

UPDATED, JUNE 2008

RETURN OF “THE CRUELTY”

Fifteen

Why Kansas Child Welfare is Broken – and [^] Ten Ways to Fix It

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Child Protection Reform
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NCCPR ADVOCATES FOR SYSTEMIC CHANGE. WE REGRET THAT WE ARE TOO SMALL TO BE ABLE TO ASSIST WITH INDIVIDUAL CASES. WE ARE NOT A GENERAL MEMBERSHIP ORGANIZATION, BUT INDIVIDUALS ARE WELCOME TO USE MATERIAL ON WWW.NCCPR.ORG IN THEIR OWN EFFORTS TO CHANGE CHILD WELFARE SYSTEMS.

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Why Kansas Child Welfare is Broken – and [^] Ten Ways to Fix It

By Richard Wexler, NCCPR Executive Director

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WHAT’S IN THE UPDATED EDITION:

- A new opening section concerning the latest developments in Kansas child welfare, in particular the contradictory statements from SRS Secretary Don Jordan.
- Five new recommendations in response to those statements.
- Updated statistics on entries into care and safety outcomes.
- Updates to the section on “turning foster children into unpersons.”

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ABOUT NCCPR

The National Coalition for Child Protection Reform is a non-profit organization whose members have encountered the child protection system in their professional capacities and work to make it better serve America’s most vulnerable children. A full list of our Board of Directors and staff is available at www.nccpr.org

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JUNE, 2008 UPDATE: MATTERS OF INTEGRITY

There is one thing we know for sure: If an account from a top deputy in the Sedgwick County District Attorney's office is accurate, then the Secretary of the Kansas Department of Social and Rehabilitation Services has made a false statement.

We just don't know for sure *which* statement is false.

We also know that, depending on which statement is *true*, SRS may have violated federal law, federal regulations or both.

Sadly, the recent statements from SRS Secretary Don Jordan are in keeping with the way SRS has behaved in the past, as is discussed elsewhere in this report.

- SRS has exploited an apparent loophole in federal regulations (or simply exploited the refusal of the federal government to enforce its own rules) to treat thousands of children torn from their parents as "unpersons," invisible in reports to the federal government or the state's own statistics. If these children ever were made visible it would reveal that Kansas takes children at one of the highest rates in the nation, and Sedgwick County is a contender for the dubious title of child removal capital of America. (See page 31).

- SRS looked the other way as caseworkers in Sedgwick County, along with the District Attorney's office and the courts "interpreted" a state law requiring a court hearing within 72 hours as actually meaning 144 hours. Every other county managed to read the law correctly – but the legislature had to specifically clarify the statute in order to set Sedgwick straight. (See page 25).

This behavior raises questions about the institutional integrity of SRS. There is only one person who can guarantee that

integrity – the person ultimately responsible, Governor Kathleen Sebelius.

But instead of acting immediately in the wake of revelations that either caseworkers are putting information into sworn affidavits that they don't really believe or their boss only said that in order to "pander" to advocates (choose whichever claim you prefer), the Governor has remained silent, apparently hoping the matter will simply go away.

"But in Sedgwick County oftentimes we end up writing things because it's what our social workers get bullied by the District Attorney's Office into writing. So they really **have no belief in what it says.**" [Emphasis added].

--SRS Secretary Don Jordan

That is a huge disservice to the vulnerable children of Kansas, who are suffering enormously because of SRS' lack of institutional integrity and the Governor's lack of leadership.

The governor is not the only leader who has failed. Everyone from Sedgwick County judges to key legislators has sought to avoid confronting the implications of Jordan's comments. Their response to the revelations has been shameful.

The tale of the tape

Those are the key lessons from the revelation of some astounding statements from Don Jordan, reported in *The Wichita Eagle* on June 8.¹

The statements were made during a meeting with Citizens for Change, a Wichita-based group that advocates for families caught up in the child welfare system.

“...the reality comes down to, you send a 25-year-old social worker into a room with a 15-year county ADA (assistant district attorney) who is willing to yell at them, cuss at them, scream at them and threaten them, you know.”

--SRS Secretary Don Jordan

The *Eagle* reports that a tape of the meeting reveals Jordan saying this about affidavits submitted by caseworkers in court, affidavits used to persuade a judge to keep children in foster care:

"But in Sedgwick County oftentimes we end up writing things because it's what our social workers get bullied by the District Attorney's Office into writing. So they really have no belief in what it says." [Emphasis added].

Later in the meeting, Jordan said: "I am working on our staff that we do our assessments properly and we not get bullied into writing things we don't believe. But then the reality comes down to, you send a 25-year-old social worker into a room with a 15-year county ADA (assistant district attorney) who is willing to yell at them, cuss at them, scream at them and threaten them, you know."

When Jordan found out his comments would become public – and only then – he said he should not have used the term "bullied." He has not, however, rescinded the terms "yell" "cuss" "scream" and "threaten."

It also was only after he learned his comments would become public that Jordan rushed to call the deputy district attorney in charge of child abuse investigations in Sedgwick County, Ron Paschal, and say he was really, really sorry. In fact, according to Paschal, Jordan said he'd merely been "pandering" to Citizens for Change.

Pandering for beginners

That's possible, of course. But it's hard to see why Jordan would make such explosive comments, when there are far easier ways to pander.

The usual approach is to pull out a yellow legal pad, take copious notes (or pretend to) lean in toward the speaker, nod a lot, say "mmm hmmm" and "I see" and then, at the end say something like: "I can certainly see why you're so upset, and we are definitely going to look into this."

If Jordan really was just pandering when he made those comments about bullying, cussing, screaming, yelling and threatening, then he's taken pandering to a whole new level.

Paschal and his boss, District Attorney Nola Foulston, strongly deny Jordan's allegations. And, of course, we don't know what Ron Paschal or anyone on his staff says to caseworkers behind closed doors.

We do know, based both on data from Sedgwick County and his public statements, that Paschal is a strong advocate of the take-the-child-and-run approach to child welfare. Examples of such statements can be found throughout this report – including one in which he specifically calls for taking away children when single mothers who can't get child care must leave their children home alone – in order to work. (See page 16).

And we know that Paschal has sought to bully the agency as a whole through public statements. Even as the data show that Kansas takes children at a rate above the national average (vastly above when off-the-books placements are included) Paschal and Foulston used a high-profile case of abuse in Sedgwick County to attack the agency for supposedly doing too

much to keep families together. (See page 19).

In still another news story, Paschal claimed a change in SRS regulations concerning what constituted substantiated maltreatment led to a reduction in removals of children. In fact, removals increased. (See page 19).

Paschal has been a strong supporter of the fiction that these off-the-books placements as not foster care. He was a strong supporter of the past practice in Sedgwick County of allowing a child to languish in foster care for up to eight days before there was even a hearing.

And, back in December 2007, we described some of Paschal's statements concerning the issue of time-until-the-first-hearing as "boil[ing] down to a threat." (See page 30).

On the other hand, it's hard to understand why the District Attorney's office would feel the need to pressure caseworkers to hype their sworn affidavits – since Sedgwick County Juvenile Court Judge Jim Burgess, the presiding judge of the juvenile division, has made clear he is likely to approve a request to hold a child in foster care no matter how weak the evidence in the affidavit may be. Indeed, he calls substituting a rubber-stamp for a gavel in these cases "a no brainer." (See page 13).

And it's not just the District Attorney's office that's putting out denials. As is noted above, Jordan apparently offered one as well. He didn't deny saying it. According to Paschal, Jordan just denied *meaning* it. Paschal says Jordan called him to explain that he was merely "pandering" to Citizens for Change.

Federal law and regulations

Whether, in fact, Jordan believes his caseworkers are being pressured to hype the affidavits or whether he was merely pandering, it appears that SRS has violated federal law or federal regulation.

Federal law requires that states make "reasonable efforts" to keep families together. As we note in this report, Con-

gress has blasted huge holes in this law – and while SRS may not be very good at serving children it's great at exploiting loopholes. But no loophole is so huge that it would allow caseworkers to actually exaggerate problems in a family in order to avoid making reasonable efforts.

If, on the other hand, Jordan was merely pandering, that raises another problem. All states are required to take part in a process called a Child and Family Services Review (CFSR). That process includes a self-assessment, in which a state describes its view of its own child welfare problems, and what it is doing about them. SRS' self-assessment specifically lists Citizens for Change as a group "with which [the agency] collaborates."²

If Jordan said that his comments, while meeting with Citizens for Change, were just pandering, then he was merely going through the motions, holding the meeting to say he held the meeting, rather than to actually exchange ideas or improve the child welfare system. That probably is not what the federal government has in mind as part of the CFSR process.

So NCCPR has joined Citizens for Change in calling on the relevant federal agency, the Children's Bureau of the Administration for Children and Families in the Department of Health and Human Services, to investigate Kansas SRS. But we're not optimistic. The Children's Bureau is the same agency that said it saw no problem in Kansas' scheme to keep thousands of foster care placements out of official statistics.

So truly holding SRS, the District Attorney's office and the courts accountable for how they have failed the state's vulnerable children will require action by state and local officials. They have not yet stepped up to do the job.

On the contrary, when questioned by the *Eagle* two of the judges said they're sure there is no problem:

Sedgwick County District Judge Jim Burgess, presiding judge in the juvenile division, which handles the child custody cases, said the process is thorough and fair.

Burgess said he is confident that prosecutors "would never intentionally put in false information."

Over the years, he has heard complaints that social workers get pressured but has not seen evidence of it, he said.

In "at least 95 percent" of the cases, parents do not contest moves to keep their children in temporary custody, he said. Critics of the child-welfare system might see details in the affidavits as "piling on," but prosecutors are only trying "to present the clearest picture they can," Burgess said.

Of course, Burgess is the one who has indicated that, even when the case for removal is inadequate, he approves the removal anyway.

The reason parents don't contest the removal of their children at the first hearing is that the overwhelming majority can't. If they're poor, then they probably didn't meet their lawyer until moments before the hearing, and maybe not until afterwards. And there is a good chance the lawyer warned them not to contest the removal if they ever want to see their children again, since it probably wouldn't do any good and they would risk angering SRS and the judge.

Burgess' comment helps explain why a lawyer might offer such advice. The job of a district attorney is not to paint an objective picture – rather, it is to present the case in the way most favorable to getting the outcome he wants – without distorting the facts or bullying anyone, of course. That's also the job of the defense attorney – and when the playing field is level, this works fine. But when there is no real defense and the judge already has decided that in every case the D.A.'s presentation is "the clearest picture they can" provide, then one wonders why Sedgwick County even bothers having judges in these cases at all.

As for the other judge, according to the *Eagle*:

District Judge Tim Henderson said ..."I am very comfortable in the integrity of the DA's office and the (SRS) workers... be-

cause I am constantly asking them if they believe [removal] is appropriate," he said.

"Are there inaccuracies in these affidavits sometimes? Sure. It's because of the tight time frames and limitations.... But it doesn't mean that anybody's being bullied and anybody's being dishonest."

But if the workers are being bullied, it's not likely to take place in open court, now is it? And if she's been bullied, a caseworker isn't likely to turn around and say, in open court, "Why, no, your honor, I don't believe everything in this affidavit I signed, but I was bullied into it."

The response of the judges only reinforces the impression that Sedgwick County Juvenile Court is a closed club where everybody is such good friends with everybody else that even without any bullying, the objectivity required to achieve justice is compromised. And that is one more reason why it is urgent that these court hearings be opened to press and public.

One would hope, therefore, that the judges would be demanding an independent investigation, instead of burying their heads in the sand.

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hearings be opened to press and public. (See Recommendation 10, page 40).

Key legislators performed no better. Indeed, their comments are bizarre. Again, from the *Eagle*:

State Rep. Mike O'Neal, R-Hutchinson, a lawyer and the chairman of the House Judiciary Committee ... called Jordan's comments "refreshing" because of their apparent candor. "I applaud him for recognizing (a concern) and saying we need to do something about it."

Which comment do you consider “refreshing” Rep. O’Neal, the one about bullying or the one about pandering – which would contradict the one about bullying?

And, according to the *Eagle*:

State Rep. Jim Morrison, R-Colby, said ... "I think it's good that we have a secretary (of SRS) that is as frustrated as a lot of people who are complaining."

Except that according to Paschal, Secretary Jordan isn’t frustrated at all, he was merely “pandering.” And there is one crucial difference between Jordan and all those other “people who are complaining:” Jordan actually has the power to do something about it.

Come to think of it, Rep. Morrison and Rep. O’Neal -- so do you.

But the person with the most power is the person who has, so far, done nothing. The silence of Governor Sebelius is predictable. In fact, in our original report we all-but-predicted it – even before the latest revelations. In that report we noted that right after a case of horrific abuse made headlines in Wichita,

the governor did what governors always do in situations like this: ordered a special investigation. ... We know of no governor ever ordering a special investigation of whether a state is taking away too many children.

If, in fact, SRS is allowing its caseworkers to be bullied, yelled at, screamed at, cussed at and threatened, and if the caseworkers are caving in and hyping their

sworn affidavits, that poses an enormous risk of harm to children – and not just the children wrongfully taken. It also overwhelms the system, making it less likely that workers will find children in real danger who really need to be taken from their homes. If, on the other hand, the secretary of SRS is simply pandering to a group with which it is supposed to work in good faith, that also indicates a huge problem with the agency leadership.

NEW RECOMMENDATIONS:

There is no excuse for the silence of Sebelius. So, in addition to the ten recommendations at the conclusion of the report, here is what a governor who put children first would do, and what we recommend:

- Demand the resignation of Don Jordan, either for tolerating the bullying of his caseworkers or for making statements he didn’t really believe to a group with which SRS is supposed to partner, whichever it may be.

- Launch a comprehensive nationwide search for a replacement, with advocates of all perspectives on the search committee.

- Order SRS to comply with the spirit as well as the letter of federal regulations and end the practice of keeping huge numbers of foster care placements off the books.

- Seek a change in state law opening court hearings in child abuse and neglect cases to press and public.

- Conduct an independent investigation of allegations of bullying by the Sedgwick County District Attorney’s office, by a commission or agency that will hold all of its meetings and hearings in open session – and which is empowered to require testimony under oath. This is essential to end practices which compromise justice, if they exist, or, conversely, to allow the District Attorney’s office to clear its name.

- The legislature also should hold open hearings and, if it is empowered to do so under Kansas law, take testimony under oath.

Overview

Try to imagine what it must be like for a very young child, a little boy aged four or five, perhaps.

You are at home one evening, when two people come to the door. One you recognize as a policeman. They look all over the house, checking cupboards and the refrigerator. They ask you scary questions about whether mommy and daddy hit you or yell at each other. Maybe they look under all the clothes you're wearing, so they can see your entire body. They want to see if there are any bruises, but you don't know that. You just know that you've been taught your body is your own and nobody is supposed to be able to do this to you.

They try to be kind, they speak softly. But it doesn't help. You become more and more afraid.

Then they tell your mother that they are going to take you away. Your mother starts to cry. She gives you a long hug. The policeman has to pry you away. By now you are screaming and crying, not understanding why you are being taken or where you are going. You know that a policeman protects us from bad people. So you wonder: What have I done that's bad? Why are they making me leave? Why am I being punished? When will I see mommy again?

The policeman takes you to a big building. It has pretty pictures on the walls, but you don't care. You're terrified of all the strangers. They seem to be nice, but when you keep asking for mommy, no one will tell you why she's not here. Strangers put you to bed and you cry yourself to sleep.

The next morning they're gone, too. A new set of strangers wakes you up in the morning. You keep asking for mommy, but she never comes. You can't even talk to her on the phone. You wonder why she's never there and never calls. You don't know that the rules in the place you're living now

don't allow you even to talk to her for three days.³

And it's not only mommy who is gone. Your friends are gone. Your preschool teachers are gone. Your classmates are gone. Grandma and grandpa are gone. Maybe your brother is there to comfort you – or maybe not. He may be in another part of the big building, or someplace else entirely.

Day after day it goes on. One group of strangers in the morning, another at night, still another on the weekend.

Finally, you're allowed to go home. It's been a week since you were taken away. But because you're a very young child, you perceive time differently, so it feels like you've been gone much, much longer.

Though you're back home, there is no happily ever after. You hide whenever there is a knock at the door. You begin to cry whenever you see a policeman. You have nightmares that you are back in the big building full of strangers. The experience may torment you for years, maybe for life.

And it was all a terrible mistake.

Everybody makes mistakes, of course. No child welfare system can get it right all the time. But if you were a child in Sedgwick County, Kansas in 2006, the chances are that up to four times out of five, and maybe more, all this trauma was inflicted needlessly.

