



# **TWO EPIC FAILS:** **THE NEW MEXICO “CHILD WELFARE” SYSTEM, AND THE REPORT PURPORTING TO CRITIQUE IT.**

An Issue Brief from the  
NATIONAL COALITION FOR  
CHILD PROTECTION REFORM  
April 20, 2026

# TWO EPIC FAILS:

## THE NEW MEXICO “CHILD WELFARE” SYSTEM, AND THE REPORT PURPORTING TO CRITIQUE IT.

An Issue Brief from the National Coalition For Child Protection Reform  
[www.nccpr.org](http://www.nccpr.org) ; info(at)nccpr(dot)info

*By Richard Wexler, NCCPR Executive Director  
April 20, 2026*

**One year ago, just as New Mexico Attorney General Raúl Torrez was beginning his investigation of the New Mexico Children, Youth and Families Department, [Source NM published a column from NCCPR](#) under the headline “Torrez’s CYFD investigation will fail if it leaves people out.”**

**He left people out. The investigation failed.**

**The result is a report that is likely to worsen the problems it highlights; it may even trigger events that lead to more children dying.**

### KEY POINTS

- The report is largely right about the failings of CYFD: It is an agency lurching from crisis to crisis, incapable of truly protecting children.
- But the report is dangerously wrong about the reasons for those failings. Torrez alleges that the system deliberately leaves children in danger because CYFD supposedly is hellbent on preserving families “at almost any cost.” He calls it a “systemic moral failing.”
- Ignoring a mountain of contrary evidence, Torrez makes his case by taking a page from the Donald Trump playbook. Trump tries to boost support for his horrific immigration policies by reveling in the most gruesome stories concerning immigrants, stories that are, of course, entirely unrepresentative of immigrants as a whole. Torrez uses the same tactic. He relies the same way on horror stories about birth parents who torture and murder their children – stories that bear no

resemblance to the overwhelming majority of parents who lose children to foster care.

- In 2024, in 80% of cases in which children were forced into foster care in New Mexico, there was not even an *allegation* of physical or sexual abuse. In 59%, there was not even an allegation of any form of drug abuse. Far more common are cases in which family poverty is confused with neglect. In fact, in New Mexico in 2024, more children were placed in foster care because of inadequate housing than because of physical and sexual abuse combined. Torrez ignores all of this. In a 220-page report about child welfare in the state with the highest child poverty rate in America, the word poverty does not appear even once.

- At one point, Torrez's rhetoric borders on the rhetoric of conspiracy theory, as when he points out that a shortage of foster parents gives CYFD "a built-in excuse" to leave children in dangerous homes.

- Torrez's approach makes all children less safe. It is likely to set off another foster-care panic, a sharp, sudden spike in the number of children torn from everyone they know and love and consigned to the chaos of foster care. Such a panic sent entries into care skyrocketing by more than 40 percent between 2022 and 2023 – leading to an exponential increase in children forced into dangerous makeshift placements, such as CYFD offices.

That did enormous harm to the children needlessly taken, exposing them to emotional trauma that can be life-shattering. It also put them at risk of abuse in foster care. Multiple studies find abuse in one-quarter to one-third of family foster homes, with an even higher rate in group homes and institutions. At the same time, when a take-the-child-and-run mentality sets off a foster-care panic, it further overloads the system, making it even harder to find the relatively few children in real danger. Torrez's false conclusion about the reasons CYFD is failing actually makes more likely the very horrors he rightly decries.

- Study after study finds that, in typical cases, not the horror stories, children left in their own homes typically fare better in later life than even comparably-

maltreated children placed in foster care. One study even finds that, in such direct comparisons, the foster youth are four times more likely to die by age 20. The most common cause of death: suicide.

- When Torrez was asked about such studies at a news conference, he defended his own ignorance, declaring, "I'm not afforded the luxury of an academic view of public safety. I have to have a real view of public safety." But the "academic view" he derides is based on a close, objective examination of the fates of tens of thousands of children. Not only does Torrez embrace the Trump approach to fearmongering, he also embraces the RFK Jr. approach to science – even when that may put children's lives at risk.
- Torrez's Trump-style approach diverts attention from the real reasons CYFD is failing – reasons cited over and over in the report itself: An underprepared, underqualified, undertrained, undersupervised workforce that's horrendously overwhelmed – all problems that a foster-care panic can only worsen.
- Torrez either misunderstood key data or chose to use it selectively. Contrary to his claims, there is no evidence that there is more child abuse in New Mexico than in other states (nor is there any evidence that there is less). And the staggering increase in children forced into makeshift placements occurred during the foster-care panic, not, as Torrez claims, when entries into foster care were decreasing. If there were a hotline to which one could report statistics abuse, Attorney General Torrez would have his rights to the calculator app on his phone terminated.
- The Attorney General and his staff appear to have sought out the views only of those who would confirm their biases going in. Either that or they spoke to some who would contradict the report's thesis, but chose to ignore them. The voices of birth parents whose children were needlessly taken, and even the voices of foster youth who say they should have been allowed to remain in their own homes, appear nowhere in the report.

