note 3, supra.
[35] Allen D. DeSena et. al., "SAFE Homes: Is it worth the cost?" *Child Abuse and Neglect* 29 (2005) 627-643.
[36] Colin Poitras, "Special Homes Trouble State," *Hartford Courant*, July 23, 2006.
[37] Bazelon Center for Mental Health Law, *Making Child Welfare Work: How the* R.C. *Lawsuit Forged New Partnerships to Protect Children and Sustain Families* (Washington, DC: 1998).
[38] Church, notes 6 and 18, supra.
[39] Hank Liese, "There's more to the Adam Walsh story than meets the eye," *The Salt Lake Tribune,* September 23, 2007.
[40] Lawrence H. Liese, James L. Anderson, Richard Paul Evans, "The Christmas Box House: Developing a Best Practice Model for Emergency Shelter Care and Assessment," *Journal of Family Social Work*, Volume 7, Issue 3, April 19, 2004.
[41] Liese, note 39, supra.
[42] Betournay, note 4, supra.
[43] Kirsten Stewart, "Legacy of Roska case is child welfare system reform," *The Salt Lake Tribune*, July 7, 2007.
[44] E-mail from Duane Betournay, July 23, 2007, available from NCCPR.
[45] Stewart, note 3, supra.
[46] Personal communication from Thomas Vaughn, September 25, 2007.