It probably happened to children more than 2,000 times in Sedgwick County in 2006. But don't expect to see that number in any official data. That's because the four out of five times when it all may well have been a mistake are never recorded in state statistics. In an Orwellian interpretation of federal regulations, the Kansas Department of Social and Rehabilitation Services has turned these children into unpersons. As far as SRS is concerned, what happened to these

children never happened, and for purposes of the data presented to state legislators and the federal government, the children don't exist.

SRS is playing a giant game of let's pretend: Let's pretend the children aren't there; let's pretend the trauma never happened.

That is what SRS does on its own website, in its own reports, and when it comes to reporting to a critical federal database. As a result, that database vastly understates the number of children torn from their homes in Kansas every year, especially in Sedgwick County.

And that's not the only way SRS manipulates data. The agency also massages the numbers in a way which may underestimate the actual number of placements endured by some children. All this may make Kansas look better than it deserves to on a vital evaluation of its performance in protecting children, the federal government's Child and Family Services Review.

SRS isn't the only one playing "let's pretend." The Sedgwick County District Attorney's office is playing the game, as are some judges. Rather than push SRS to shorten the time children must endure all this needless trauma, they are urging legislators to lengthen that time again, all the while pretending that this experience of separation and loss is not foster care, because they've slapped another label onto it.

Instead of calling it foster care, they simply re-label it "protective custody." Of course, the child doesn't read the label. To him, it's foster care. But if everyone insists on using another name, we suggest calling the forced detention of an innocent child for a week with no hearing and no recourse what it really is: internment.

Fortunately, the legislature put an end to some of the gamesmanship. Lawmakers stopped Sedgwick County from interning children in a foster-care Twilight

In an Orwellian interpretation of federal regulations, the Kansas Department of Social and Rehabilitation Services has turned these children into unpersons. As far as SRS is concerned, what happened to these children never happened, and for purposes of the data presented to state legislators and the federal government, the children don't exist.

Zone for more than three working days without a day in court – just as happens in every other county in Kansas. It used to be six – and since there is no way to go six days without hitting a weekend, in reality, SRS used to have a free shot at any child in Sedgwick County for at least eight days, a very long time for a very young child.

The sad fact is, these first hearings are not likely to change much.

Prof. Paul Chill, Associate Dean for Academic Affairs at the University of Connecticut Law School, a member of the NCCPR Board of Directors and one of the nation's leading experts on "emergency" removal has said flatly: "these hearings are often shams."⁴

A deputy district attorney in Sedgwick County actually admitted as much – when it comes to counties other than his own. (See "A D.A.'s remarkable candor," page 24). But at least it's harder for SRS to, in effect, deny that these children's trauma

ever existed.

Instead of trying to make the sound, sensible 72-hour rule work, Sedgwick County officials repeatedly have thrown up road-blocks – needlessly overloading the system by holding children in care unnecessarily after the first hearing, prolonging these children’s trauma – and making it even harder to find children in real danger who really do need to be taken from their homes.

And the problems don’t end there.

If everyone insists on using another name, we suggest calling the forced detention of an innocent child for a week with no hearing and no recourse what it really is: internment.

- Even when entries into care are limited to those SRS officially admits to, when rates of child poverty are factored in, Kansas takes away children at a rate 19 percent above the national average and nearly double and triple the rate in systems widely regarded as, relatively speaking, models for keeping children safe. (When poverty is not factored in, Kansas’ performance is even worse. See Data Tables, pages 16 and 17).⁵

- Now that Sedgwick County can no longer hide as many entries into care by holding children for a week and sending them home or to informal placement with relatives, the official rate of removal in the county is worse than the state average.⁶

- When all the “off the books” placements are factored in, Sedgwick County, Kansas is a contender for child removal capital of America.

- The state’s own data show that a claim by Sedgwick County Deputy District Attorney Ron Paschal, a claim he used to inflame passions in favor of tearing even

more children from their families, is flat wrong. In 2006, Paschal told *The Wichita Eagle* he believed that when a change in SRS regulations resulted in fewer allegations of maltreatment being substantiated, that led to fewer children being removed from their homes.⁷

In fact, since the change took effect, in July 2004, the number of children taken from their parents over the course of a year has increased by 35 percent.⁸ Overall, from state fiscal year 2002 through state fiscal year 2007, removals have soared by more than 47 percent.⁹

- Fueled in part by Paschal and District Attorney Nola Foulston, bureaucratic and media response to a horrible case of child abuse in Sedgwick County set off a spike in removals of children from their homes, what we call a foster-care panic.

In the six months after the case made headlines, SRS workers, terrified of having the next such case on their caseloads, tore nearly ten percent more children from their parents than they did during the same six months the year before. They removed more children than during any comparable period since 2000. This took place *before* state law was clarified to stop Sedgwick County from holding children more than a week before the first hearing.

And since foster-care panics are likely to have the biggest impact on short placements – the kind that often are “off the books” in Sedgwick County - the real impact of the panic may have been greater.

In the 19th Century, horror stories about abused children led to the formation of Societies for the Prevention of Cruelty to Children. They had vast, unchecked powers to take children from their homes. Though they used horror stories about abuse to justify these powers, such cases were few and far between - their real targets were the children of the immigrant Catholic poor. The parents were viewed as genetically inferior, and the SPCC officers were sure the children would be better off in middle-class Protestant homes.

In impoverished neighborhoods in America's big cities, SPCCs soon gained a new, and appropriate nickname: "The Cruelty."¹⁰ What Kansas in general and Sedgwick County in particular are witnessing now amounts to the return of The Cruelty.

The people who worked for The Cruelty in the 19th century actually meant well. They sincerely believed that immigrant parents were inferior and their children would be better off elsewhere.

Similarly, very little of what is happening in Kansas now is due to ill motivation on the part of the people involved in trying to protect the vulnerable children of Sedgwick County and the State of Kansas. From frontline caseworkers to the district attorney's office to judges' chambers to the central office of SRS in Topeka, most of those involved in this work are dedicated professionals who have only the best interests of children at heart. They are not jack-booted thugs who relish tearing children from their families. Comparisons to the Third Reich have no place the child welfare debate.

Furthermore, there are some situations in which removing a child from the home is absolutely essential. These are the rare cases such as those in which the parents are brutally abusive, where they take sadistic delight in beating, torturing and raping innocent children. Or the cases in which parents really are hopelessly addicted to cocaine or methamphetamine and uninterested in treatment. In such cases, SRS workers should take away the children and never look back.

But the tragic irony of the take-the-child-and-run approach that dominates child welfare in Kansas is that it so overwhelms workers that they may have less time to find such children. The take-the-child-and-run mentality makes all children less safe.

Most workers are dedicated and caring, but underprepared and overwhelmed.

Combine this with the near absolute power and near total secrecy of child welfare agencies, and abuse of power becomes almost inevitable.

Rarely is the power of God accompanied by the Wisdom of Solomon.

One caseworker in another state allegedly told several parents: "I have the power of God." It is alarming if he said it. What is more alarming is, it's true. SRS caseworkers do have the power of God. To give an inexperienced, overwhelmed worker the power of God, send her off on what she perceives as a godly mission to rescue children from people she thinks are the scum of the earth and then expect self-restraint is more than can be expected of most human beings. Rarely is the power of God accompanied by the Wisdom of Solomon.

The problem is only compounded when the response to a high-profile tragedy leaves every worker terrified of losing her job, and winding up on the front page.

The surest sign that people at a child welfare agency are being disingenuous is when they claim that the system has checks and balances.

The claims are familiar. "We can't take children away," the workers say, "only the police can do that." But who calls the cops? SRS. And how often to the police turn down such a request?

Or SRS will say: "A judge has to approve everything we do." But, of course, that's not true. The police can remove a child, on their own or at SRS' request, entirely on their own authority, and that child can be interned for three days, plus weekends and holidays (it used to be up to eight total days in Sedgwick County). And when

the case finally comes before a judge, that judge knows that if he sends a child home and something goes wrong, his career may well be over. Remove hundreds of children needlessly and, while the children may suffer horribly, the *judge* is safe.

The problem with what Kansas is doing – the huge number of “off the books” removals, the foster-care panic in Sedgwick County, the soaring rate of removal statewide – the problem with all of that is not that it hurts parents, though of course it does. The problem is that it hurts children.

So it’s no wonder that, as Paschal himself has acknowledged, when that first court hearing takes place and SRS wants to keep on holding the child in foster care, the judge almost never says no.¹¹ Indeed, one Sedgwick County judge effectively admitted that he rubber-stamps removals even when SRS itself doesn’t know if it has a case or not. Indeed, he says approving such removals is “a no-brainer.”¹²

The fact that workers and others in the system are well-motivated is no cause for comfort. On the contrary, were they ill-motivated one could appeal to their consciences to get them to stop doing things that harm children in the name of helping them. But when people are well motivated and certain they are doing the right thing, it’s much harder to get them to change.

And getting them to change is urgent. Because in Sedgwick County, Kansas, in 2006, the pain of wrongful removal was inflicted on children in up to 80 percent of cases in which children were taken from their parents – those are the “off the books” removals discussed earlier. Indeed the figure may well be higher, because in many cases, when a judge approves the removal and it goes “on the books” that, too, was a mistake.

The harm to children

There are people who want you to believe that only parents are hurt by all the policy failures in Kansas child welfare.

Thus, Judge Jim Burgess, the judge who said rubber-stamping removals where there may be little evidence is “a no-brainer” justifies this by saying “you go with safety.”

He’s wrong in every possible way. But the most important problem with his approach is, it makes children less safe.

And the problem with what Kansas is doing – the huge number of “off the books” removals, the foster-care panic in Sedgwick County, the soaring rate of removal statewide – the problem with all of that is not that it hurts parents, though of course it does. The problem is that it hurts children.

Another version of “you go with safety” is: Sure, adults may suffer if children are wrongfully removed, but we have to “err on the side of the child.” In fact, there probably is no phrase in the child welfare lexicon that has done more harm to children than “err on the side of the child.”

- When a child is 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

Kansas ignores the “evidence base”

The buzzword in child welfare lately is “evidence-based.” What that really means is: How dare proponents of any new, innovative approach to child welfare expect to get funding if they can’t dot every i and cross every t on evaluations proving the innovation’s efficacy beyond a shadow of a doubt? Old, non-innovative programs, however, are not held to this standard.

Indeed, evidence that those old, non-innovative programs are a failure is routinely ignored. Nevertheless, it was disturbing to read how casual some officials in Sedgwick County sound about throwing children into foster care.

They actually say that if a child is torn from everyone he knows and loves but is sent home in less than a week, it’s not foster care. Sedgwick County Juvenile Court Judge Jim Burgess calls throwing a child into foster care even when SRS hasn’t shown it’s necessary (because, in essence, you never know), “a no-brainer.”

Since we have no doubt that these officials would never deliberately let a child suffer, these comments suggest a disturbing lack of knowledge of the latest research on foster care.

There has long been a wealth of evidence that when children are left in their own homes and the families are given intensive support, this approach is not only more humane (and less expensive) than foster care it also is safer than foster care. A series of studies of Intensive Family Preservation Services have proven this.¹³

But the new research goes much farther. It finds that children usually are better off left in their own homes even when the family doesn’t get intensive help.

The largest and most comprehensive of these studies was released this year by a researcher at the Massachusetts Institute of Technology. He compared outcomes for 15,000 children. He excluded the extreme cases – the horror story cases in which any worker *with enough time to investigate* would agree the children should be taken from their homes. Instead he focused on the “in-between cases” the ones in which there were real problems, but some workers chose foster care and others chose to keep the family together. These are the kinds that make up the overwhelming majority of cases seen by workers for SRS and similar agencies.

The study compared outcomes for children placed in foster care and *comparably maltreated* children left in their own homes. As the children grew up:

- The children left in their own homes were less likely to become pregnant.
- The children left in their own homes were less likely to be arrested.
- The children left in their own homes were less likely to be unemployed.¹⁴

So now, when a judge or a district attorney treats removing a child from his home lightly, there are 15,000 children, who, we suspect, would like them to know they’re making a mistake.

And this is not the only such study. A University of Minnesota study, released last year, also compared children in foster care to comparably-maltreated children left with their own families who got little or no help. Once again, on average, the children left in their own homes did better.¹⁵

Still another study, of foster-care alumni, including many who had been in one of the nation’s best foster care programs, found that the alumni had twice the level of Post-Traumatic Stress Disorder of Gulf War veterans and, as young adults, only 20 percent could be said to be doing well.

This study also found that one in three of the alumni reported being abused by a foster parent or another adult in a foster home.¹⁶ The study didn’t even ask about one of the most common forms of abuse in foster care, foster children abusing each other.

But what about cases in which the parent, usually the mother, is addicted to drugs? Why bother with mothers in those cases?

The reason to “bother” is not for the sake of the parents, but, again, for their children.

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.¹⁷ For the foster children, being taken from their mothers was more toxic than the cocaine.

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

Surely, then, it would be wise for there to be a less casual attitude about throwing children into a system that churns out walking wounded four times out of five – and more respect for the “evidence base.”

In fact, it’s a no-brainer.

can be an experience akin to a kidnapping. Other children feel they must have done something terribly wrong and now they are being punished. The emotional trauma can last a lifetime.

The harm has been well-known to scholars for decades – but it is reinforced by the powerful new research summarized on page 13. We have to wonder if anyone in Kansas child welfare has read it, because anyone who has would have to wonder, for example, how throwing children into a foster care system that churns out walking wounded four times out of five is “erring on the side of the child.”

- All that harm can occur even when the foster home is a good one. The majority are. But the rate of abuse in foster care is far higher than generally realized, far higher than in the general population, and far higher than reflected in official statistics which involve agencies investigating themselves. One recent study found that one-third of foster children said they’d been abused by a foster parent or another adult in a foster home.¹⁸ (The study didn’t even ask about one of the most common forms of abuse in foster care, foster children abusing each other). Several other studies have found similarly alarming results.¹⁹

All Kansans should have been reminded of the risks of abuse in foster care by the case of Brian Edgar, the nine-year-old foster child killed by the foster parents who adopted him.²⁰ There were, in fact, plenty of warning signs that the Edgars might not be

suitable foster or adoptive parents.²¹ But with the federal government paying states a bounty for every finalized adoption over a baseline number, and with every child welfare agency aware that the one time it’s guaranteed good press is when it gets those adoption numbers up, there is a strong incentive for quick-and-dirty, slipshod placements.

Of course such cases are very rare. But cases in which birth parents allegedly torture and starve their own children are very rare as well.

But there tends to be a double standard in media and public reaction to such tragedies. When the death occurs at the hands of a birth parent, public officials often rush to scapegoat all efforts to keep families together, and media rarely question it. When the death takes place in a foster home, it is written off as an aberration, fixable with tighter licensing standards and tougher “background checks.” Almost never does anyone ask if the problem is too much foster care. (On the rare occasions that reporters *do* ask, children benefit, as is discussed later in this report.)

Switching to orphanages won’t help -- the record of institutions is even worse.²² Furthermore, the more a foster care system is overwhelmed with children who don’t need to be there, the less safe it becomes, as agencies are tempted to overcrowd foster homes and lower standards for foster parents. If a child is taken from a perfectly safe home only to be beaten, raped or killed in

foster care, how is that “erring on the side of the child”?

In every possible way, blind, unthinking allegiance to a take-the-child-and-run approach, allegiance reflected in statements that wrongly equate child safety with child removal, does children enormous harm.

- But even that isn't the worst of it. Everyone knows how badly caseworkers are overwhelmed. They often make bad decisions in both directions – leaving some children in dangerous homes, even as more children are taken from homes that are safe or could be made safe with the right kinds of services. The more that workers are overwhelmed with children who don't need to be in foster care, the less time they have to find children in real danger. So they make even more mistakes in both directions.

And that explains a terrible pattern.

It is extremely difficult to measure a child welfare system's safety by fatalities, or even extreme cases of abuse, for a reason for which we all should be grateful: Though each is a terrible tragedy, in all but the very largest jurisdictions, they are rare enough for the number to rise or fall due to random chance. But three of those very large jurisdictions, Florida, Illinois, and New York City have had foster-care panics. And in all three, the panics were followed by *increases* in child abuse fatalities.²³

So in every possible way, blind, unthinking allegiance to a take-the-child-and-run approach, allegiance reflected in statements that wrongly equate child safety with

child removal, does children enormous harm.

A few states know this, including one whose place on a list of national leaders may come as a surprise.