- Torrez did get some things right – including his condemnation of CYFD’s obsessive secrecy. And he’s right to bring a lawsuit about it. But he ignores real solutions that really could vastly improve CYFD and make all children safer.

In short, Attorney General Torrez has issued a report that indulges in horror stories in the manner of Donald Trump, ignores evidence and is likely to leave the system even worse. What might one call such a report? How about: a systemic moral failure.

Attorney General Torrez got some things right concerning the problems plaguing CYFD, including an arrogant obsession with secrecy so extreme that Torrez is – rightly - suing over it. But he’s dangerously wrong about the reason for those problems, and he’s descended to Trump-style tactics to support his central, false claim.

With no evidence for that central claim, not even from his own handpicked experts, and despite overwhelming evidence to the contrary, Torrez blames CYFD's failings on a supposed obsession with keeping families together at the expense of child safety. He even has misunderstood key data.

That false framing will only make the real causes of CYFD's massive dysfunction worse. It is likely to set off another [foster-care panic](#) – a sharp, sudden spike in needless removals of children like the one that sent entries skyrocketing by more than 40 percent just from [2022](#) to [2023](#)<sup>1</sup>. As we document below, that means more children forced into an already-deluged system where they will suffer enormous emotional trauma, face a high risk of abuse in foster care itself, and may even be four times more likely to die. At the same time, even more children are likely to be left in dangerous homes.

The problems plaguing New Mexico child welfare will never be fixed unless CYFD, the courts and lawmakers move in the opposite direction: reducing unnecessary entries into foster care, so children are spared the trauma of needless placement and workers are no longer engulfed in a tsunami of false reports, trivial cases and cases in which family poverty is confused with neglect. Only then will they have time to investigate every case with care and find children in real danger.

### **The Donald Trump approach to evidence**

Instead of backing up his thesis with evidence, Torrez trashes families caught up in the system exactly the way Donald Trump trashes immigrants: revel in the worst horror stories and pretend they’re the norm.

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<sup>1</sup> This link goes to national data for 2024. Use the drop-down menus in the left-hand column to get data specific to 2023 and specific to New Mexico.

Think back to Trump’s State of the Union Address. He tried to justify his horrendous immigration policy with horror stories about immigrants committing terrible crimes, [reveling in the hideous details](#). Of course, these horrors have nothing to do with the actual record of immigrants. Trump wants us so upset by the gruesome details that we’ll lose sight of the facts and embrace phony solutions. It’s equally wrong – and equally dangerous to children – when a report issued by one of the state’s most prominent elected officials uses the same tactic.

So the report tells us about children gruesomely abused until they died, often seemingly under the nose of CYFD. But the overwhelming majority of cases are nothing like the horror stories.

In 2024, of all the children torn from their families and thrown into foster care in New Mexico, [80% did not involve](#)<sup>2</sup> even an *allegation* of physical or sexual abuse. And 59% did not involve even an *allegation* of any form of drug abuse – not just no allegation of overdosing on fentanyl or running a meth lab, no allegation of any drug abuse of any kind. Far more common are cases in which family [poverty is confused with “neglect.”](#) Indeed, in 2024, more children were torn from their families and consigned to the chaos of New Mexico foster care because of inadequate housing than were taken because of physical and sexual abuse combined.

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And yet, in an entire 220-page report about child welfare in the state with the highest child poverty rate in America, there is no discussion of this. In fact, the word poverty does not appear in the report even once. And in a state where Native Americans represent 10% of the foster child population, the Indian Child Welfare Act is barely mentioned – and there is no discussion at all concerning whether it is enforced.

Instead, like Trump, Torrez apparently wants us to lose sight of the facts and embrace phony solutions presented in a way that suggests his real preferred solution boils down to: “Take-the-child-and-run.”

So, with only his horror stories as evidence, Torrez claims that CYFD:

*abandoned its core mission to protect children as its highest duty. Instead of safeguarding vulnerable children, the Department has prioritized family reunification at virtually any cost ... This misalignment between mandate and practice has had*

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<sup>2</sup> This link goes to national totals. Use the drop-down menu in the left-hand column to get data specific to New Mexico.

*devastating consequences, including the deaths of at least seven children since this investigation's inception.*

Then, presumably knowing full well that it would be the quote that got all the headlines, Torrez labeled this a “systemic moral failing.”

### **The context: Why the Attorney General's report endangers children**

Before discussing in detail why the report's central claim is false, it's urgent to understand why it *matters* that the claim is false. It matters not because buying into that false claim will hurt parents, though of course it will; it matters because buying into that false claim hurts children.

The claim is premised on the Big Lie of American child welfare: that child safety and family preservation are opposites, and, even if it does all sorts of other harm, rushing to take away children at least keeps them safe. The irony, of course, is that even as the report propounds this Big Lie, two full sections, on congregate care and makeshift placements, contradict it, outlining in telling detail the enormous dangers of New Mexico foster care itself.

Torrez tries to find a way out of the corner into which he's painted himself by implying that the horrors are confined to group homes, makeshift placements and other forms of “congregate care,” while family foster homes are portrayed as uniformly run by underappreciated living saints. So he then suggests that all the problems involving the harm of foster care could be solved by simply coddling those saintly foster parents – and throwing in a caseworker hiring binge.

There are two key problems with this logic:

- While some foster parents really are living saints, [multiple studies](#) have found abuse in one-quarter to one-third of family foster homes. Those studies use conservative methodology, so the real figure is almost certainly higher. And, as the report itself documents, CYFD likes to look the other way when the abuse is in foster care.

Even with so much abuse in foster care, the risk might be worth it if all cases were like the horror stories in which Torrez revels. But, on the contrary, since most cases are nothing like the horror stories, children can be taken from safe homes or homes that could be made safe, only to be abused in foster care.

- Even saintly foster parents can't make up for the enormous, inherent trauma of being torn from one's family and consigned to the chaos of foster care. And no wonder. When a child is needlessly thrown into foster care, he loses not only mom and dad but often brothers, sisters, aunts, uncles, grandparents, teachers, friends and classmates. He is cut loose from everyone loving and familiar. For a young enough child, it's an

experience akin to a kidnapping. Other children feel they must have done something terribly wrong and now they are being punished.

If you doubt the trauma, [listen to the cries](#) of children separated at the Mexican border. Notwithstanding the *other* horror stories in the report, the ones about caseworkers, most CYFD workers probably mean well. But the children they take cry out the same way for the same reasons.

So it's no wonder that [multiple North American studies](#), several of them massive in size and scope, involving thousands of typical cases, find that children left in their own homes in such cases typically fare better even than comparably-maltreated children placed in foster care.

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Foster care apologists sometimes say: Sure, children needlessly taken might be emotionally traumatized for life, sure they have far greater odds for rotten outcomes in later life and ok, maybe one-quarter of them, at least, will be abused in foster care – but at least they won't die.

But even that is far from certain.

Consider an [even more alarming study from Sweden](#). It finds that children left in their own homes do better on the most important outcome of all – surviving to adulthood. This study found that, when compared to comparably-maltreated children left in their own homes, the foster children were more than four times more likely to die by age 20. The most common cause of death is one with which New Mexico is tragically familiar: foster youth committing suicide. That, of course, suggests something about the enormous trauma inflicted on a child simply by the act of removal from her or his home.

In contrast, [another massive study](#) finds that, in the United States, taking away more children does nothing to reduce child abuse deaths.

When Torrez was asked about such studies at a news conference, he defended his own ignorance, declaring, "I'm not afforded the luxury of an academic view of public safety. I have to have a real view of public safety." But the "academic view" he derides is based on a close, objective examination of the fates of tens of thousands of children. Not only does Torrez embrace the Trump approach to fearmongering, he embraces the RFK Jr. approach to science – even when that may put children's lives at risk.

But even that isn't the worst of it. The more that workers are overwhelmed with false allegations, trivial cases and children who don't need to be in foster care, the less time they have to find children in real danger. So they make even more mistakes in all directions. That's almost always the real reason for the horror stories about children left in dangerous homes. And that brings us to the actual, mundane, non-conspiratorial reason for CYFD's failures. It can be found just a few paragraphs past the false framing and demagogic attack on keeping families together. According to the report:

*“CYFD has systematically de-professionalized its workforce, forgoing the hiring of licensed social workers and relying on staff that are ill-equipped to handle the complex demands of child welfare practice. Combined with crushing caseloads, inadequate training, and absent supervision, this approach fuels burnout and turnover.”*

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Now consider these two explanations, incompetence and overload or family preservation fanaticism, in light of Torrez's condemnation of

*“The Department's ongoing failure to fully implement differential response models ... When implemented effectively, this approach can ease investigator workloads and reduce repeat maltreatment by diverting lower-risk cases away from full investigations.”*

Surely an agency in the grip of a fanatical devotion to family preservation would rush to embrace differential response – maybe even “at virtually any cost.” But an agency so deluged that it can only lurch from crisis to crisis would not.