- Thanks to a lawsuit that led to a landmark consent decree, Alabama is rebuilding its entire child welfare system to emphasize keeping families together. Alabama takes away children at one of the lowest rates in the nation, a rate a little over half the rate of Kansas. But Alabama has cut the rate of reabuse of children left in their own homes in half, and an independent, court-appointed monitor has found that children are *safer* now than they were before the changes.²⁴ *The New York Times* was sufficiently impressed to put the Alabama reforms on the front page.²⁵

- Illinois used the Alabama model and other innovations to rebuild its system under terms of a lawsuit consent decree.²⁶ A decade ago, at any one time, more than 50,000 children were trapped in foster care in Illinois.²⁷ Today the number is under 17,000.²⁸ Illinois takes children at about one-third the rate of Kansas.²⁹ And in Illinois, as in Alabama, independent court-appointed monitors have found that, as the number of children taken away has declined, child safety has improved.³⁰

- And there has been notable progress in Missouri. After two-year-old Dominic James of Springfield was taken, needlessly, from his parents, only to be killed by his foster father, the *Springfield News-Leader* refused to settle for pat answers about how everything could be fixed with new licensing standards and background checks. Instead, the newspaper zeroed in on the fact that Missouri was taking children at a rate well above the national average, and Greene County (Springfield) was well above the state average. The newspaper even sent a reporter, photographer and editorial writer to Alabama – two years be-

fore *The New York Times* - to see what Missouri could learn.³¹

As a result, Missouri is curbing needless removal of children. Even as removals have soared in Kansas, they've declined 23 percent in Missouri. Now the two states have changed places, with Missouri taking children at a rate a little below the national average.

And most important, it was done with no compromise of child safety. Indeed, the two key indicators of safety used by the federal government both showed small improvements.³²

Why do states that rebuild to emphasize family preservation keep children safer? Because most parents who lose their children to foster care are not who most people think they are.

Contrary to the common stereotype, most parents who lose their children to foster care are neither brutally abusive nor hopelessly addicted. Far more common are cases in which a family's poverty has been confused with child "neglect." Several studies have found that 30 percent of America's foster children could be home right now if their parents just had decent housing.³³

As far back as 2003, Sedgwick County Judge Timothy Henderson was complaining about the confusion of poverty with neglect. According to the *Lawrence Journal-World*: "He cited a case involving three children who remained in foster care because their father couldn't come up with \$400 needed to pay off past-due utility bills."³⁴ The news account does not explain why the judge tolerated this.

Single parents, desperate to keep their low-wage jobs when the sitter doesn't show may have to choose between staying home and getting fired, or going to work and having their children taken on "lack of supervision" charges.

Deputy District Attorney Ron Paschal says just such cases are part of the rea-

son Sedgwick County should be able to prolong the internment of children for a week. He offered this example to the Kansas Health Institute News Service:

The deputy district attorney in charge of child abuse cases in Sedgwick County, Kansas is justifying the internment of children for more than a week ... solely because of their mother's poverty.

"Let's say police come upon a two-year-old child at night, wandering the streets. They do some investigating and they find out the child had been left with a six-year-old. Now, maybe the children were unsupervised because mom was passed out drunk or maybe she's working two jobs, doing everything she can to make ends meet - she didn't have anybody she could leave the kids with.

"If she's working, it may be that she needs (public) assistance or some parenting classes or some other form of support. Maybe the child can stay with an aunt or uncle or a grandparent while all this is being worked out? If they can, that child may not need to be in foster care."

In other words, the deputy district attorney in charge of child abuse cases in Sedgwick County, Kansas is justifying the internment of children for more than a week – and returning them afterwards not necessarily to their own homes, but sometimes to relatives – solely because of their mother's poverty.

Not only is this enormously harmful to children, it's not entirely clear if it conforms to Kansas law. Kansas law seeks to avoid confusing poverty with neglect by defining a "child in need of care" in part as a child who "is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian."³⁵

Many states have such clauses, and they are, in fact, routinely ignored. So the fact that Paschal thinks it is, nevertheless, o.k. to tear apart a family in the hypothetical he described is not unusual. Paschal is merely saying it out loud.

In fact, faced with this kind of case, a well-functioning child welfare agency would not remove a child from the home for even one minute. Rather, the caseworker would wait in the home until the mother got home from work. Then the agency would send a babysitter into the home. Or the agency could provide a one-time payment of "flex funds" to the mother to arrange for a sitter until after-hours day care could be arranged.

It is incomprehensible why, under these circumstance, Paschal would call first for institutionalizing a child for more than a week and then placing the child 24-hours-a-day with grandparents instead of simply asking those grandparents to baby-sit. Even less comprehensible is why he would think that, in addition to all her other burdens, this mother should be forced to make her way to a parenting class.

But this kind of thinking does help explain why, all over the country "service plans" for parents tend to look exactly alike; cookie cutter documents forcing everyone through a mill of counseling and parent education – because that makes the "helpers" feel more professional than performing more mundane chores like arranging day care and babysitting.³⁶

The reason to offer this kind of help is not for the sake of the mother. Rather, it should be done to spare the two-year-old and the six-year-old the enormous trauma of being torn away from their mother – and the one-in-three risk that the children, never abused in their own home, might be abused in foster care.

Other cases fall on a broad continuum between the extremes, the parents neither all victim nor all villain. What these cases have in common is the fact that there are a wide variety of proven programs that can keep these children in their own homes, and do it with a far better track record for safety than foster care. (See Appendix C).

And that includes cases in which substance abuse is an issue. (See "Kansas ignores the 'evidence base,' page 8). So even in the second scenario posed by Paschal, odds are alcohol abuse treatment for the mother would be a far better option than foster care for the children. Indeed, we suspect that if and when such cases arise in Derby or Belle Aire, SRS wisely stands back and lets the family arrange the best private treatment money can buy.

The price of panic

Kansas child welfare took a turn for the worse in 2004. After years of steady declines in entries into foster care, removals suddenly shot up again, and they've been increasing ever since.

The increase slowed in 2005, then accelerated in 2006.

We explained the dynamic of foster-care panic as far back as 1993, in *Nieman Reports*, the journal of Harvard University's Nieman Fellowship program for journalists.³⁷

It works this way: A case of horrific child abuse gets enormous media attention, as it should. But public officials respond by scapegoating efforts to keep families togeth-

er. Reporters often accept the scapegoating without question.

They then turn to the state's most prominent "child advocacy" organization – a group which usually embraces a take-the-child-and-run approach to child welfare. That group is glad to exploit the horror story as supposedly "proving" the state is doing too much to keep families together.

The reporter limits his effort to get the "other side of the story" to contacting the child welfare agency. But the agency actually has a vested interest in supporting the reporter's thesis. Rather than admit that a child died or was horrendously abused because of its own failure, the agency rushes to scapegoat some law or policy over which it has no control.

So "both sides" appear in agreement that some policy emphasizing keeping families together is to blame.

Workers become terrified of having the next such case on their caseloads so they rush to tear apart more families. That only further overloads the system. With so many more cases, workers have even less time to find children in real danger. So the panic actually increases the likelihood of another tragedy.

In recent years, in some parts of the country, news coverage has improved. Reporters have become more skeptical about these sorts of pat answers from politicians. But not, it seems, in Wichita.

The Wichita Foster Care Panic of 2006 fits the mold so perfectly it could be a case study in the nation's journalism schools.

It began with the case of two young children allegedly starved, beaten and tortured by their father and stepmother.

Sadly, the Sedgwick County District Attorney used this tragedy as an opportunity to attack all efforts to keep families together.

So on August 13, 2006, a front-page story in *The Wichita Eagle* began as follows:

*"Three weeks after police removed a pair of malnourished and bruised little girls from their Wichita home, the county's chief prosecutor has criticized the competence and purpose of the state's child protection agency. ... In balancing the goal of keeping families together with the goal of protecting children, SRS has tilted too far away from protecting children, she said."*³⁸

The issue is immediately distorted by the way it is framed. Protecting children and keeping families together are portrayed as opposites that must be "balanced." Child protection is equated with child removal. Neither is true.

In fact, for the overwhelming majority of children, real family preservation programs are not only more humane and less expensive than foster care, they also are safer than foster care.³⁹ And even when such programs are not used, the evidence is overwhelming that most children fare better when left in their own homes. (See, "Kansas ignores the 'evidence base,' page 8).

Then the reporter turns to the advocacy group, Kansas Action for Children. The group's director, Gary Brunk, promptly obliges:

*The case has definitely raised questions of whether the SRS child-protection system has moved too far toward keeping children with their families, Brunk said, and whether it has sufficient staffing to receive and assess reports of child abuse.*⁴⁰

"Raised questions" is the standard way reporters state their own thesis while maintaining a façade of objectivity. You can always tell what is going to come in for the brunt of criticism in a news story by what follows the words "raised questions."

In between, the reporter seeks the other side of the story from SRS. But SRS runs for cover:

Federal law requires that "all rea-

sonable efforts be made before recommending removal of a child from their home,"[SRS Deputy Secretary Candy] Shively said.⁴¹

In other words, says SRS: It's not *our* fault that we left those children in a dangerous home, that darned federal law made us do it.

But that is not true.

Since 1980, federal law has required "reasonable efforts" (not "*all* reasonable efforts") to keep families together. But both legislative history and guidance from the federal Department of Health and Human Services make clear that "reasonable efforts" are never to be made if it would mean a child has to stay in or return to a dangerous home – to do so would be inherently unreasonable.⁴² Furthermore, the law was never enforced.

In 1997, the reasonable efforts requirement was effectively turned into a reasonable efforts option when Congress added a series of catchall exceptions watering down the "reasonable efforts" clause to meaninglessness.

But it is, of course, in SRS' interests to claim that, if children are tortured despite repeated warnings to SRS, it's because a federal law ties their hands, rather than tell the truth: SRS screwed up.

It is, however, just what the reporter needs to "confirm" his thesis, as evidenced by the way he "questioned" District Attorney Nola Foulston.

First he tosses the softball right over the plate:

Asked how well SRS balances efforts to preserve families vs. efforts to protect children,

Then Foulston hits the reporter's version of a home run:

Foulston said: "I have often pondered this very point. The stated mission of SRS is to preserve families, and oftentimes I

believe that in so doing, more harm comes to the children.⁴³

Foulston is never asked to document her claim.

One week later, the same reporter was back with a new variation on the same theme, again scapegoating family preservation: This time, the claim was that children were being endangered because, in 2005, SRS tightened the criteria and raised the standard of proof for "substantiating" an allegation of maltreatment. That led to a significant drop in "substantiated" allegations.

There was just one problem. Paschal's theory was flat wrong.

According to the story, though SRS said the change did not compromise safety:

"others say the numbers raise questions about whether the state is missing some children who are being abused. It could mean, they say, that some endangered children are not being removed from their homes."

And, once again, the D.A.'s office was glad to oblige:

Ron Paschal, a deputy Sedgwick County district attorney who oversees child abuse cases, thinks the declining number of victims translates to fewer children being removed from homes. "So to a certain extent," he said in a written response to questions from The Eagle, "the pendulum has shifted. At times this can be in conflict with the best interests of the child."⁴⁴

There was just one problem. Paschal's theory was flat wrong.

The change took effect in state fiscal

year 2005. That year, the State of Kansas took away *more* children than the previous year. It took away still more in SFY 2006 and more again in SFY 2007.⁴⁵ And, based on data for the first half of SFY 2008, it appears there has been no let-up, either state-wide or in Sedgwick County.⁴⁶

Caseworkers often like to claim they are “damned if we do and damned if we don’t.” That’s not true. When it comes to taking away children, SRS workers are *only* damned if they *don’t*.

Of course, neither Paschal nor the *Eagle* could know what would happen in 2007 while writing a story in August 2006. But data for State Fiscal Year 2005 almost certainly were available, and data for State Fiscal Year 2006 probably were as well.

On the Thursday night before this Sunday story appeared, the *Eagle* reporter contacted NCCPR. (He knew about us because we’d contacted him after the previous week’s story.)

It was an odd conversation. The reporter appeared to want to glean statistical information concerning the decrease in substantiations without revealing his thesis. When the thesis became apparent and we began to try to address it, the reporter said he had to take an urgent phone call from the governor’s chief counsel, Matt All. The reporter promised to call back.

Figuring he would not call back (and in fact, he didn’t) we put our concerns into an e-mail. In that e-mail we urged the reporter to find out whether entries into care actually had decreased, and even explained how to frame the query to make it difficult

for SRS to evade the question.

But three days later, Paschal’s claim appeared in print unrebutted. There is no indication that the reporter tried to find the actual data.

Not long after, the governor did what governors always do in situations like this: ordered a special investigation. The investigation was conducted by Matt All.

As usual after such investigations, most of the recommendations were harmless, though one could cause serious problems. It called for more suspicion when there is a so-called “pattern of allegations” even when the allegations are false.⁴⁷ That is an open invitation to anyone who wants to harass a neighbor or a former spouse or anyone else: Call SRS often enough and you can get your enemy’s child taken away.

A more serious problem concerns what followed the issuance of All’s report; what we have come to call The Ritual Sacrifice of the Staff.

Several staff in the Wichita SRS office were disciplined over alleged failures in their handling of the case that got all the attention.

“It’s more than a reprimand,” All told the *Eagle*. “And it’s going to require specific evidence of improvement...”⁴⁸

Of course there are times when workers deserve to be disciplined. This may have been one of them. And the failures in this case deserved to be investigated. The bigger problem isn’t what the governor, All, and SRS did – it’s what they didn’t do; what agencies and governors never do:

There is no comparable concern over the wrongful removal of children.

We know of no governor ever ordering a special investigation of whether a state is taking away too many children. Similarly, in more than 30 years of following child welfare, we know of no instance in which a caseworker, supervisor or other agency staffer has been fired, demoted, suspended,

TRENDS IN ENTRIES INTO CARE AND CHILD SAFETY IN KANSAS

The table below compares the number of children officially reported as taken from their parents over the course of a year to the two key safety outcomes used by the federal government to measure child welfare system performance, reabuse of children within six months and foster-care “recidivism,” the proportion of children returned home from foster care who have to be placed in foster care again within a year.

Entry data are available both by federal fiscal year and state fiscal year. The safety indicators are available by federal fiscal year only.

In general, the rate of reabuse improved as removals declined – and continued to improve when they went up again. But if safety can be improved either way, it makes far more sense to improve child safety without exposing ever more children to the trauma of needless foster care.

Recidivism generally declined as removals declined and worsened as removals increased again.

Though re-abuse can be compared from 2000 through 2004 and from 2005 through 2007, these two sets of years can’t be compared to each other. That’s because, in 2005, Kansas raised the standard for substantiating abuse – which means the standard for when abuse has recurred also is higher. That is likely to lower the reabuse rate. Only years when the standard is the same should be compared to each other. So if people at SRS try to claim they reduced reabuse from 7.8 percent to 2.6 percent – as they probably will, it’s probably not true.

And finally, these are only officially-reported entries into care, not the many more to which SRS turns a blind eye.

Year	Entries into care FFY /SFY	%Re-abuse FFY	%Recidivism FFY
2000	3,191 / n/a	7.8	4.3
2001	2,834 / 3,071	8.3	3.1
2002	2,766 / 2,600	8.2	3.8
2003	2,677 / 2,642	7.1	3.4
2004	3,038 / 2,834	6.5	3.5
2005	3,119 / 2,981	5.4	n/a
2006	3,506 / 3,683	3.8	5.5
2007	n/a / 3,829	2.6	5.4
2008	n/a / 3,766 ESTIMATE ONLY	2.3 (through 3/08)	5.4 (through 3/08)

Sources:

Entries into care, federal fiscal year: U.S. Department of Health and Human Services, Administration for Children and Families, *Foster Care, FY 2000-FY 2005, Entries, Exits and Numbers of Children in Care on the Last Day of Each Federal Fiscal Year*, available online at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2005.htm 2006: Same source, but the data are not yet available online. NCCPR obtained them via a federal Freedom of Information Act request.

Entries into care, state fiscal year: Kansas Department of Social and Rehabilitation Services, *Reintegration Referrals and Permanencies*, available online at http://www.srskansas.org/CFS/datareports_files/refsumfy20012008.pdf **2008 estimate based on doubling actual total for first half of the year.**

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OFFICIAL RATES OF REMOVAL IN SEDGWICK COUNTY AND STATEWIDE COMPARED TO OTHER CITIES AND STATES

Comparison to children living in poverty:

Jurisdiction	Impoverished children	Entries into care/ time period	Rate-of-removal
Metro Chicago	303,300	1,400/SFY 2007	4.6
Illinois	519,000	5,004/FFY 2006	9.6
New York City	579,570	7,072/CFY 2007	12.1
Los Angeles County	652,752	11,572/yr ends 3/31/07	17.7
Alabama	245,000	3,791/FFY 2006	15.5
Missouri	246,333	5,657/FFY 2006	23.0
National Average	12,921,333	303,456/FFY 2006	23.5
Kansas 2006	122,000	3,506/FFY 2006	28.7
Kansas 2007	122,000	3,823/SFY 2007	31.3
Sedgwick County 2006	22,019	531/SFY 2006	24.1
Sedgwick County 2007	22,019	791/SFY 2007	35.9
Sedgwick County 2008	22,019	ESTIMATE ONLY: 788/SFY 2008	35.8

Comparison to total child population:

Jurisdiction	Children	Entries into care/ time period	Rate-of-removal
Metro Chicago	1,397,819	1,400/SFY 2007	1.0
Illinois	3,215,244	5,004/FFY 2006	1.6
New York City	1,940,269	7,072/CFY 2007	3.6
Los Angeles County	3,078,096	11,572/yr ends 3/31/07	3.7
Alabama	1,114,301	3,791/FFY 2006	3.4
Missouri	1,416,592	5,657/FFY 2006	4.0
National Average	73,735,562	303,456/FFY 2006	4.1
Kansas 2006	695,837	3,506/FFY 2006	5.0
Kansas 2007	695,837	3,823/SFY 2007	5.4
Sedgwick County 2006	125,835	531/SFY 2006	4.2
Sedgwick County 2007	125,835	791/SFY 2007	6.3
Sedgwick County 2008	125,835	ESTIMATE ONLY: 788/SFY 2008	6.3

The Sedgwick County and Kansas figures are, of course, for officially acknowledged placements only. Sedgwick County Deputy District Attorney Ron Paschal estimates that in 2006, 80 percent of removals ended with returning the child home or placing informally with a relative before the first court hearing. That means these placements don't appear in official figures issued by the Kansas Department of Social and Rehabilitation Services for the county or the state. *Therefore to get a sense of the real rate of removal in Sedgwick County in 2006 one must take the official figure and multiply by five.*

Sources

Entries into care:

- Illinois, Alabama, Missouri, Kansas (2006): U.S. Department of Health and Human Services, AFCARS database, obtained by NCCPR through a federal Freedom of Information Request.
- Metropolitan Chicago: State of Illinois Department of Children and Family Services, *Executive Statistical Summary*, October, 2007, available online at <http://www.state.il.us/DCFS/docs/execstat.pdf>
- Kansas (200, 20087), Sedgwick County: Kansas Department of Social and Rehabilitation Services, *Reintegration Referrals and Permanencies*, available online at: http://www.srskansas.org/CFS/datareports_files/refsumfy20012008.pdf **2008 estimate based on doubling actual total for first half of the year.**
- Los Angeles County: University of California at Berkeley, Child Welfare Resource Center, *Child Welfare Services Reports*, available online at <http://cssr.berkeley.edu/CWSCMSreports/cohorts/firstentries/>
- New York City: Mayor's Management Report, available online at: http://www.nyc.gov/html/ops/downloads/pdf/_mmr/acs.pdf

Impoverished child population:

- States: U.S. Census Bureau, *Current Population Survey, Annual Demographic Survey, 2006 Annual Social and Economic Supplement*, available online at http://pubdb3.census.gov/macro/032007/pov/new46_100125_03.htm
- Cities and counties: U.S. Census Bureau, *Small Area Income and Poverty Estimates: Estimates for 2004*, available online at: <http://www.census.gov/hhes/www/saiep/county.html>

Total child population:

- States: U.S. Census Bureau, *Annual Estimates of the Population by Sex and Age*, available online at: <http://www.census.gov/popest/states/asrh/SC-EST2006-02.html>
- New York City, metropolitan Chicago: 2000 Census via Annie E. Casey Foundation KidsCount database, www.kidscount.org/census
- Sedgwick County, Census Bureau estimate for 2005 via KidsCount, available online at http://www.kidscount.org/cgi-bin/cliiks.cgi?action=profile_results&subset=KS&areaid=87
- Los Angeles County: Estimate for 2007, based on a projection from census data by the California Department of Finance, available via KidsCount at http://www.kidscount.org/cgi-bin/cliiks.cgi?action=profile_results&subset=CA&areaid=20

reprimanded, or even slapped on the wrist for taking away too many children. All of these things have happened to workers, supervisors, even agency chiefs, when one child was left in a home and suffered horrible abuse.

Caseworkers often like to claim that they are “damned if we do and damned if we don’t.” That’s not true. When it comes to taking away children, SRS workers are *only* damned if they *don’t*.

The impact of all this – the front-page stories attacking SRS for failing to take away children, the investigation and the disciplinary action-was predictable. Indeed, in an op ed column in the *Eagle* on August 18, 2006, we predicted it: a foster-care panic.⁴⁹

The official number of Sedgwick County children torn from their parents in the last six months of 2006 was nearly 10 percent higher than during the same period the previous year.⁵⁰ It was the highest number of official entries into care for this time period since 2000. When only July through September, the three months when news coverage were most intense, are compared to the same period the previous year, the increase is 15 percent.⁵¹

And this cannot be blamed on the clarification in state law concerning how long a child can be interned – that didn’t happen until 2007.

The impact of a panic is most likely to be greatest on very short removals – cases in which workers rush to tear apart a family, but very quickly realize it was a mistake. But these are precisely the kinds of cases least likely to make it into official statistics in Sedgwick County. So the real impact of the panic may have been even greater.

We may never really know exactly how many more children who otherwise would have been left alone or who could have been helped while remaining in their own homes instead endured the trauma to the psyche of being torn from everyone lov-

ing and familiar.

And none of it was necessary to keep children safe.

There are two key indicators of child safety used by the federal government: The percentage of children known to have been abused who are abused again within six months, and foster-care recidivism, the percentage of children returned home from foster care who are removed from their homes again within one year.

It is foolish, and cruel to children, to use foster care in ever-larger doses, when Kansas also was able to improve child safety while reducing entries into care.

In recent years, one indicator, reabuse, improved. *But that same indicator also improved when entries into care were falling.*

If safety improves either way, why is it a bad idea for Kansas to take away more children? Here’s why:

Suppose a doctor can treat cancer with two drugs that are equally effective, but one has terrible, toxic side effects. Surely we all would want the doctor to choose the drug without the side effects. Kansas has shown that it can reduce reabuse while taking fewer children and while taking more children. But taking more children has terrible toxic side effects. It is foolish, and cruel to children, to use foster care in ever-larger doses, when Kansas also was able to improve child safety while reducing entries into care.

Furthermore, the second key safety indicator, foster-care recidivism largely improved as entries into care declined, but

worsened as entries increased again.⁵² This indicates that, overall, Kansas was doing a better job of improving the safety of children when it was taking away fewer of them. (For details on entry rates and safety indicators, and data sources, see the table on page 16.)

The Deputy D.A.'s revelation

The Sedgwick County Foster Care Panic of 2006 did, however, lead to one astonishing revelation. In a rebuttal to NCCPR's op ed, Ron Paschal wrote:

"...the district attorney's office reviews all cases in which children are taken into police protective custody. In collaboration with law enforcement, the Kansas Department of Social and Rehabilitation Services and other service providers, alternatives to filing child-in-need-of-care cases were found in about 80 percent of all of those cases. This means that in the overwhelming number of cases, the child was safely returned home or placed with a non-offending family member while the case was resolved."⁵³

The implications of this admission are staggering. For starters, it means that the real rate at which children are torn from their homes in Sedgwick County is five times the official rate, since those 80 percent of removals in which the child goes home before the petition is filed never appear in SRS figures on entries into care.

So while officially, SRS took away 531 Sedgwick County children in state fiscal year 2006, the real number was more like 2,665 – with 2,124 of the children removed and “thrown back” in a week or so. Data from the place where many of the children are institutionalized right after they're taken, the Wichita Children's Home, tend to support Paschal's estimate.⁵⁴

When one compares the number of children *officially* taken from their homes in

Sedgwick County to the number of impoverished children in the county, one finds that the county took away 24.1 children for every thousand impoverished children – a rate well above several other big cities.

But that's just the official figure. Add in the “off the books” removals and, if Paschal's estimate is correct, in 2006 the figure soars to 120.5 children removed for every thousand impoverished children. That is nearly seven times the rate in Los Angeles County, ten times the rate in New York City and 26 times the rate in metropolitan Chicago. In fact, it is among the three highest rates NCCPR has encountered in any state or county we have measured anywhere in the United States – and the other two counties are far smaller.

If fully 80 percent of the children taken from their parents can be returned home or sent informally to a relative within a week, that strongly suggests that most of these children never needed to be taken away in the first place.

If Paschal's estimate is correct, in 2006 Sedgwick County, Kansas was a top contender for the dubious distinction of child removal capital of America. It is a record the people who, back in the 19th Century, worked for “The Cruelty” would have envied.

We believe that the fairest way to compare rates of removal is to compare entries to the number of impoverished children in a community. That's because, while not every child taken away is poor, most are. And poverty is both the single biggest con-

tributor to actual maltreatment and is itself often confused with neglect.

Some have argued, however, that entries should be compared only to a community's total child population.

There is a land where a child can be interned in an institution for more than a week, cut off even from all communication with family for three days, and yet be an unperson to the bureaucrats who run the state child welfare agency. It is a place where holding a child in foster care for a week can be labeled a way to prevent foster care.

It isn't Oz. It's Kansas.

For an extreme "outlier" like Sedgwick County, the results are no better. In state fiscal year 2006, Sedgwick County took 4.2 children for every thousand children in the county – again, significantly worse than Los Angeles County, New York City, and metropolitan Chicago. But add in all the "off-the-books" placements – and the figure soars to 21 per thousand – the highest rate we have encountered, using this measure, anywhere in the country and more than double the rate of the worst state in the country using this measure. (For details and sources see the table on page 17.)

Even worse, as noted earlier, if fully 80 percent of the children taken from their parents can be returned home or sent informally to a relative within a week, that

strongly suggests that most of these children never needed to be taken away in the first place.

Yes, those defending this practice undoubtedly can come up with some horror story cases where it really was necessary to take away a child this way, and yet the child still could go home within a week. But for the sake of thousands of children, it's time we stopped letting advocates of a take-the-child-and-run approach use the horror story to distract us from the norm.

The norm is Paschal's own acknowledgement that he thinks it is right and proper to tear apart a family solely because a single parent had to leave young children home alone to go to work.

But instead of admitting the failure and working to correct it, too many in Sedgwick County are fighting efforts to curb the prolonged internment of children.

The battle over internment

There is a land where a child can be interned in an institution for more than a week, cut off even from all communication with family for three days, and yet be an unperson to the bureaucrats who run the state child welfare agency. It is a place where holding a child in foster care for a week can be labeled a way to prevent foster care.

It isn't Oz. It's Kansas.

In fact, the debate over efforts to curb internment sounds less like something that sprang from the pen of L. Frank Baum and more like a creation of Lewis Carroll, with an assist from Rod Serling and, especially, George Orwell.

The consequences for the state's vulnerable children are deadly serious.

Imagine for a moment that, when he was Attorney General, John Ashcroft had proposed anti-terrorism legislation with the following provisions:

Special anti-terrorism police can enter any home and search it without a war-

rant; in fact, they can do it based on no more than an anonymous tip. (Or they can simply threaten to detain anyone in the household if they are not given permission to enter.) Not only can they search the home, they can stripsearch the occupants or arrange for a doctor to do so. They can have the regular police detain any member of the household for at least 72 hours and sometimes a week or more, before they even see the inside of a courtroom. In fact, detention will probably last for the duration of the proceeding because no judge wants to look "soft on terrorism."

Those arrested under this statute get a lawyer only moments before the first hearing begins – or perhaps only after that hearing already is over, and that lawyer often is too overwhelmed to mount a real defense. And all of the trials and hearings are secret, unless the judge feels like letting the public in.

Had Ashcroft proposed such a law, it is likely that everyone from the ACLU to the Libertarian right would be furious. But what we have described is effectively the current law on child welfare in Kansas – and, with some variations, most other states.

Now that the legislature has enforced one tiny change – ensuring that the time before the first hearing does not exceed 72 hours (not including weekends and holidays) Sedgwick County judges and the district attorney's office are fighting it.

In the face of the near total absence of real checks and balances, one would hope that authorities would exercise extraordinary self-restraint. Because a child abuse investigation is not a benign act.

Having a stranger come to your door – or your school – pull you aside and ask questions about the most intimate aspects of your life can be an enormously traumatic experience for a child; and the younger the child the greater the trauma. It can leave lifelong emotional scars.

Three of the nation's leading scholars of child welfare in the 20th Century, the late Anna Freud, Joseph Goldstein and Albert J. Solnit wrote that children

*"react even to temporary infringement of parental autonomy with anxiety, diminishing trust, loosening of emotional ties, or an increasing tendency to be out of control. The younger the child and the greater his own helplessness and dependence, the stronger is his need to experience his parents as his lawgivers -- safe, reliable, all-powerful and independent. When family integrity is broken or weakened by state intrusion [the child's] needs are thwarted and his belief that his parents are omniscient and all-powerful is shaken prematurely."*⁵⁵

“[The people who make removal decisions] don’t see a child having a panic attack at 3 a.m. because he is suddenly alone in the world. Or slamming his head against a wall out of protest and desperation.”

--Former child protective services investigator

Even worse, all over the country, when the allegation is physical abuse – and, sometimes, even when it's not, the investigation often is accompanied by a stripsearch by a caseworker or a doctor looking for bruises.⁵⁶ If anyone else did that it would be sexual abuse. And if the allegation *is* sexual abuse, the medical exam can be a lot more traumatic.

And of course, the trauma is compounded, almost unimaginably, when the child is then taken away from everyone he knows and loves.

As one former caseworker has written: “[The people who make removal decisions] don’t see a child having a panic attack at 3 a.m. because he is suddenly alone in the world. Or slamming his head against a wall out of protest and desperation.”⁵⁷

It is all the more traumatic for younger children, who don’t experience time in the same way as adults. For children, it moves far more slowly.

Indeed, this principle is so important, it is enshrined in Kansas law, which says it is the one of the “policies of the state”

*to acknowledge that the time perception of a child differs from that of an adult and to dispose of all proceedings under this code without unnecessary delay.*⁵⁸

All is why many states try, though often without success, to impose limits on the power of a child welfare agency and law enforcement to remove children entirely on their own authority, without so much as phoning up a judge first.

Many state laws try to restrict this power to situations where a child is at immediate risk of serious harm. The reason for this is obvious: If the risk isn’t immediate, there’s time to find ways to eliminate the risk—or at least phone the judge.

And as Associate Dean Paul Chill of the University of Connecticut Law School has written, “courts have held that only an imminent danger to a child’s life or health can justify removal of the child without notice and a hearing first.”⁵⁹

But Kansas law is murkier. On the one hand, if SRS decides to file a petition asking the court to remove a child, it must specify that SRS tried to avoid having to remove the child or “that an emergency exists which threatens the safety of the child.”⁶⁰

And yet, for SRS to ask law enforcement to take the child *without* going to a judge first, or for law enforcement to do it

on their own, the law enforcement officer need only “reasonably believe the child will be harmed if not immediately removed. . . .”⁶¹ And the definition of harm is breathtakingly broad: Harm, according to Kansas law, means “Physical or psychological injury or damage.”⁶²

It makes no sense to think that the legislature meant there to be a lower standard for taking a child without a judge’s permission than there would be when seeking that permission first. The implication is that removal should be done only in an emergency, and only when a child’s actual safety is in danger.

But even if one reads the law more broadly, to suggest that the reasonable belief that there is the threat of any kind of immediate “harm” is grounds for removal, the law says a police officer must, in fact, have this reasonable belief before removing the child. He is not supposed to take the child, and see if there was a reason afterwards.

Once the hearing is held, the judge must decide whether to keep the child in foster care. Under Kansas law:

*The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (A)(i) the child is likely to sustain harm if not immediately removed from the home; (ii) allowing the child to remain in home is contrary to the welfare of the child; or (iii) immediate placement of the child is in the best interest of the child; and (B) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child’s home or that an emergency exists which threatens the safety to the child.*⁶³

Although this language is, unfortunately, quite broad, it does not say that the court is allowed to hold a child in foster care while SRS figures out if there was ever a need to take the child in the first place. In-

deed, the theory is that the SRS worker will have evidence that a child faces immediate harm before bringing down the enormous power of the state and tearing a child from everyone she knows and loves.

But that doesn't seem to be how it's always done in Sedgwick County.

**In a use of language only
George Orwell could love,
holding a child in foster care –
sorry, “protective custody” -
for a week is a way to keep
the child out of foster care.**

As noted above, state law says the first hearing must be held within 72 hours, not including nights and weekends. Most states schedule their hearings that quickly. Many states, in fact, require this hearing in 24 or 48 hours, and holding the hearing within 72 hours is considered “best practice,” according to the American Bar Association’s Center on Children and the Law.⁶⁴

But Sedgwick County had been “interpreting” the law differently. Through reasoning never explained in any news account, the Sedgwick County District Attorney and local judges, decided that 72 really meant 144. They interpreted the law as meaning they had 72 hours to file a petition – and then another 72 hours before the hearing. That’s six days, not including weekends and holidays.

But since it’s impossible to go six days without hitting a weekend, this really meant that a child in Sedgwick County could be interned for at least eight days without a hearing.