Or consider this situation:

A 17-year-old foster youth runs away with her newborn to be with the child's father, just over the border in El Paso.

An agency fanatical about keeping families together, an agency hellbent on reunifying families, would be thrilled! That's one fewer case they'd have to deal with and the family would be reunited – which, according to the Attorney General's report, is exactly what CYFD wants -- at almost any cost!

On the other hand, in an agency where there is no casework expertise, no supervision and workers are on their own to do pretty much what they want, a caseworker might take it upon himself to chase the family to El Paso, ignore the assessment of the Texas child welfare agency that the family is safe, force mother and infant back to New Mexico and then tear the infant from her mother and throw her into a separate foster home, even though the infant was never in the legal custody of CYFD.

And that, according to a lawsuit, is what really happened [in this actual case](#).

Or consider, as [Searchlight New Mexico](#) found, the widespread use of false reports to CYFD by schools seeking to bully parents into not fighting for their children's special education rights. According to the story:

*Parents, attorneys, advocates and CYFD employees agree that such malicious reports by school personnel are widespread, both here in New Mexico and across the country.*

*Searchlight* spoke to 28 parents who described such harassment. Apparently, Torrez and his staff spoke to none.

And yet, CYFD keeps right on investigating such reports – odd behavior indeed for an agency supposedly hellbent on not taking away children.

Unless, of course, those claims about false reports are, themselves, part of a Vast Family Preservation Conspiracy on the part of CYFD to avoid rescuing children.

Torrez never uses the word conspiracy, of course, but his rhetoric verges on it. In a section devoted to how CYFD mistreats foster parents, thereby driving them out of fostering, Torrez says:

*Fewer available homes gives CYFD a built-in excuse for failing to remove children from unsafe environments and encourages premature reunification with biological parents.*

But even Torrez's own hand-picked "experts," while agreeing with his conclusions concerning CYFD failures, say nothing about family preservation fanaticism motivating those failures. Instead, they suggest the same mundane common-sense explanations as Torrez himself does, repeatedly, through most of his own report.

CYFD is an agency in which, according to the report, a caseworker allegedly shows up drunk for a home visit, and another "claimed a child had weekly visits with their grandfather despite their grandfather having been deceased for months," and others place children in foster homes without even knowing the children's names. Does it really make sense to believe such an agency never wrongfully removes a child?

Does it really make sense to think that an agency which, according to Torrez, lies so often that the state should mandate that "all court reports and testimony in permanency proceedings be made under oath, subject to perjury penalties for material, intentional

misstatements” (a very good idea, by the way) would never lie to a court in order to get a child taken away?

We are reminded of how a newspaper editor once replied to similar accusations about the media: “There are no media conspiracies,” he said. “We’re not that well organized.”

### **The report’s limited vision**

An agency that is in chaos because it is overloaded, not because it is conspiring to put family preservation ahead of child safety, inevitably will make horrific errors in all directions – tearing some children needlessly from their homes, even as it leaves other children in danger. Torrez didn’t see that, because he didn’t look. Instead of cherry-picking cases that confirmed his biases going in, he could have commissioned an audit of a representative random sample of cases.

Decades ago, when he was New Jersey’s Child Advocate, [that’s exactly what was done by Kevin Ryan](#), who now is one of the “Co-Neutrals” monitoring the *Kevin S.* consent decree. Not only did he examine a random sample of cases, the casereaders came from diverse backgrounds and perspectives. Not surprisingly, the report found errors in all directions.

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Even among foster youth, Torrez is selective. All over the country, many such young people have spoken up to say how much better off they would be if their families simply got help. Others will say they should have been taken sooner. Odds are all of them are right. But the voices of the wrongfully removed appear nowhere in Torrez’s report.

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And while Torrez brags about how many people he interviewed, some people were left out right from the start. When he announced his investigation, *Source NM* reported

*Torrez’s agency is also calling on current and former case workers, foster families, and youth impacted by the system to come forward with information ...*

Notice anyone missing?