No other county in Kansas had been interpreting the law this way.

When the legislature closed the loo-

phole and clarified that all the other counties were right and Sedgwick County was wrong, the D.A.’s office and some of the judges threw a fit.

Their argument was that without 144 hours to investigate, more children would have to be placed in foster care. But of course the children are already *in* foster care. No, says the D.A. and the judges, that’s not foster care, that’s “protective custody.” Thus, in a use of language only George Orwell could love, holding a child in foster care – sorry, “protective custody” - for a week is a way to keep the child out of foster care.

In fact, what those favoring the 144-hour rule are saying is that, with that much time, investigators can find out whether the child really needs to be out of the home. But, of course, they were supposed to know that in the first place.

Instead, the policy in Sedgwick County is, take the child first, ask questions later.

So, according to the KHI news service:

When these investigations don't come together in three days, judges are expected to choose between the uncertainty of a sending a child home and the safety of foster care. "It's a no-brainer," [Juvenile Court Judge Jim] Burgess said. "You go with safety."

Leaving aside the fact that the story makes the same mistake as the stories in the *Eagle*, assuming foster care is safe and all risk lies in returning the child home, the judge’s interpretation raises questions (as the *Eagle* might say) about whether it is consistent with state law.

State law requires *probable cause* to support a belief there are certain specified grounds to keep the child in foster care. It does not say “hold onto the child while we figure out if there’s actually a problem.”

A D.A.'s remarkable candor

NCCPR has maintained for years that the initial court hearing after a child is taken away by caseworkers or police officers, acting entirely on their own authority, almost always is a sham.

But it was a shock when the deputy district attorney in charge of child abuse cases in Sedgwick County actually admitted as much – though only in other counties, of course.

Given the current structure of law and the lack of real representation for families, how can it be otherwise?

On one side at this hearing is an assistant district attorney who has had 72 hours to prepare a case – or, until recently in Sedgwick County, more than a week.

On the other side is an impoverished, overwhelmed birth parent. If she can't afford an attorney she won't get one until the hearing itself, and maybe not until afterwards. And then that lawyer is likely to be overwhelmed with just minutes to talk to his client. He is unlikely to have much in the way of resources to challenge SRS's case.

Presiding is a judge who knows that he can rubber-stamp hundreds of removals and, though the children may suffer terribly, he is safe. Send one child home and have something go wrong and his career may be over.

And in some cases, judges seem unaware of the harm of sundering a family. Thus, Judge Jim Burgess says that rubber-stamping a removal even when SRS hasn't provided all that much evidence to make its case is "a no-brainer."⁶⁵

So yes, everyone knows that the hearings are a sham. The surprise was when Ron Paschal, the Sedgwick County deputy district attorney in charge of the Juvenile Division, said it out loud.

Here's how it played out in a story by the Kansas Health Institute News Service.

Paschal was trying to explain why Sedgwick County should be allowed to intern a child for eight days while everywhere else in Kansas gets no more than three to five before the first court hearing. Part of the reason, he explained, is that in those other districts the hearings are a sham:

Paschal said he doubted that other judicial districts' hearings are truly held within 72 hours of a child entering police custody. "A lot of times what happens is, yeah, they'll have a hearing and the judge will say [to the parents], 'You want a hearing? OK, here, let's schedule a hearing. When can you be here?'" he said.

"That's not really a hearing" Paschal said. "It's certainly not the way it is in Sedgwick County. When we have a hearing, the evidence is presented, there will be witnesses, and you will have the opportunity to cross-examine your accusers."

How exactly this cross examination can be effective when the parent's lawyer may have just met her, Paschal doesn't say.

But then, it is almost as if Paschal realizes he may have gone a bit too far. If after all, 72-hour hearings are a sham, and if Sedgwick County must now hold its hearings in 72 hours, then...

So Paschal quickly clarifies matters. Referring to the fact that he believes Sedgwick hearings are *not* a sham, he says:

"That's the way it was when we had 144 hours and that's the way it is now," he said.

So now, Paschal is saying that all those other counties don't provide a real hearing in 72 hours – but Sedgwick does. In that case, what's the problem with holding the hearings in 72 hours? He explains:

"The only difference is the social worker doesn't have as much time to come up with an alternative" to foster care.

But, of course, the child already is *in* foster care.

But even using the judge's standard, there is no reason that changing the law to a 72 hour hearing should lead to any increase in the number of children held in foster care.

If SRS is filing away children and forgetting them, abandoning them to their fate after the 72-hour hearing, that is the fault of SRS, the district attorney's office and the judges, not the clarification in the law.

There is no question that there has been a sharp increase in officially-reported entries into care in Sedgwick County since the state law was changed. However, that alone tells us nothing. It suggests only that a lot of "off the books" entries into care are now being included in official statistics because the child is still being interned after 72 hours.

And, indeed, data from the first half of 2007 suggest that by the end of the year there will be about 1,000 "on-the-books" entries into care this year.⁶⁶ That suggests that the number of "off the books" entries will be cut from 80 percent to about 62 percent.

But this doesn't tell us what happens after one week. Many of the children still may, in fact, be going home in a week. Data from SRS suggest that others are, indeed, being held in foster care after the first hearing at a greater rate than before.⁶⁷

However, this much is certain: Even with the clarification in state law, there is no reason why the children *couldn't* still go home in a week.

Those supporting the 144-hour rule imply that somehow, after the 72 hour hearing all investigating must stop and the child must remain locked in foster care for months. We find nothing in Kansas law that would deny SRS the right to finish its investigation and go back to court a few days later to ask that the child be sent home.

If, instead, SRS is filing away children and forgetting them, abandoning them to their fate after the 72-hour hearing, that is the fault of SRS, the district attorney's office and the judges, not the clarification in the law.

What the district attorney's office and some judges are doing boils down to a threat: You'd better let us intern the children for a week, they're saying, or we'll just have to hold them a whole lot longer. That is unconscionable.

The other argument from Sedgwick County is that the rest of the state simply doesn't understand; because of the county's severe urban problems it simply can't complete its investigations within 72 hours, like everyone else.

But other cities manage. In Los Angeles County, the hearings are held within 72 hours. In Chicago, it's 48 hours. In New York City, it's 24 hours.

All of these cities take away children at rates far lower than Wichita – even when only Wichita's officially-acknowledged entries into care are counted.

And, stereotypes about America's largest cities notwithstanding, all of these communities have good records for keeping children safe. Again, using the key indicators used by the federal government, Los Angeles County has a far better track record for safety than other California counties which take, proportionately, far more children.⁶⁸ New York City has significantly reduced entries into care with no compromise of safety based on those same indicators.⁶⁹ And in Chicago, independent court-

appointed monitors have found that, as entries into care have been reduced, child safety has improved.⁷⁰

The only reason any state or county would “need” 144 hours to figure out if a child needs to stay in foster care is if it were taking away children based on little more than a whim, and then beginning the investigation only after removal.

The sad truth, however, is that moving up the hearing from 144 hours to 72 won’t matter in most cases. No matter when the hearing is held, judges are far more prone to wield rubber-stamps than gavels. Paschal actually admitted as much – before quickly adding that he was speaking only about all those other counties, not Sedgwick. (See “A D.A.’s remarkable candor, page 24.)

It would be interesting to know how often, both last year and now, a judge ever refused to hold a child in foster care when SRS and the District Attorney asked him to.

So reducing the number of children needlessly taken away, and getting those children who are needlessly taken back home, will take more significant reforms. Such reforms are suggested at the end of this report.

The most significant benefit of enforcing the 72 hour rule may be simply that it will make it harder for Kansas in general, and Sedgwick County, in particular, to hide the true number of children taken from their homes every year.

Turning foster children into unpersons

If torturing logic were a war crime, the Kansas Department of Social and Rehabilitation Services would be hauled before an international tribunal. For it is hard to imagine “logic” more tortured than that used by SRS to justify failing to report large numbers of foster care placements to the federal government.

The implications are profound. SRS’

failure could give the state an undeserved passing grade on a federal review of child welfare performance. (Flunking the review may jeopardize federal aid.) And it may breed complacency about the foster care system, understating the number of children damaged by foster care and the extent of the damage. It also may encourage similar statistics abuse by other states that have been more straightforward about facing up to their failings.

If torturing logic were a war crime, the Kansas Department of Social and Rehabilitation Services would be hauled before an international tribunal.

Every state is required to report data about its foster care system to a central federal database, the Adoption and Foster Care Analysis and Reporting System (AFCARS). These data help the federal government determine how well the system is serving America’s foster children. They help point out states that may be leaders and states that may be doing particularly poorly. And the data are used for those federal evaluations of each state, called Child and Family Services Reviews.

AFCARS has bred a plethora of regulations and a huge online policy manual. And where there are lots of regulations, there are lots of potential loopholes. Kansas may have found one.

AFCARS requires that, whenever a child is taken from his parents because of suspected abuse or neglect and kept out of the home for at least 24 hours, the state must report this as an entry into foster care.

AFCARS also requires that states

report the total number of foster care placements endured by each child. This is vitally important because the trauma of foster care is compounded when a child is forced to move repeatedly from one placement to another.

In Kansas, when a child is taken away without a court order it is done by law enforcement. Even though, in many cases, it is SRS that asked that the child be removed, the physical act of removing that child and driving him to, say, the Wichita Children's Home, is performed by a police officer.

The District Attorney then has the formal responsibility of deciding whether to file a petition to hold the child in foster care after 72 hours (formerly 144 hours in Sedgwick County), or send the child home or into the informal care of a relative.

Of course the DA's office is not acting in a vacuum. It's SRS that is investigating the case, and recommending the course of action.

But in an e-mail to NCCPR, (See Appendix A) the director of SRS' Division of Children and Family Services, Tanya Keys, claims that because the police took the child away, the child isn't in foster care under the auspices of SRS; rather, he is in the "protective custody" of law enforcement. After the 72 hour hearing, if the child is not returned home, custody is "transferred" to SRS. Only when that happens, Keys argues, is SRS required to admit that the child has been taken from the home and report this to AFCARS.⁷¹

This also has implications concerning the number of placements each child endures that are actually reported to AFCARS.

Typically, in Sedgwick County, law enforcement will place the child at the Wichita Children's Home, while SRS looks for someplace else to put that child.

If SRS can find such a place before the first night after custody is transferred, SRS pretends the child was never in the Wichita Children's Home at all.

In other words, if the court hearing takes place at 10 a.m., and the child is moved before nightfall, SRS never tells AFCARS the child was ever in the Wichita Children's Home. So if that child is then moved once more and then sent home in eight months, SRS tells AFCARS the child was in two placements. The real number, of course, was three.

The same applies to statistics offered up on the SRS website for public consumption. If Paschal's estimate that 80 percent of the time, children are sent home or placed informally with a relative before the first court hearing is correct, then four out of five removals in Sedgwick County are never listed on the SRS website, or reported to AFCARS.

Similarly, though the SRS website claims that 73.54 percent of Sedgwick County foster children were in two or fewer placements, that doesn't include any placements in which the child was moved out of WCH, or some other first placement, before that first court hearing – so the real number of children enduring only two placements may be lower. Or, ironically, since it doesn't include all those "off the books" children sent home after a placement only at WCH, the real number may be higher. (This, in fact, illustrates why this kind of attempt to determine whether a system is doing well based on average number of placements doesn't work, and the federal government should revise it.)

SRS justifies its statistical sleight-of-hand by arguing it doesn't have to count a placement until SRS has "custody."

But AFCARS regulations don't actually say that the child welfare agency had to have "custody."

Rather, ACF's online manual says that "the State is required to count a placement that lasts more than 24 hours while the child is in foster care under the *placement, care or supervision responsibility* of the State agency" [emphasis added].⁷²

Turning real children into human teddy bears

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. When 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, such as the Wichita Children's Home, 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, perhaps thousands, of Sedgwick County children have been placed, needlessly, often for a week or more, when they could be in their own homes or with loving relatives instead. And some children stay on at the shelter for 30 days or more even after the first court hearing, while waiting for placement with a family. (The WCH website says the "goal" is 30 days - the website doesn't say how often the goal is met - and 30 days is an eternity for a young child.)

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're so *homelike*." But children know the difference between "homelike" and home. They know the difference between a Potemkin Village family and a real family.

In Utah, for example, where the misuse and overuse of shelters has been much in the news, some children were allowed out of a shelter to visit a family friend who eventually would become their foster mother. But when the children had to go back, the foster mother recalled,

*They'd cry and stand at the door, saying, "We don't want to go back there." 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.*⁷³

For children trapped at the Wichita Children's Home it's even worse. The official center policy, stated on its website, in each and every "shelter" case, is to deny children all contact with their families for 72 hours. Unlike a criminal suspect, the child is denied even one phone call.⁷⁴ Supposedly this is for the protection of the child. But WCH never explains how, say, denying a toddler a supervised visit with her mother, from whom she may have been taken only because of mom's poverty, would endanger the child.

And the policy appears to contravene the spirit, if not the letter, of Kansas law. The law states that

*If a child is in the protective custody of the secretary [of SRS], the secretary shall allow at least one supervised visit between the child and the parent or parents within such time period as the child is in protective custody. The court may prohibit such supervised visit if the court determines it is not in the best interest of the child.*⁷⁵

We assume WCH evades this requirement by arguing that the children are in the custody of law enforcement, much as SRS uses a similar dodge to avoid reporting the placement in official statistics.

"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 Utah, new practice standards, adopted as part of a consent decree, eloquently explain why shelters and other “congregate care” are not really stable at all:

*Permanency, commonly identified with the meaning of 'family' or 'home' suggests not only a stable setting, but also stable caregivers and peers; continuous supportive relationships and some level of parental/caregiver commitment and affection. Because of the nature of congregate settings, with frequent turnover of caregivers, time limited stays, serial peer groups, conditional commitment and unreliable personal caring relationships; placements in congregate settings cannot be judged to achieve an acceptable permanency rating.*⁷⁶

“But 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.”⁷⁷

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.

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 such shelters in 1995, in the wake of a huge – and unnecessary - increase in the number of children taken from their parents.

But a comprehensive study of the shelters by Yale University and the Connecticut child welfare agency itself found that wasn’t true either.⁷⁸

On the contrary, 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. (As usual, in child welfare, the worse the option for children, the more it costs.)

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.*⁷⁹

But that doesn’t mean DCF, Connecticut’s equivalent of SRS, didn’t take action. DCF used to have the study up on its own website. But after the *Courant* story came out, the link to the study was removed.

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, especially for those “emergency” placements (which, as the rest of this report makes clear often aren’t really emergencies).

But good child welfare systems know better. Many such systems make little or no use of shelters at all.

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). The lawsuit led to a consent decree that puts strict limits on shelters.⁸⁰

The shortage of foster homes is, in fact, artificial, caused by taking away so many children needlessly in the first place. Keep those children in their own homes and there will be plenty of room in good foster homes – at all hours – for the children who really need to be taken from their parents.

The best systems are moving toward a model called “first placement, best placement.” By only taking children when it is genuinely the only option, and by putting a heavy emphasis on kinship care placements, these systems are more likely to have enough options to place a child in the best home to meet her or his needs the very first time – even in the middle of the night.

In contrast, it appears that needless removal of children may be a major source of children for WCH. According to the Center's FY 2006 Annual Report, their "residential" program served a total of 1,728 children, not including those placed in family foster homes, and 1,861 children were "referred" to the center by law enforcement.⁸¹

In 2006, when Sedgwick County still was waiting more than a week for the first hearing, the county took away more than 2,650 children – if Ron Paschal's estimate that 80 percent of removals are resolved before that hearing, and so don't appear in official statistics, is correct. About 2,120 of these would be "off the books" removals, most of whom probably landed at WCH. So without all those placements, most of which probably were unnecessary, WCH would be a much emptier place.

Indeed, the real reason shelters exist boils down to "if you build it, they will come." Create a place where it is easy for stressed-out workers to dump a child at all hours, and they will do just that, rather than seek out better options. As the independent monitor overseeing Utah's consent decree puts it: "'On the simplest level, if congregate shelter beds are available, staff will out of convenience use them regardless of the expense and effects on children's well-being.'"⁸²

At another point, the manual includes this question and answer:

***Question:** Under what circumstances, if any, should children in emergency care be included in the AFCARS reporting population?*

***Answer:** The reporting population includes children in emergency care, if the emergency care exceeds 24 hours, regardless of whether the placement and care responsibility or supervision is on the basis of a court order, legislation or regulation.⁸³*

When it comes to such placements in Kansas:

- It is SRS that often asks law enforcement to take custody in the first place.

- The children generally are placed in a home or institution that must be licensed by a sister agency, the Department of Health and Environment. (In the original version of this report, we erroneously said they are licensed by SRS itself. We presume, however that the two agencies work together – at least we certainly hope so.)

- SRS workers visit the child while in the facility.

- In the case of the Wichita Children's Home SRS workers even are on site to oversee the case.

- SRS develops the plan to either send the child home, place the child in informal care with a relative, find a foster

home with strangers, or keep the child in an institution.

- SRS foots the bill. SRS reimburses institutions like the Wichita Children's Home for the cost of these placements.

That sure sounds a lot like "placement, care or supervision responsibility."

Whether or not the placement "counts" to SRS, whether or not it "counts" to the Sedgwick County District Attorney's office, and whether or not it "counts" to the Administration for Children and Families, we may be sure of one thing: It counts to the child.

And whether or not the placement "counts" to SRS, whether or not it "counts" to the Sedgwick County District Attorney's office, and whether or not it "counts" to the Administration for Children and Families, we may be sure of one thing: It counts to the child.

Apparently the Kansas Legislature

thinks so, too. Because under Kansas law, it is not the police, but rather the home or institution where the child has been placed – such as a temporary foster home or the Wichita Children’s Home – that is deemed to “have physical custody and provide care and supervision for the child.”⁸⁴

We are not aware of any other state which engages in this kind of manipulation of data. And we know that states responsible for at least one-third of entries into care either can’t exchange in a similar dodge or won’t.⁸⁵ That means Kansas’ evasion has implications well beyond the state’s borders – it compromises the ability to compare state performance and the integrity of the entire AFCARS process.

In our original report, we noted that NCCPR had asked the Administration for Children and Families to investigate SRS’ practices concerning AFCARS data and determine if the agency is in violation of federal regulations. (See Appendix B). Such violations can result in a loss of federal aid, though we are not aware of a time when this actually happened. Instead, should ACF find SRS in violation, Kansas probably would be required to do no more than re-submit corrected data.

But we were not optimistic, writing in that original report that there was no guarantee that ACF would lift a finger. The agency generally prefers to keep its head down.

This was clear from our efforts to get an opinion before our original report was released in December, 2007. We described the Kansas policy in detail, and even passed on a complete copy of Tanya Keys’ explanation of the policy, with information identifying the state removed. But, in a series of e-mails, the newly installed Acting Associate

Commissioner of ACF’s Children’s Bureau at the time, Joseph Bock, and his staff kept dodging the question. Finally, Bock said he could not answer the question unless told the name of the state – and even then a response was not guaranteed.⁸⁶

We declined, both because we were concerned SRS might use the time to back away from the comments made by Tanya Keys in her e-mail to NCCPR, and because we hoped that, by not naming the state, there would be neither the reality nor the appearance of politics tainting any opinion the agency offered.

Though Bock said the refusal to provide an answer without the name of the state was his agency’s general policy, he did not respond to an e-mail request from NCCPR to provide a written copy of any such policy.

Later, after this report was issued, he declared in an e-mail: “There is no written policy - that is how I run my shop.”⁸⁷ (Bock was fond of referring to the Children’s Bureau as “my shop.”)

On December 19, after he knew the name of the state, ACF did indeed say it had no problem with the way Kansas reports its data to AFCARS. In a letter to NCCPR, Bock offered no explanation other than to claim Kansas’ interpretation is consistent with federal regulations “and our policy.”⁸⁸

On January 2, NCCPR appealed to Bock’s boss, Daniel Schneider, acting Assistant Secretary of the Department of Health and Human Services in charge of the Administration for Children and Families.

Schneider is a University of Kansas graduate who joined HHS after serving as Chief of Staff to former U.S. Rep. James Ryun, (R-Kansas).

Schneider referred the matter back to the Children’s Bureau which, by the end of January no longer was Bock’s shop. But on January 22, his replacement, Christine Calpin sent a letter essentially repeating Bock’s assertions.⁸⁹

So it seems SRS had concocted a clever scheme to exploit a loophole in federal regulations – at the expense of vulnerable children.

And it also is Calpin who will make the initial decision on whether to investigate the recent statements from Don Jordan.

The vital role of private agencies

It was disappointing to read in the *Eagle* that Youthville, the private lead agency responsible for foster care in Sedgwick County, takes no responsibility for the controversy that has so overloaded the system.

Youthville CEO Shelley Duncan told the *Eagle* editorial board that whether or not the problem is too many children being taken away is, in the *Eagle*'s words, "beside the point." Youthville's job, she suggested, is just to find places to put all those kids.⁹⁰

We are not familiar with Youthville's contract with SRS, so we don't know if, legally, that's all they have to do.

But morally, it's a form of child abandonment.

Private lead agencies sometimes like to claim they have nothing to do with issues involving the "front door" to child welfare systems. In fact, they have everything to do with it.

Since private agencies are responsible for "reintegration" – SRS' term for reunifying children once they're in foster care – and since those services usually are the same ones needed to keep a child out of foster care in the first place, agencies like Youthville are in the best possible position to control that front door.

It seems SRS has concocted a clever scheme to exploit a loophole – at the expense of vulnerable children.

Their creativity and flexibility, or lack of it, helps determine whether there will be the array of services needed to give an SRS worker an alternative to taking away a child in the middle of the night.

A lead agency can work aggressively to create an infrastructure of prevention and family preservation – thereby giving SRS workers a wide range of options short of removing a child. Or a lead agency can become mired in a take-the-child-and-run mentality and put most of its effort into substitute care.

A lead agency can invest its prevention or reintegration money primarily in "counseling" and "parent education" the cookie-cutter services that often do more to make the helpers feel good than to actually help impoverished families, or they can move that money into "hard services" like housing assistance and day care.

A lead agency can say "that's not in our contract" (if, in fact it's not) and say keeping children out of foster care is somebody else's problem, or a lead agency can say that the needless destruction of families is everybody's problem.

Lead agencies can, in fact, make or break the system.

RECOMMENDATIONS

These recommendations are in addition to the new recommendations in the update at the beginning of this report.

RECOMMENDATION 1: first and foremost, Kansas must reduce the

number of children needlessly taken from their parents – officially and unofficially.

There are a wide variety of safe, proven programs that can reduce the number of children torn from their families. These range from things as simple as rent supplements and day care assistance to Intensive Family Preservation Services to drug treatment campuses where parents can live with their children, to programs like Community Partnerships for Child Protection and Family to Family (a project of the Annie E. Casey Foundation which also funds NCCPR.)

Brief summaries of model programs and model child welfare systems can be found in NCCPR's publication, *Twelve Ways to do Child Welfare Right*, included as Appendix C and available at www.nccpr.org. We will not repeat those recommendations here. But we do offer a warning. Beware of any claim by SRS that they already have a given program. Agencies almost always make such claims. Sometimes such claims are true. But often the program is either merely a pilot project, available on a highly limited basis, or it is a mere shell of the original, including the name of the original program but not rigorously following its precepts.

RECOMMENDATION 2: The Kansas Legislature should resist any attempt to water down the 72-hour rule in order to give special treatment to Sedgwick County.

There is no evidence that the problems facing the child welfare system in Sedgwick County are any more serious than those in New York City, Chicago or Los Angeles. And it is an insult to the dedicated workers at SRS to suggest that they are somehow so much less capable than their counterparts in these other cities that they would need more than a week to determine if a child needs to remain in foster care.

Rather, the problem is that SRS is moving too quickly to take children and on-ly then seeking to determine if the removal

was necessary. Start removing children only when there is genuinely no alternative, and there will be plenty of time to complete all investigations within 72 hours.

Simply holding children in foster care in the name of avoiding "harm" is a license to confiscate the children of the poor – and do them very serious harm in the process.

The practice of interning children for more than a week without a hearing must never be allowed to return.

Fortunately, during its 2008 session, the legislature wisely resisted pressure from the Sedgwick County District Attorney's office, the county's juvenile court judges and others. The 72-hour rule remains in force with no exception for Sedgwick County. But the legislature should go further:

RECOMMENDATION 3: The time between removal and the first court hearing should be shortened to 24 hours. If New York, Florida, and several other states can do it, so can Kansas. But the hearings need to be more than a rubber-stamp process. Therefore:

RECOMMENDATION 4: A well-funded institutional provider of counsel for birth parents should be provided in every county. The provider should be funded sufficiently to ensure that lawyers have reasonable caseloads and adequate support staff, including their own social workers and investigators, so they can propose alternatives to SRS "service plans."

This is not a matter of "getting parents off." Rather, it is essential so a judge can hear all sides of the story and make a

Leveling the playing field in Washington State

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

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

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

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

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

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

The National Council of Juvenile and Family Court Judges is publicizing the results, and even the State Attorney General at the time, who had to face the better-prepared lawyers, supported the project and wanted it expanded.⁹¹ (We don't know if she still holds that view in her current job – governor.) Further information about the program is available here:

<http://www.opd.wa.gov/Parents%20Representation%20Program.htm>

decision that is truly best for the safety and well-being of the child. In Washington State, even the people whose role is equivalent to that of Ron Paschal and his staff ultimately supported such a system (See "Leveling the Playing Field in Washington State, above). In addition, to make this provision of counsel truly effective:

RECOMMENDATION 5: The institutional provider of counsel should have lawyers available 24-hours-a-day, seven-days-a-week, so that they can begin to work on a case from the moment a child is removed from the home, instead of only at or after the first hearing as is the case now.⁹²

This is, of course, all the more important if caseworkers are, in fact, being bullied into adding statements to the affidavits submitted at those first hearings that the workers don't really believe.

RECOMMENDATION 6: The Kansas Legislature should clarify the law concerning when it is permissible to take away a child without a court hearing. The

law should specify that such removals are to be considered an emergency measure, to be done only when there is probable cause to believe the child is in serious and immediate danger and there is no way to remove the danger instead of removing the child. In addition:

RECOMMENDATION 7: At the 24-hour hearing (see Recommendation 3), the standard of proof for holding the child in foster care should be raised from the current "probable cause" to "clear and convincing," the same standard SRS workers are supposed to use to substantiate maltreatment in the first place. And SRS should be required to show that returning the child home will cause serious harm.

The sad fact is, living in poverty is harmful for a child. But living in foster care is far more harmful. Therefore, simply holding children in foster care in the name of avoiding "harm" is a license to confiscate the children of the poor – and do them very serious harm in the process.

Indeed, the balance of harms is a principle that everyone in child welfare should remember at all times. Therefore:

RECOMMENDATION 8: In all places where it appears, in law, policy and regulation, the phrase “best interests of the child” should be replaced with the phrase “least detrimental alternative.”

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

But that is a phrase filled with hubris. It says we are wise enough always to know what is best and capable always of acting on what we know. In fact, those are dangerous assumptions that can lead us to try to fix what isn't broken or make worse what is.

More than thirty years ago, Albert Solnit, Joseph Goldstein, and Anna Freud, proposed an alternative phrase. They said “best interests of the child” should be replaced with “least detrimental alternative.”⁹³

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

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

RECOMMENDATION 9: Kansas needs a “truth in labeling law” for foster care. Since ACF refused to rescue the interned children of Kansas from their status as “unpersons,” the Kansas Legislature should.

The legislature should make clear that whenever any child is removed from the home by SRS or law enforcement for more

than 24 hours because of suspicions of abuse or neglect, or any other situation in which SRS would assume custody were there a court hearing, that placement is deemed to be an entry into foster care, and is to be reported as such in all state statistics and all reports to the federal government.

RECOMMENDATION 10: All court hearings in child maltreatment cases and almost all documents should be subject to a “rebuttable presumption” of openness.

Hearings should be open unless the lawyer for the parents or a lawyer representing the child can persuade the judge, by clear and convincing evidence, that opening a given hearing or record would cause serious emotional damage to a child.

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

As noted earlier in this report, the people who work for SRS are not evil. But even the best of us would have trouble coping with nearly unlimited power and no accountability. And accountability is not possible in secret.

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

An exception would be made to the presumption of openness for portions of documents that name people who reported child abuse in confidence. Though even then, if a parent claims to be a victim of harassment, that parent should be allowed to ask a judge to review the record and, if the judge agrees there has been harassment, open this record as well.

Only the lawyer for a parent and the guardian *ad litem* for a child should be allowed to request secrecy. Neither SRS nor the district attorney's office should even be allowed to *ask* for it. They have no interest

in secrecy other than as a way to cover up their failings. If secrecy is truly needed to protect a child, that's what the child's lawyer is there to ask for.

This, of course, goes much farther than existing Kansas law, which opens hearings only when the judge wants the press and public to see what's going on – which means, of course, only when the judge looks good and wants to make a point.

Similarly, records now can be opened only after a fatality or near fatality.

While that is better than nothing, it has an unintended consequence: Because, in raw numbers, more children die in their own homes than in substitute care (though proportionately, substitute care is more dangerous than the general population) this limited degree of openness reinforces the misperception that the system errs only in one direction, leaving children in dangerous homes.

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

They can tell their stories to reporters, but even if they have some limited documentation, the reporters may decline to write about the case, rather than risk the possibility that people at SRS are telling the truth when they say, as they so often do, “Oh, there's really *so* much more to it, and we *wish* we could tell you, but our hands are tied: confidentiality, you know.” This is especially true when the reporter is profoundly hostile to birth parents to begin with and wants an excuse to ignore their claims.

In fact, many journalists have found that when child welfare agencies really have a good case, they leak the information. But this veto of silence often is effective in stifling the stories of families whose children have been wrongfully taken.

At a minimum, Kansas should adopt laws like those in Arizona, New York,

Maine and Iowa which allow, but, unfortunately, do not require, child welfare agencies to provide information when a parent has come forward to say his or her child was wrongfully removed.

“Sunshine is good
for children.”

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

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

That argument fails on several counts:

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

- The most traumatic cases are likely to involve not only child protection proceedings but criminal cases as well. These hearings already are public. And when parents who feel they have been wronged file their own civil suits, trials and records in those cases are public as well. Yet we have never seen nor heard a single account of a child saying that she or he was traumatized by the fact that such a trial was public. Nor do we know of any adult coming forward years after the fact to complain of such trauma.

- At least 12 states have opened child protection proceedings to the press and the public, including Missouri which did so after the controversy over the death of Dominic James. Indeed, NCCPR recommended such openness in our report on Missouri child welfare.

Two more states let in only reporters. In every one of these states, the same fears were expressed initially as in Kansas. But a comprehensive nationwide examination by

the *Pittsburgh Post-Gazette* found that none of the problems materialized. Indeed, over and over, one-time critics became converts.⁹⁴

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

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

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

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

Once the courts were opened, reporters saw the shabby conditions families had to endure. That led to funding for repairs. It’s also helped increase pressure to raise fees paid to the lawyers who defend impoverished parents – at \$40 an hour in court and \$25 an hour out of court, they’re the second lowest in the country. Now they’re \$75 an hour – and New York City’s child welfare agency is supporting a move to create an institutional provider of counsel for birth parents, like the one suggested in Recommendation 4 above.

The head of New York City’s child welfare agency when the courts were opened, Nicholas Scopetta, said opening up the process helped him improve his agency. “We have not experienced a downside,” he said.⁹⁵

New York is not alone. In Illinois, the press has been allowed into juvenile court for more than a century, and the for-

mer head of the state’s child welfare agency, Jess McDonald, says the public should be allowed in, too. “We will only make mistakes if we are hidden in the back room,” McDonald says.

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

In Oregon, hearings in abuse and neglect cases have been open for more than 20 years. “The appearance of being treated fairly is compromised when things are done in secret,” says Oregon Circuit Judge Daniel Murphy. “People are suspicious of anything done secretly.”

But perhaps most revealing is this: Of all the states to open proceedings, not one has closed them again. For example, after three years of experimenting in 12 counties, the Minnesota Supreme Court ordered open courts in child maltreatment cases statewide.⁹⁶ Surely if the experiment had been traumatizing children, it never would have been expanded.

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

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

No state court judge in America has a better reputation for concern about the welfare of children than Judge Kaye in New York. She stands by what she said when the courts first were opened:

“Sunshine is good for children.”

Endnotes follow appendices, which begin on the following page

Appendix A

E-mail from Tanya Keys, Director, Division of Children And Family Services,
Kansas Department of Social and Rehabilitation Services.
(Ms. Keys' comments are in italics.)

From: [Tanya Keys](#)
To: rwexler@nccpr.org
Cc: [Michelle Ponce](#)
Sent: Monday, November 26, 2007 4:22 PM
Subject: Re: Some follow up questions

It was good to speak with you today. Thank you for your questions, and answers are below the question.

>>> <rwexler@nccpr.org> 11/26/2007 8:45 AM >>>

In our discussion last week concerning data on entries into care in Kansas, you explained that only law enforcement has the legal authority to remove a child from the home without obtaining court permission first. At that point, the child is deemed to be in the "protective custody" of the law enforcement agency. So for purposes of data compiled by SRS and reported to AFCARS this is not considered an entry into care until and unless legal custody is transferred to SRS.