In the report itself, he states that he gathered recommendations from

*former CYFD staff, social work professors, youth attorneys and GALs, Kevin S. plaintiffs, foster parents, law enforcement, medical professionals, service providers, and practitioners from other states.*

Notice anyone still missing? Torrez showed no interest in talking to parents whose children were wrongfully removed, and no interest in hearing how those children suffered for it. He showed no interest in hearing from the lawyers who represent such parents. He showed no interest in speaking to anti-poverty organizations that might discuss the confusion of poverty with neglect. He showed no interest in talking to civil rights leaders, who could talk about racial bias in child welfare. And again, in a state where 10% of foster children are Native American, the report has not a single comment from tribal leaders.

Even among foster youth, Torrez is selective. All over the country, [many such young people](#) have spoken up to say how much better off they would be if their families simply got help. Others will say they should have been taken sooner. Odds are all of them are right. But the voices of the wrongfully removed appear nowhere in Torrez's report.

### **The report suffers from appendicitis**

The report lacks even a fundamental of rigorous investigation: an appendix listing exactly who Torrez *did* speak to. Of course, whistleblowers fearing retaliation have reason to seek anonymity and Torrez is right to grant it. But what about the "professionals from other states" and others with nothing to fear? How are we to know if there was any breadth of viewpoints in those Torrez and his staff chose to interview, or did they only talk to those they were confident would share their biases? Who, if any, did they speak to and then ignore? Such a list also would tell us who among America's leading child welfare scholars and practitioners they *didn't* talk to.

Even among the whistleblowers, the report could at least have listed how many they spoke to in each category. Did they speak to any birth parents at all whose children were wrongfully taken? Or did they speak only to extended family members who agreed that the children to whom they were related should have been taken from their parents?

### **Statistics abuse: The report's basic data failures**

- The report states, repeatedly, that "New Mexico has long faced disproportionately high levels of maltreatment, repeat maltreatment, and child fatalities compared to national averages." The data do not support these claims. And once again, the reason is in the report itself.

The data Torrez cites come from the federal government's annual [Child Maltreatment reports](#). These reports include voluntary surveys, so there are no standards concerning what agencies report and no checks on accuracy. But that's only the beginning. The data on "child abuse" involve how often caseworkers check a box on a form expressing their belief that the allegation is "substantiated." There is no court hearing first, and no chance for the family to defend itself.

That is true in all states. So why might the New Mexico numbers be misleading? For starters, because differing state laws and regulations contribute to differing definitions of abuse and, especially, neglect. And, in a state with the highest child poverty rate in

America, it stands to reason that there is more opportunity to confuse poverty with neglect, and mistakenly include such cases in the totals.

Even more significantly, as the report itself takes pains to point out, the amount of evidence required to check the “substantiated” box in New Mexico is vastly lower than in almost every other state.

In the overwhelming majority of states, caseworkers must believe there is a “preponderance of the evidence” that the abuse or neglect occurred. That is the lowest standard of proof in court, the one used to decide which insurance company pays for a fender-bender. It’s commonly described as the 51% standard – slightly more likely than not.

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Were there a hotline to which one could report statistics abuse, Attorney General Torrez would have his rights to the calculator app on his phone terminated.

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But again, as the report points out, New Mexico uses a far lower standard. There must simply be some “credible evidence.” That means even when it’s more likely than not that the abuse or neglect *didn’t* occur, workers still are supposed to check the “substantiated” box. Only five other states use this standard. So it’s hardly surprising that if you require far less evidence to “substantiate” child abuse, you will find more “child abuse” and more “reabuse” to “substantiate.”

Torrez insists that workers are failing to apply this lower standard, but that’s based on his self-selected non-random sample. But if his report encourages more workers to “substantiate” abuse or neglect based on less evidence, then the statistics will show even more “child abuse” – and Torrez can rush back and say: Look! Child abuse has gotten even worse!

But [what about fatalities](#)? Aren’t those easier to compare? No. There is wide variation in the quality of investigation, and even in the skill of the coroners and medical examiners who determine the cause of death. Agencies report whatever they want to that federal database. And even with fatalities, determinations can be surprisingly subjective.

Consider a hypothetical example: Early one Sunday morning, while his parents are asleep, a three-year-old wakes up, manages to unlatch the back door of the family home and wanders away. He falls into a body of water and drowns. Accident or neglect? The history of American family policing suggests that if the body of water is the pool behind a McMansion, it will be labeled an accident. If it’s a pond behind a trailer park, it will be labeled neglect.

All this helps explain why the federal report from which Torrez draws his data specifically says readers should not do what Torrez did. As the federal report explains:

*[R]eaders should exercise caution in making state-to-state comparisons. Each state defines child abuse and neglect in its own statutes and policies and the child welfare agencies determine the appropriate response for the alleged maltreatment based on those statutes and policies.*

None of this means New Mexico doesn't have more child abuse – it means only that we don't know. And it means we should beware of politicians taking numbers out of context to support their own agendas – something Torrez does in another instance as well:

- The report uses data selectively to suggest that the increase in the number of children forced into makeshift placements occurred even as the foster care population was falling. On the contrary, most of the increase occurred as the foster care population was skyrocketing – probably *because* the foster care population was skyrocketing.

Torrez writes:

*Between 2022 and 2024 alone, the number of children who had been placed at a CYFD office doubled each year. Excerpts from the 2024 Co-Neutrals' Report showed that over a five-year period from 2019-2024, the number of children staying in CYFD offices rose nearly 500%. This explosion of children in offices took place despite a 22% reduction in the number of children in state custody.*

But the table in the report, on page 171, right below this claim, tells a vastly different story. Have a look:

**Table 6.** Children with any placement in a hotel/motel, out-of-state facility, or CYFD office (including Receiving Center), 2019-2024. Reproduced from Kevin S. Co-Neutral 2024 Annual Report.

Category	2019 (N = 3,881)		2020 (N = 3,344)		2021 (N = 2,949)		2022 (N = 2,755)		2023 (N = 2,944)		2024 (N = 3,026)	
	#	%	#	%	#	%	#	%	#	%	#	%
Children with any placement in applicable setting <sup>108</sup>	83	2%	63	2%	102	4%	82	3%	199	7%	412	14%
<i>Children with placement to any applicable setting, by type of setting</i>												
Out-of-state facility	57	1%	31	<1%	27	<1%	14	<1%	18	<1%	32	1%
Office (including Receiving Center)	34	<1%	32	<1%	85	3%	71	3%	185	6%	404	13%
Hotel/motel	0	0%	2	<1%	3	<1%	6	<1%	0	0%	0	0%

In almost every year from 2019 to 2022, the number of children staying in CYFD offices declined or stayed the same. The explosion came between 2022 and 2024. You know

what else exploded between [2022](#) and [2024](#)? The number of children in state custody – it increased by more than 23%. Entries into foster care increased by more than 30%.

If there were a hotline to which one could report statistics abuse, Attorney General Torrez would have his rights to the calculator app on his phone terminated.

### **Drugs: the failure of confiscation-at-birth**

The report's discussion of New Mexico's Comprehensive Addiction and Recovery Act (CARA) law once again gets the problems right: failed implementation due to

*Untimely guidance, lack of training for medical providers, unenforceable plans of care, and poor oversight.*

But once again, the report gets the solution wrong. It complains about an alleged lack of enforcement of the draconian confiscation-at-birth directive issued by Gov. Michelle Lujan Grisham. Under that directive, children “born exposed to methamphetamines, fentanyl, polysubstance, or diagnosed with fetal alcohol syndrome” are taken away immediately.

In some cases, that is justified. In many more, it is not. The automatic confiscation-at-birth directive makes children less safe. It exposes them to the enormous emotional trauma of separation during the most important days of their lives – their first. That puts them at risk for all the short-term and long-term consequences of separation.

A clue to those consequences can be found in a study conducted during a previous “worst drug plague ever,” crack cocaine:

Researchers [studied](#) two groups of children born with cocaine in their systems; one group was placed in foster care, another left 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. Typically, the children left with their birth mothers did better. For the foster children, the separation from their mothers was more toxic than the cocaine.

Similarly, consider what [The New York Times found](#) when it looked at the best way to treat infants born with opioids in their systems. According to the *Times*:

*[A] growing body of evidence suggests that what these babies need is what has been taken away: a mother. Separating newborns in withdrawal can slow the infants' recovery, studies show, and undermine an already fragile parenting relationship. When mothers are close at hand, infants in withdrawal require less medication and fewer costly days in intensive care.*

*“Mom is a powerful treatment,” said Dr. Matthew Grossman, a pediatric hospitalist at Yale-New Haven Children’s Hospital who has studied the care of opioid-dependent babies.*

And of course, a confiscation-at-birth policy is a great way to drive pregnant women away from prenatal care and hospital births, exposing their newborns to further danger.

As the drug policy experts at the Reason Foundation put it [in a critique](#) of the confiscation-at-birth policy

*Decades of public health evidence show New Mexico’s new mandate is a superficial fix that undermines effective, long-term solutions.*

Yet Torrez’s only problem with the confiscation-at-birth policy is that, it’s alleged, some newborns aren’t being confiscated.