Answer: Children in police protective custody are not in state custody, thus do not meet the federal definition of the foster care reporting population. Children in police protective custody are not reported Kansas' AFCARS federal report submission unless or until they are placed in the custody of the Secretary of SRS.

So, for example, if an SRS worker in Sedgwick County responds to a hotline call, goes to a home and believes the child must be removed immediately, she must call law enforcement to do this. Law enforcement places the child at the Wichita Children's Home. But this is not considered an entry-into-care until after the first court hearing, when SRS is given legal custody. If, before that court hearing, the SRS worker finds an alternative - she determines the child can return home or finds a relative to care for that child, for example, and the child is returned home or placed with that relative, then the child is never in SRS custody. Therefore this case is never reported to AFCARS as an entry into care.

Answer: If an SRS worker responds to report and believes law enforcement is needed to assist or respond, SRS contacts law enforcement. If a law enforcement officer believes the child will be harmed if not immediately removed, then an officer may take the child into law enforcement custody and transport the child to a designated location. In Wichita, children may be placed at the Wichita children home, however there may also be other designated locations such as emergency foster homes, etc. If, before that court hearing, safety plans or alternate arrangements are secured, the district attorney may release the child to custody of parents or other custodian. In these circumstances of a child being released from law enforcement custody, the child is not reported to AFCARS because the child was not in the custody of the state agency.

Similarly, if the child is still at the Wichita Children's Home after custody is transferred to SRS, but the child is placed in, say, a foster home by that night, the placement at the Wichita Children's Home is not counted in adding up the total number of placements for that child.

Answer: for the purposes of AFCARS, placements start at the point of state agency custody.

I have a few follow up questions:

--Under these circumstances, who pays for the placement before the first court hearing? Under the circumstances I described in Sedgwick County, for example, who pays the Wichita Children's Home for the first 72 hours? Does the law enforcement agency pay WCH? Does SRS pay these costs? Does SRS reimburse law enforcement? Or is there some other arrangement?

answer: SRS pays Wichita Children's Home for services during that time of law enforcement custody

--Do you seek IV-E reimbursement for such placements? If so, from what date do you seek such reimbursement? That is, do you seek reimbursement from the date the child is taken into protective custody by law enforcement or only for days in care following a determination at the first court hearing?

Answer: Children in law enforcement custody are not eligible for IV-E reimbursement.

(over)

--Who visits the child during those initial days at, say WCH? Is it the SRS worker or the law enforcement officer who took the child into custody or both? At one time, there was a plan to station SRS workers at WCH in order to make quicker determinations for these children. Did that happen?

answer: SRS, law enforcement and, or, family may visit that child depending on the circumstance and nature of the event that has brought the child to the WCH. SRS does have social workers located at WCH.

--Who is responsible for deciding if the child can go home or to a relative before that first hearing, SRS or law enforcement, or both? Does SRS make a recommendation to law enforcement? If so, how often are those recommendations followed? If the child is still in care at the time of that hearing, who makes the recommendation concerning where the child should go?

answer: The district attorney's has authority to release the child. Yes, SRS does provide information to the district attorney's office as needed and directed to assist the DA's office. I do not have information on how often SRS recommendations are followed. If children are placed into the custody of the Secretary of SRS, a placement decision is made based on best interest of child's needs, availability of relative and kin resources, etc.

--If, during the period before the court hearing, the SRS worker determines there is a suitable relative available, and the parents agree to place the child there without court intervention, does SRS do any ongoing supervision of the placement? Are there any rules concerning if and when a relative can return the child to the parents?

answer: SRS may offer services to the family and/ or get the family connected to community services that they feel they need. Depending on the nature of the family's circumstances and custodianship issues, there may or may not be court orders or rules regarding when a child can return to the parents. Each case may be different and such rules may have been in effect without regard or prior to law enforcement of SRS involvement.

Thank you again for your assistance.

Richard Wexler
Executive Director
National Coalition for Child Protection Reform
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Alexandria VA 22314
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Appendix B

NATIONAL COALITION FOR CHILD PROTECTION REFORM

53 Skyhill Road (Suite 202) / Alexandria, Virginia, 22314
Phone and Fax: (703) 212-2006 / e-mail: info@nccpr.org / www.nccpr.org

December 5, 2007
VIA E-MAIL AND POSTAL SERVICE

Mr. Joseph Bock
Acting Associate Commissioner,
Children's Bureau
Administration for Children and Families
U.S. Department of Health and Human Services
370 L'Enfant Promenade, S.W.
Washington, D.C. 20201

Dear Mr. Bock:

The National Coalition for Child Protection Reform requests that ACF investigate whether the State of Kansas Department of Social and Rehabilitation Services is in compliance with ACF regulations concerning the AFCARS database; specifically regulations concerning what must be reported as an "entry into care" and what must be counted in providing the total number of placements endured by a foster child.

The numbers involved are not trivial. If an estimate given by the deputy district attorney in charge of child abuse cases for the state's largest county, Sedgwick, is correct, fully 80 percent of all entries into care in that county in 2006 – more than two thousand children -- were not reported to AFCARS.

I have previously brought this matter to your attention and discussed in detail our concerns, without mentioning the specific state, for reasons I have explained previously. Rather than restate our concerns over Kansas' policy, and why we feel it is a violation of AFCARS regulations, I have included at the end of this e-mail or enclosed with the hard copy the following:

--The section of the report NCCPR released this morning on Kansas child welfare dealing specifically with this issue. The full report, which includes a brief discussion of our previous correspondence, is available at www.nccpr.org/reports/kansas.pdf

--The e-mail we received from Tanya Keys, Director of the Division of Children and Family Services at Kansas SRS, outlining agency policy.

In addition, this URL: <http://www.kslegislature.org/sessionlaws/2006/chap200.pdf> provides a link to the state statute discussed in our report.

I look forward to hearing from you.

Sincerely,

Richard Wexler
Executive Director

Appendix C

TWELVE WAYS TO DO CHILD WELFARE RIGHT Successful alternatives to taking children from their families

At the National Coalition for Child Protection Reform, we often are asked what can be done to prevent the trauma of foster care by safely keeping children with their own families. There are many options, and we've listed some below. None of the alternatives described below will work in every case or should be tried in every case. Contrary to the way advocates of placement prevention often are stereotyped, we do not believe in "family preservation at all costs" or that "every family can be saved." But these alternatives can keep many children now needlessly taken from their parents safely in their own homes. Similarly, even communities that have turned their child welfare systems into national models still have serious problems, and often much progress still needs to be made. All of the things that go wrong in the worst child welfare systems also go wrong in the best – but they go wrong less often.

1. Doing nothing. There are, in fact, cases in which the investigated family is entirely innocent and perfectly capable of taking good care of their children without any "help" from a child welfare agency. In such cases, the best thing the child protective services worker can do is apologize, shut the door, and go away.

2. Basic, concrete help. Sometimes it may take something as simple as emergency cash for a security deposit, a rent subsidy, or a place in a day care center (to avoid a "lack of supervision" charge) to keep a family together.

3. Intensive Family Preservation Services programs. The first such program, Homebuilders, in Washington State, was established in the mid-1970s. The largest replication is in Michigan, where the program is called Families First. The very term "family preservation" was invented specifically to apply to this type of program, which has a better track record for safety than foster care. The basics concerning how these programs work – and what must be included for a program to be a real "family preservation" program -- are in NCCPR Issue Papers 10 and 11. Issue Paper 11 lists studies proving the programs' effectiveness.

CONTACTS: Charlotte Booth, executive director, Homebuilders (253) 874-3630, cbooth@bsihomebuilders.org, Susan Kelly, former director, Families First (734) 547-9164, susan.kelly@cssp.org

4. The Alabama "System of Care." This is one of the most successful child welfare reforms in the country, successful enough to be featured on the front page of *The New York Times*. The reforms are the result of a consent decree growing out of a lawsuit brought by the Bazelon Center for Mental Health Law. The consent decree requires the state to rebuild its entire system from the bottom up, with an emphasis on keeping families together. The rate at which children are taken from their homes is among the lowest in the country, and re-abuse of children left in their own homes has been cut sharply. An independent monitor appointed by the court has found that children are *safer* now than before the changes.

CONTACTS: Ira Burnim, Legal Director, Bazelon Center for Mental Health Law (202) 467-5730, ext. 129. Mr. Burnim also is a member of the NCCPR Board of Directors. The Bazelon Center also has published a book about the Alabama reforms. Paul Vincent, Child Welfare Policy and Practice Group, Montgomery, Ala. (334) 264-8300. Mr. Vincent ran the child protection system in Alabama when the lawsuit was filed. He worked closely with the plaintiffs to develop and implement the reform plan. Ivor Groves, independent, court-appointed monitor, (850) 422-8900.

5. Family to Family. This is a multi-faceted program developed by the Annie E. Casey Foundation (which also helps to fund NCCPR). One element of the program, Team Decisionmaking often is confused with the entire program, which has many more elements. The program is described at the Casey website <http://www.aecf.org/Home/MajorInitiatives/Family%20to%20Family.aspx> A comprehensive outside evaluation of the program, found that it led to fewer placements, shorter placements, and less bouncing of children from foster home to foster home – with no compromise of safety. **CONTACT:** Gretchen Test, Annie E. Casey Foundation (410) 547-6600.

6. Community/Neighborhood Partnerships for Child Protection. These partnerships, overseen by the Center for the Study of Social Policy in Washington, are similar to the Family to Family projects. They mobilize formal and informal networks of helpers to prevent maltreatment and avoid needless foster care placement. Partnerships in Florida's Duval County, St. Louis, Mo. and Georgia have reduced placements and improved safety. **CONTACTS:** Marno Batterson, Center for the Study of Social Policy, (641) 792-5918, marno.batterson@cssp.org

7. The turnaround in Pittsburgh. In the mid-1990s, the child welfare system in Pittsburgh and surrounding Allegheny County, Pa. was typically mediocre, or worse. Foster care placements were soaring and those in charge insisted every one of those placements was necessary. New leadership changed all that. Since 1997, the foster care population has been cut dramatically. When children must be placed, nearly half of all placements are with relatives and siblings are kept together 82 percent of the time.

They've done it by tripling the budget for primary prevention, more than doubling the budget for family preservation, embracing innovations like Family to Family and adding elements of their own, such as housing counselors in every child welfare office so families aren't destroyed because of housing problems. And children are safer. Reabuse of children left in their own homes has declined and there has been a significant and sustained decline in child abuse fatalities. **CONTACT: Karen Blumen, Allegheny County Department of Human Services, Office of Community Relations (412) 350-5707.**

8. Reform in El Paso County, Colorado. By recognizing the crucial role of poverty in child maltreatment, El Paso County reversed steady increases in its foster care population. The number of children in foster care declined significantly – and the rate of reabuse of children left in their own homes is below the state and national averages, according to an independent evaluation by the Center for Law and Social Policy. **CONTACT: Barbara Drake, El Paso County Department of Human Services, (719) 444-5532.**

9. The Bridge Builders, Bronx, New York. Combine the giving and guidance of ten foundations with the knowledge and enthusiasm of eight community-based agencies, then partner with the child protective services agency and what do you get? A significant reduction in the number of children taken from their homes, with no compromise of safety, in a neighborhood that is among those losing more children to foster care than any others in New York City. That's the record of the Bridge Builders Initiative in the Highbridge section of The Bronx. (NCCPR has received a grant to assist the Bridge Builders with media work). **CONTACTS: Francis Ayuso, Project Director, ayusof@highbridgelife.org, (718) 681-2222; Mike Arsham, executive director, Child Welfare Organizing Project, co-chair Bridge Builders Executive Committee, mike@cwop.org, 212-348-3000.** Throughout the City, the Administration for Children's Services has made significant progress in safely keeping children in their own homes. Since 1998, even with backsliding since 2006 in the wake of highly-publicized deaths of children "known to the system," the number of children taken from their parents over the course of a year has been cut by about significantly, with no compromise of safety. Though child abuse fatalities garnered extensive media attention in 2006, such fatalities declined during the reforms – only to increase in the wake of the backsliding. Overall reabuse of children left in their own homes declined significantly when entries into foster care were reduced. **Contact: Sharman Stein, Administration for Children's Services 212-341-0999**

10. The transformation in Maine. After a little girl named Logan Marr was taken needlessly from her mother only to be killed by a foster mother who formerly worked for the child welfare agency, the people of Maine refused to settle for pat answers about background checks and licensing standards. They zeroed in on the fact that Maine had one of the highest proportions of children in the country trapped in foster care. The combination of grassroots demands for change from below and new leadership at the top led to a dramatic reduction in the number of children taken away over the course of a year. And while the state still has a long way to go in using kinship care, the proportion of children placed with relatives has more than doubled. It's all been done without compromising safety, earning the support of the state's independent child welfare ombudsman. **CONTACTS: Dean Crocker, Vice President for Programs, Maine Children's Alliance, (207) 623-1868 ext. 212, dcrocker@mekids.org; Mary Callahan, founder Maine Alliance for DHS Accountability and Reform, (207) 353-4223, marvec_98@yahoo.com**

11. Changing financial incentives. While not a program per se, making this change spurs private child welfare agencies to come up with all sorts of innovations. This is clear from the experience in Illinois. Until the late 1990s, Illinois reimbursed private child welfare agencies the way other states typically do: They were paid for each day they kept a child in foster care. Thus, agencies were rewarded for letting children languish in foster care and punished for achieving permanence.

Now those incentives have been reversed, in part because of pressure from the Illinois Branch of the ACLU, which won a lawsuit against the child welfare system. Today, private agencies in Illinois are rewarded both for adoptions (which often are conversions of kinship placements to subsidized guardianships) and for returning children safely to their own homes. They are penalized for prolonged stays in foster care. As

soon as the incentives changed, the “intractable” became tractable, the “dysfunctional” became functional, and the foster care population plummeted. And children are safer. Today, Illinois takes away children at one of the lowest rates in the country. Independent, court-appointed monitors have found that child safety has improved. **CONTACT: Ben Wolf, Illinois Branch, ACLU, (312) 201-9760, ext. 420, bwolf@aclu-il.org**

12. Due process of law. Even the best programs are no substitute for due process. That means court hearings in child welfare cases should be open. But that also means it’s urgent for accused parents to have meaningful legal representation from well-trained attorneys with low caseloads and solid support staff. It’s not a matter of getting “bad” parents off, it’s a matter of challenging case records that often are rife with error, countering cookie-cutter “service plans” that provide no services and ensuring that families get the help they need. A pilot project to provide such representation in some counties in Washington State has had such success in safely keeping families together that even the Attorney General’s office, which represents the child welfare agency in these cases, favors expanding it. **FURTHER INFORMATION AND CONTACTS are available from the Washington State Office of Public Defense at this website: <http://www.opd.wa.gov/Parents%20Representation%20Program.htm>**