It is extremely difficult to take a swing at so-called “bad mothers” without the blow landing on their children. That doesn’t mean we can simply leave children with hopelessly addicted parents. But it does mean that in most cases, drug treatment for the mother is a better option than foster care for the child. And it means that fixing the CARA program is a vastly better solution than a confiscation-at-birth policy.

### **How the system treats foster parents**

The report includes an entire section devoted to what it alleges is abominable treatment of foster parents. Again, this is not the result of random sampling, so we don’t know how widespread such treatment is. But his findings here jibe with accounts from frustrated foster parents all over the country. And they jibe with common sense. In a grossly overwhelmed system full of underprepared, sometimes clueless caseworkers with little or no supervision, everyone and everything gets short shrift. There’s another factor as well: CYFD’s secrecy – both the secrecy built into law and CYFD’s obsession with going well beyond that law, combined with enormous unchecked power, inevitably breeds arrogance.

Long ago, a caseworker in another state allegedly told parents: “I have the power of God.” It’s true. CYFD workers, hiding behind secrecy and lacking any real accountability, do have the power of God. Rarely is the power of God accompanied by the wisdom of Solomon.

At the same time, this does not mean, as the report seems to imply, that every foster parent’s every complaint is valid. All over the country, foster parents sometimes lose their licenses because they abuse foster children or allow such abuse. And sometimes they lose them because they are, indeed, trying to sabotage reunification when it is, in fact, in the best interests of children; something the report implies never, ever happens.

In addition to all the other harm done by CYFD retaliation, it undermines the agency's credibility when its decisions concerning foster parents are legitimate.

But Torrez – and the foster parents whom he selectively spoke to – also are overlooking the obvious. As the report points out, CYFD really *needs* foster parents. If this is how they treat foster parents, imagine how those workers, with the power of God, treat birth parents, who have even less power and are at CYFD's mercy from the moment the caseworker pounds on the door. (Unless, of course, you believe the ill-treatment of foster parents is some kind of conspiracy to reduce their numbers to give workers a “built-in excuse” to leave children in dangerous homes.)

### **The arrogance of the AG**

That arrogance of power isn't limited to CYFD. Consider how one of the most powerful politicians in the state condescends to some of the least powerful citizens he is supposed to represent – families caught up in the system and children wrongfully removed -- when he writes that reunification:

*must be earned through demonstrated change, not assumed as a default outcome. Children are not test subjects for parental rehabilitation—they are human beings who deserve stability, care, and safety.*

Consider how many false, arrogant assumptions are in just those sentences.

- The framing assumes that, in a system in which one can be declared abusive even when a caseworker finds more evidence of innocence, all families caught up in the system are guilty and in need of “rehabilitation.” In this vision of the system, there is no such thing as a false report, no such thing as, say, a school district harassing a parent who is actually fighting for her children, and no such thing as confusing poverty with neglect. Nope, in this vision of the system, if the CYFD worker checks the box, the parent is either evil or sick! Sick! Sick! In this vision, the workers err only when they *fail* to check that box.

Even more important, this phrasing portrays reunification as a privilege for parents. On the contrary, it is a *right* for *children* – because for the overwhelming majority of children, the overwhelming majority of the time, it is better for their health, well-being – and safety – than foster care.

Torrez is right when he says children “are human beings who deserve stability, care, and safety.” But, as his own report documents, the foster care system gives them none of that.

### **Working the new ref?**

New Mexico has just named its first Child Advocate. Though appointed by the governor, the office is housed within the Department of Justice. Torrez apparently wants to be

sure the Child Advocate shares his biases. Indeed, he seems to be giving her orders when he writes:

*The NMDOJ expects this report to serve as the foundational roadmap guiding the incoming state child advocate's work. ... [T]he child advocate must neither rubber-stamp CYFD's actions nor excuse or rationalize its misconduct, but instead serve as an unapologetic champion for children's safety and well-being.*

But as we've seen, Torrez equates child safety with child removal. So the message to the agency housed within his own is clear. In effect, Torrez is saying: Don't you dare listen to those evil, sick birth parents; ignore them just as I did – and rubber-stamp *my* biases.

### **Things the report got right**

We've already noted the most important item the report got right: its characterization of CYFD as arrogant, secretive, clueless and overwhelmed. (The biggest thing the report got wrong is its misdiagnoses of the reasons CYFD is arrogant, secretive, clueless and overwhelmed.) In addition:

- Torrez is right to target the undermining of an area where New Mexico is among the leaders: opening court hearings in these cases. We agree with his recommendation to

*Amend ... state law to limit courts' authority to sequester hearings or restrict the release of information, except when necessary to protect narrowly defined personal identifying details or in truly exceptional circumstances.*

- Torrez also is right to bring a lawsuit to try to breach the wall of secrecy CYFD has erected to hide its many failings. But he doesn't go far enough. Torrez's lawsuit appears intended to pry loose only documents in horror stories cases, something that would support his biases. But he should be seeking much more. He should be seeking a change in law to create a strong rebuttable presumption that all records in all cases are open, subject to limited redactions where the privacy of children is genuinely at issue. But he won't do that, because then we all could see the errors in all directions – and that would contradict Torrez's thesis.

- As noted earlier, Torrez is right to recommend that “all court reports and testimony in permanency proceedings be made under oath, subject to perjury penalties for material, intentional misstatements,” but again, he doesn't go far enough. There also should be a requirement that all interviews in the course of CYFD investigations be videotaped. And there should be an equivalent of an exclusionary rule: If an interview wasn't taped because a worker “forgot” or a phone died, or an app didn't work, anything gleaned from that interview should be inadmissible in court. If we could see all the interviews, we'd see errors in all directions.

## **Toward better solutions**

The way to fix a child welfare system is to listen to your gut instinct – and do the opposite. Torrez’s recitation of horror stories, like Trump’s, understandably would prompt anyone who knows nothing else to go with their gut and say the answer is to rush to tear apart families far more quickly and reunify them far more slowly, if at all.

But the real problems in New Mexico are rooted in an overloaded system. The Attorney General’s approach will only overload it more. The horror stories are serious and they are real. They also are needles in a haystack. You can’t find the needles by making the haystack even bigger.

Nor can you keep up with demand by coddling foster parents and conducting a caseworker hiring binge. You’ll never get enough of either to keep up with the demand even now, let alone the increase in demand if, as is likely, the Attorney General’s report sets off another foster-care panic.

The only way to fix foster care is to have less of it.

We have a series of recommendations for how that can be done [in the Solutions section](#) of [www.nccpr.org](http://www.nccpr.org), including the kinds of services that really work and, even more important, a due process agenda. We also have a “Good Bill Bank” with links to outstanding legislation introduced across the country.

But there are two key changes we highlight here that are vital to improving safety for New Mexico’s children:

- A laser focus on ameliorating the worst effects of poverty. [The evidence is overwhelming](#) that even small amounts of cash go a long way toward curbing not only neglect confused with poverty itself, but even the most serious forms of abuse. Such approaches also cost less than foster care.

As for the claim that children are not taken because of poverty “alone,” that’s a red herring. For starters, sometimes they are. But even when poverty is not “alone,” money often can solve whatever problem comes along with it – just the way money solves the same problems in affluent homes.

- Provide high-quality defense counsel to every family from the moment CYFD pounds on the door. That means a defense team. The family gets a lawyer, a social worker and often a parent advocate who’s been through the system herself or himself. No, it’s not to get “bad parents” off, it’s to craft alternatives to the cookie-cutter “service plans” often dished out by CYFD; alternatives that actually keep children safe. It’s an approach that’s been [shown to reduce foster care with no compromise of safety](#).

These changes alone won’t fix the system. But they are prerequisites to fixing the system. They will spare children the enormous trauma of needless foster care, and free

up time for caseworkers to do the hard work of finding and protecting those relatively few children in real danger.

## **Conclusion**

Attorney General Torrez has issued a report that indulges in horror stories in the manner of Donald Trump, ignores evidence and is likely to leave the system even worse. What might one call such a report? How about: a systemic moral failure.

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**About who we are:** *The National Coalition for Child Protection Reform is a small, nonprofit child advocacy organization dedicated to trying to make the “child welfare” system better serve America’s most vulnerable children. You can read all about [our distinguished Board of Directors here](#) and about [what others in the field say about us here](#).*

**About where we are from:** *The Attorney General and his allies are bound to try to deflect all criticism in this report by pointing out that we’re not from New Mexico. But the “you’re not from here” argument would make more sense if New Mexico were a national leader in getting “child welfare” right. One thing we and the Attorney General agree on is that, obviously, it is not. So wise public policymaking is likely to be aided by looking beyond the state’s borders to seek out all perspectives and find out where child welfare is done better and what can be learned from it. The states, it is said, are laboratories of democracy. We read the lab results.*

National Coalition for Child Protection Reform, [www.nccpr.org](http://www.nccpr.org) info(at)nccpr(dot)info