Updated, January 1, 2008

ENDNOTES

- ¹ All quotations in this section are from Tim Potter, "Concerns arise over SRS files' validity," *The Wichita Eagle*, June 8, 2008.
- ² Kansas Department of Social and Rehabilitation Services, *Statewide Assessment, Child and Family Services Review*, June 1 2001, available online at http://basis.caliber.com/cwig/ws/cwmd/docs/cb_web/Blob/217.pdf?m=1&w=NATIVE%28%27DT+%3D+%27%27Statewide+assessment%27%27+and+STATE+%3D+%27%27Kansas%27%27+and+RPERIOD+%3D+%27%271st++Round+CFSR%27%27%2C%27%272nd++Round+CFSR%27%27%27%29
- ³ In Sedgwick County, these children usually are placed at the Wichita Children's Home. According to the Home's website "for the protection of the child no phone or visitation is allowed" during the first 72 hours See <http://www.wch.org/shelter.htm>
- ⁴ Paul Chill, *Burden of Proof Begone: The Pernicious Effect of Emergency Removal in Child Protective Proceedings*, 41, Fam Ct. Rev. 457 (2003).
- ⁵ NCCPR compares rates of child removal by comparing officially-reported entries into care over the course of a year to a census bureau estimate of the number of impoverished children in each state. Using that measure, during federal fiscal year 2006, the most recent for which comparative data are available Kansas took away 28.7 children for every thousand impoverished children in the state. The national average was 24.1. When compared to the total child population, Kansas took away 5.04 children per thousand, the national average was 4.12. SRS' own figure for state fiscal year 2007 show that removals increased over the previous year, so the gap between Kansas and the nation may well have widened.
- ⁶ Kansas Department of Social and Rehabilitation Services, *Reintegration Referrals and Permanencies*, available online at http://www.srskansas.org/CFS/datareports_files/refsumfy20012008.pdf
- ⁷ Tim Potter, "Reports up; fewer labeled as abuse," *Wichita Eagle*, Aug. 20, 2006.
- ⁸ *Reintegration Referrals and Permanencies*, note 5, supra.
- ⁹ *Ibid.*
- ¹⁰ See generally, Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence*, (New York: Viking Penguin, 1988).
- ¹¹ Dave Ranney, "Rule change puts more Sedgwick County children in foster care," Kansas Health Institute News Service, June 21, 2007.
- ¹² *Ibid.*
- ¹³ For a discussion of this research and citations see NCCPR Issue Papers 1 and 11 available online at http://www.nccpr.org/index_files/page0003.html and note 17, infra.
- ¹⁴ 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/~jdoyle/doyle_fosterl_march07_aer.pdf See also NCCPR's full analysis of this study at www.nccpr.org
- ¹⁵ Byron Egeland, et. al., "The impact of foster care on development" *Development and Psychopathology*, (Vol. 18, 2006, pp. 57–76).
- ¹⁶ Peter Pecora, et. al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* (Seattle: Casey Family Programs, 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
- ¹⁷ 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.
- ¹⁸ Pecora, note 16, supra.
- ¹⁹ See for example, Mary I. Benedict and Susan Zuravin, *Factors Associated with Child Maltreatment by Family Foster Care Providers* (Baltimore: Johns Hopkins University School of Hygiene and Public Health, June 30, 1992) charts, pp. 28,30.; J William Spencer and Dean D. Knudsen, "Out of Home Maltreatment: An Analysis of Risk in Various Settings for Children," *Children And Youth Services Review* Vol. 14, pp. 485-492, 1992. Affidavit of David S. Bazerman, Esq, *Ward v. Feaver*, Case# 98-7137, United States District Court, Southern District of Florida, Fort Lauderdale Division, Dec. 16, 1998, p.4; Memorandum and Order of Judge Joseph G. Howard, *L.J. v. Massinga*, Civil No. JH-84-4409, United States District Court for the District of Maryland, July 27, 1987. David Fanshel, et. al., *Foster Children in a Life Course Perspective* (New York: Columbia University Press, 1990), p.90.
- ²⁰ Dave Ranney, "A.G. clarifies foster care records policy," *Lawrence Journal-World*, November 15, 2004.
- ²¹ Mark Wiebe and Donna McGuire, "Couple charged with boy's murder have had a life of contrasts," *The Kansas City Star*, January 19, 2003.
- ²² For data on abuse in institutions see, North American Council on Adoptable Children, *There is a Better Way: Family-Based Alternatives to Institutional Care* (St. Paul, Minn: 1995) pp. 5-9, Karen Benker and James Rempel, "Inexcusable Harm: The Effect of institutionalization on Young Foster Children in New York City," *City Health Report* (New York: Public Interest Health Consortium for New York City), May, 1989. Leslie Kaufman, "Survey Backs Reputation of Danger in Group Homes," *The New York Times*, November 6, 2003. J. William Spencer and Dean D. Knudsen, "Out of Home Maltreatment: An Analysis of Risk in Various Settings for Children," *Children and Youth Services Review* Vol. 14, pp. 485-492, M. Bush, "Institutions for Dependent and Neglected Children: Therapeutic option of choice or last resort?" *American Journal of Orthopsychiatry* (50)(2), 239-255, Megan O'Matz, "Model children's home falls short of expectations," *South Florida Sun-Sentinel*, April 21, 2002, p.A1. Tim Novak and Chris Fusco, "Reports find Maryville's environment 'dangerous'" *Chicago Sun-Times*, Sept. 6, 2002, James Rainey, "Grand Jury Cites Abuses in Group Foster Homes," *Los Angeles Times*, April 9, 1997, p.A1., Tracy Weber, "Caretakers Routinely Drug Foster Children"(p.A1) and "Prescription for Tragedy" (p.A31) *Los Angeles Times*, May 17, 1998.
- ²³ Complete data on the panics and sources can be found in NCCPR Issue Paper #2, available online at http://www.nccpr.org/index_files/page0003.html and in NCCPR's fourth report on child welfare in Florida., available at: <http://www.nccpr.org/reports/priceofpanic1311.pdf> and our report on New York City, available at <http://www.nccpr.org/reports/dontturnback.pdf>

²⁴ Erik Eckholm, "Once Woeful, Alabama Is Model in Child Welfare," *The New York Times*, August 20, 2005; Ivor D. Groves, *System of Care Implementation: Performance, Outcomes, and Compliance*, March, 1996, Executive Summary, p.3.

²⁵ Ibid.

²⁶ Personal Communication, Ben Wolf, Illinois Branch, American Civil Liberties Union. Mr. Wolf brought the lawsuit that led to the reforms.

²⁷ Illinois Department of Children and Family Services, *Signs of Progress in Child Welfare Reform* (Springfield, IL: 2001).

²⁸ State of Illinois Department of Children and Family Services, *Executive Statistical Summary*, October, 2007, available online at <http://www.state.il.us/DCFS/docs/execstat.pdf>

²⁹ Ibid.

³⁰ Matthew Franck, The Pendulum, St. Louis Post-Dispatch, February 2, 2003.

³¹ Some of the March 16, 2003 *News-Leader* stories, by reporter Laura Bauer, are available online, including "Work to keep families together," <http://springfield.news-leader.com/specialreports/dominicjames/alabama031603.html> Alabama workers: To get it right, work from ground up, <http://springfield.news-leader.com/specialreports/dominicjames/workers031603.html> and "Panel of everyday people looks for trends, keeps watch on work," <http://springfield.news-leader.com/specialreports/dominicjames/quality031603.html>

³² Entries and re-entries into care, statewide, and county data before 2006: Through June 30 2005: Missouri Children's Division, *Annual Reports*, available online at: <http://www.dss.mo.gov/re/csar.htm> 2006: Missouri Children's Division *Children's Services Management Report*, April 2007, table, p. 45, available online at: <http://www.dss.mo.gov/re/pdf/csmr/0407.pdf>

Re-abuse: Personal communication, Missouri Children's Division

³³ Deborah S. Harburger with Ruth Anne White, "Reunifying Families. Cutting Costs: Housing – Child Welfare Partnerships for Permanent Supportive Housing" *Child Welfare*, Vol. LXXXIII, #5 Sept./Oct. 2004, p.501.

³⁴ Dave Ranney, "Judges slam foster care system," *Lawrence Journal-World*, October 30, 2003.

³⁵ Laws of 2006, Chapter 200, New Sec. 2, (d) 1.

³⁶ For an excellent discussion of the tendency of people in child welfare agencies to impose on families services that make the helpers feel good, rather than what the families need, see Malcolm Bush, *Families in Distress: Public Private and Civic Responses* (Berkeley: University of California Press, 1988). Writes Bush: "The recognition that the troubled family inhabits a context that is relevant to its problems suggests the possibility that the solution involves some humble tasks ... This possibility is at odds with professional status. Professional status is not necessary for humble tasks... Changing the psyche was a grand task, and while the elaboration of theories past their practical benefit would not help families in trouble, it would allow social workers to hold up their heads in the professional meeting or the academic seminar."

³⁷ Richard Wexler, "Child Abuse - the Wrong Message," *Nieman Reports*, Spring, 1993.

³⁸ Tim Potter, "DA says kids get lost in system," *The Wichita Eagle*, August 13, 2006.

³⁹ This can be seen by comparing the results of rigorous studies of intensive family preservation services to studies of foster care. Studies of IFPS include: Carol Berquist, et. al., *Evaluation of Michigan's Families First Program* (Lansing Mich: University Associates, March, 1993), Betty J. Blythe, Ph.D., Srinika Jayaratne, Ph.D, *Michigan Families First Effectiveness Study: A Summary of Findings*, Sept. 28, 1999, p.18., State of Michigan, Office of the Auditor General, *Performance Audit of the Families First of Michigan Program*, July, 1998, pp. 2-4., Mark W. Fraser, et. al., *Families in Crisis: The Impact of Intensive Family Preservation Services* (New York: Aldine De Gruyter, 1991), p.168., S. Wood, S., K. Barton, C. Schroeder, "In-Home Treatment of Abusive Families: Cost and Placement at One Year." *Psychotherapy* Vol. 25 (1988) pp. 409-14, cited in Howard Bath and David Haapala, "Family Preservation Services: What Does the Outcome Research Really Tell Us," *Social Services Review*, September, 1994, Table A1, p.400., R.S. Kirk, *Tailoring Intensive Family Preservation Services for Family Reunification Cases: Research, Evaluation and Assessment*, (www.nfnp.org/resources/articles/tailoring.html), Washington State Institute for Public Policy, *Intensive Family Preservation Programs: Program Fidelity Influences Effectiveness*, February, 2006, available online at <http://www.wsipp.wa.gov/rptfiles/06-02-3901.pdf> Studies of foster care are listed in note 19, supra.

⁴⁰ Potter, note 38, supra.

⁴¹ Ibid.

⁴² Testimony of MaryLee Allen, Director, Child Welfare and Mental Health division Children's Defense Fund, before the House Ways and Means Committee Human resources subcommittee, April 8, 1997.

⁴³ Potter, note 38, supra.

⁴⁴ Tim Potter, "Reports up: fewer labeled as abuse," *The Wichita Eagle*, Aug. 20, 2006.

⁴⁵ *Reintegration Referrals and Permanencies*, note 6, supra.

⁴⁶ Ibid.

⁴⁷ Tim Potter, "SRS Inquiry leads to reforms," *The Wichita Eagle*, September 15, 2006.

⁴⁸ Ibid.

⁴⁹ Richard Wexler, "Protect children by preserving families," *Wichita Eagle*, August 18, 2006.

⁵⁰ *Reintegration Referrals and Permanencies*, note 6, supra.

⁵¹ Ibid.

⁵² 1998-2004 Kansas Department of Social and Rehabilitation Services, *Kansas CFSR Data Profile Across Years*, available online at http://www.srskansas.org/CFS/datareports_files/CFSRdataprofileacrossyears.html 2006: *Foster Care Reentries (Federal Measure)* FY 2006, available online at http://www.srskansas.org/CFS/datareports_files/Safe&Stable/FC_Reentries.pdf 2007: *Foster Care Reentries (Federal and Contract Measure)* FY 2007, available online at http://www.srskansas.org/CFS/2007datareports/Safe&Stable/FC_ReentriesCont_FedFY07.pdf

⁵³ Ron Paschal, "D.A.'s SRS concerns are not unfounded," *The Wichita Eagle*, September 6, 2006.

⁵⁴ The Wichita Children's Home 2006 Annual Report (available online at <http://www.wch.org/images/pdf/WCH%20Annual%20Report.pdf>) states that 1,861 children were "referred" to WCH by law enforcement during state fiscal year 2006. Yet the total number of officially-reported entries into all forms of substitute care due to suspicion of abuse or neglect from all sources in Sedgwick County during that time was 452. (The figure in the body of this report is higher because it refers to calendar year 2006, which includes the foster-care panic). Of course law enforcement also refers delinquent

youth and runaways. But WCH does not appear to take delinquents. So it would take an awful lot of runaways to explain the difference in the numbers.

⁵⁵ Joseph Goldstein, Anna Freud, and Albert J. Solnit, *Beyond The Best Interests of the Child* (New York: Free Press, 1973) pp.9, 25.

⁵⁶ According to Kansas law: "When a child less than 18 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, no consent shall be required to medically examine the child to determine whether the child has been abused or neglected." Laws of 2006, Chapter 200, New Sec. 12(a).

⁵⁷ Akka Gordon, Taking Liberties, *City Limits*, Dec. 2000., cited in Chill, note 4, supra.

⁵⁸ Laws of 2006, Chapter 200, New Section 1 (b)(4).

⁵⁹ Chill, note 4, supra.

⁶⁰ Laws of 2006, Chapter 200, New Sec. 29, (E), (6).

⁶¹ Ibid, New Sec. 26 (B) (1)

⁶² Ibid, New Sec. 2 (k)

⁶³ Ibid, New Sec. 38 (i)(1)

⁶⁴ E-mail from the Center's director, Howard Davidson, Dec. 3, 2007.

⁶⁵ All quotes in this story are from Ranney, note 11, supra.

⁶⁶ There were 499 such entries from January through June 2007, the most recent data available on the SRS website.

⁶⁷ The number of children in foster care in Sedgwick County increased from 1161 on the last day of state fiscal year 2006 to 1,452 on the last day of state fiscal year 2007, (Kansas Department of Social and Rehabilitation Services, *Core Information by Judicial District*, available online at http://www.srskansas.org/CFS/2007datereports/judicialdistrictreport_FY2007.pdf But three months later, the number had increased only slightly, to 1,480) http://www.srskansas.org/CFS/Judicialdistrictreport_FY2008.pdf

⁶⁸ For details on California safety data see NCCPR's *California Rate-of-Removal Index* available online at

<http://www.nccpr.org/reports/californiaror.pdf>

⁶⁹ For details and sources see NCCPR's report on New York City child welfare, *Don't Turn Back*, available online at

<http://www.nccpr.org/reports/dontturnback.pdf>

⁷⁰ Franck, note 30, supra.

⁷¹ Personal communication from Tanya Keys, November 26, 2007.

⁷² U.S. Department of Health and Human Services, Administration for Children and Families, *Child Welfare Policy Manual*, available online at http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=110#704

⁷³ Kirsten Stewart, "Closer look at foster care," *The Salt Lake Tribune*, September 19, 2007.

⁷⁴ Wichita Children's Home website, <http://www.wch.org/shelter.htm> last visited December 1, 2007.

⁷⁵ Laws of 2006, Chapter 200, New Sec. 35(b)(2).

⁷⁶ Letter from Paul Vincent, independent court monitor for the *David C.v. Leavitt* consent decree to Duane Betournay, director Utah Division of Child and Family Services, October 3, 2007.

⁷⁷ Lindsay Patterson, "Clark County's Shelter Children in Dire Need of Homes," KLAS-TV, Las Vegas, June 8, 2006.

⁷⁸ Allen D. DeSena et. al., "SAFE Homes: Is it worth the cost?" *Child Abuse and Neglect* 29 (2005) 627-643.

⁷⁹ Colin Poiras, "Special Homes Trouble State," *Hartford Courant*, July 23, 2006.

⁸⁰ 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).

⁸¹ <http://www.wch.org/information.htm>, last visited, Dec. 1, 2007

⁸² Vincent, Note 76, supra.

⁸³ *Child Welfare Policy Manual*, note 71, supra.

⁸⁴ "Whenever a child under the age of 18 years is taken into custody by a law enforcement officer without a court order and is thereafter placed as authorized by subsection (a), the facility or person shall, upon written application of the law enforcement officer, have physical custody and provide care and supervision for the child." Kansas Statutes, Chapter 200, laws of 2006, New Sec. 27(c)

⁸⁵ We are aware of no complete list of state laws concerning time until the first court hearing. But we have found that Georgia, Florida, Michigan, New Hampshire, Oregon and New York all require the first hearing within 24 hours, so there is no way child welfare agencies can use a technicality to claim they lack responsibility for placements longer than that. California, as a matter of policy, reports all placements over 24 hours from the initial removal (Personal Communication, Prof. Barbara Needell, University of California Berkeley School of Social Work, Center for Social Services Research).

⁸⁶ Personal communication from Joseph Bock, November 29, 2007.

⁸⁷ Personal communication from Joseph Bock, December 21, 2007.

⁸⁸ Personal communication from Joseph Bock, December 19, 2007.

⁸⁹ Personal communication from Christine Calpin, January 29, 2008.

⁹⁰ Editorial, "Need for foster parents is critical," *The Wichita Eagle*, December 2, 2007.

⁹¹ Heath Foster, "Relying on good advice can reunite troubled families," *Seattle Post-Intelligencer*, February 12, 2003, p.B1.

⁹² Current Kansas law isn't entirely clear on precisely when an indigent parent gets a lawyer. The law says one shall be appointed if, "at any stage of the proceedings" the parent asks for one, but the parent does not learn her or his rights until showing up for court for the first hearing: "A parent of a child alleged or adjudged to be a child in need of care may be represented by an attorney, in connection with all proceedings under this code. At the first hearing in connection with proceedings under this code, the court shall distribute a pamphlet, designed by the court, to the parents of a child alleged or adjudged to be a child in need of care, to advise the parents of their rights in connection with all proceedings under this code." Laws of 2006, Chapter 200, New Sec. 5 (b).

⁹³ Goldstein, Freud, Solnit, Note 55, supra, p.53.

⁹⁴ All of the quotes in this section are from the *Pittsburgh Post-Gazette* series, "Open Justice," by reporter Barbara White Stack. (Sept. 23-25 2001). The series is available at <http://www.post-gazette.com/headlines/20010923opencourt0923p8.asp>

⁹⁵ Barbara White Stack, "Freedom to speak can lead to reform," *Pittsburgh Post-Gazette*, Sept. 24, 2001.

⁹⁶ Associated Press, Minnesota wire "Court orders child protection records opened to public," Dec. 27, 2001.