

THE LENGTHENING SHADOW

How Florida's continuing
foster care panic
endangers children

By Richard Wexler
Executive Director,
National Coalition for Child Protection Reform

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ABOUT NCCPR

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NATIONAL COALITION FOR CHILD PROTECTION REFORM

53 Skyhill Road (Suite 202)

Alexandria VA 22314

www.nccpr.org

Phone/Fax: (703) 212-2006

e-mail: NCCPR@AOL.COM

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A report from the National Coalition for Child Protection Reform

Overview

Amber and Michael Grubb and their children already were in mourning last March 17.

A four-week-old infant had died of sudden infant death syndrome. Sheriff's detectives had been to the house, investigated, and concluded there had been no foul play. But by law, they had to notify the Florida Department of Children and Family Services.

The *Lakeland Ledger* told the story of what happened next. Hours after the detectives left, at 3 a.m., there was a knock on the door. It was a DCF caseworker. It didn't take long for her to get to the point.

"Have you ever heard of the Kayla McKean Child Protection Act?" She asked.

There would be no investigation. The detectives' findings were ignored. The worker demanded that the Grubbs' children, five-year-old Morgan and 19-month-old Julian, be awakened so they could be seized on the spot.

If the children can't stay here, the Grubbs said, could they at least stay with a grandparent? The DCF worker said no. How about aunts and uncles? The DCF worker said no. Then the Grubbs suggested a cousin who also happens to be a licensed foster parent and former child abuse investigator married to a Sheriff's deputy. The DCF worker said no to that, too. Only tearing the children from the arms of their parents in the middle of the night and placing them with complete strangers would truly be, as DCF and similar agencies love to say, "erring on the side of the child."

Eight hours later, a judge rubber-

stamped the removal – as judges almost always do -- but agreed to move the children to relatives. Only later, after a preliminary autopsy report confirmed the Sheriff's findings, were the children finally allowed to go home.

DCF's handling of the case infuriated the Sheriff's office. "When I came into the office at 8 a.m. the next morning and heard those kids had been snatched at 3 in the morning I hit the roof," said Polk County Sheriff's Sergeant Larry Cavallaro. "There was no need to traumatize the family any more."

"What do I say when [my child] asks me, 'Mom, why did they have to take me away?'"

--Amber Grubb

The Grubb children actually were luckier than many others caught up in Florida's ongoing foster care panic. Their parents are middle class, relatively prominent in the community and could afford a private lawyer. The children were back home within a day.

But even one day was time enough to do plenty of damage. Says Amber Grubb: "What do I say when Morgan asks me, 'Mom, why did they have to take me away?'"¹

And had the Grubbs been poor their children might still be in foster care. Just ask Keith McConnico.

At least once a month McConnico

boards a bus in New York City for a 1,285 mile 24-hour trip to Lakeland. That would be hard enough for anyone. But McConnico has cerebral palsy. He can't walk without elbow crutches.

He makes the trips because that's what it takes for him to be able to see his two-year-old son, Steon. DCF took the boy away nearly two years ago. Keith McConnico was not accused of abusing his son. He is not a drug addict. Keith McConnico's only crime is to be handicapped and need some help to raise the boy. Rather than provide the help, DCF took the boy.

Unable to get assistance from the State of Florida to help him live on his own, McConnico had to move to New York to live with his mother. She's willing to take in the boy as well. And New York authorities have approved the arrangement.

“[A]s operated, the Florida foster care system is the single biggest abuser, neglecter and exploiter of children in Florida.”

--Attorney Karen Gievers

But even though a judge overruled DCF in December 1999, father and son still were not together as of last November 29. DCF says these interstate cases take time.

McConnico says, “They take away kids and ask questions later.”²

McConnico might not even have won in court if not for the very disability that cost him his child in the first place. He won based not on any child welfare statute, but because of the federal Americans with Disabilities Act.³ For families that are simply poor and homeless, there is not even that option.

Indeed, some women are forced to choose between living with an abusive husband or boyfriend, or losing their children to DCF. As *The Ledger* reported in December:

“Fearful of losing their children to state child abuse workers, many women avoid the streets by staying in abusive relationships, living with friends or leaving children with relatives.”

“There is some validity to the fear of losing their children, said Ruth Olinger of Lighthouse Ministries, and it prevents many homeless women from asking for help.”

“It's sad. They don't know what else to do to feed their children and protect them from the (foster care) system.”⁴

Morgan and Julian Grubb, Steon McConnico, and all those children in all those homeless families are among the casualties of a foster care panic that continues to destroy children in order to “save” them.

One year ago, when the National Coalition for Child Protection Reform released its first report on the Florida Foster Care Panic, *Shadow on the Sunshine State*, we said there is probably no place worse in America to be a foster child than the State of Florida. It's still true. Indeed, a class-action lawsuit filed by Attorney Karen Gievers alleges that the Florida foster care system violates the U.S. Constitution prohibition against cruel and unusual punishment.⁵ The lawsuit alleges that “as operated, the Florida foster care system is the single biggest abuser, neglecter and exploiter of children in Florida.”⁶ It is a system that, the lawsuit says, turns children into “virtual hostages.”⁷

Years of neglect brought Florida to this point. But the problems have been vastly exacerbated by the misguided policies of DCF Secretary Kathleen Kearney and the statute formerly known as the Kayla McKean Child Protection Act.

There is more than one reason for the Florida foster care crisis. But the most im-

portant reason is this: Florida takes too many children from their parents. They are taken from homes that are safe, or could be made safe with the right kind of services.

The problem is not ill will. DCF workers are not jack-booted thugs who take joy in destroying families. By and large they are dedicated, hardworking individuals doing an almost impossible job for absurdly low pay. And, as we noted last year, we have no reason to question Kearney's motives. But the road to foster care hell has been paved with Kathleen Kearney's good intentions.

As we also said last year, Kearney's approach can be boiled down to a single sentence: Take the child and run. Kearney's justification for all the pain inflicted by this approach is that it will make children safer – indeed, despite the mass of evidence to the contrary, she repeated the claim in her response to *Shadow on the Sunshine State*.⁸

But what we said then is even more apparent now:

The problem with the approach taken by Kearney and [State Sen. Anna Cowin, who sponsored the Kayla McKean law] is not that it hurts parents, though of course it does. The problem with their approach is that it hurts children.

- *It hurts children when they are subjected to emotionally devastating interrogations and stripsearches ...*

- *It hurts children when they are taken from everything loving and familiar and thrown in with strangers, never knowing if they will see their mother and father – and often brothers, sisters, grandparents, friends, teachers, and classmates -- ever again. Younger children often assume they must have done something terribly wrong, and now they are being punished.*

- *It hurts children when the emotional trauma is compounded by physical and sexual abuse in foster care itself, a*

widespread problem nationwide and one which worsens during a foster care panic.

- *And it hurts children when workers are so overwhelmed dealing with the huge increases in their caseloads that they have even less time to find children in real danger, so more such children are overlooked.*

And that is exactly what happened. Over and over again, we heard that Kearney's policies and the Kayla McKean law were necessary to save lives. Let us take away huge numbers of children, we were told, and fewer children will die. But when DCF finally released the data on child abuse fatalities for the first full year of the foster care panic, 1999, they were virtually unchanged from 1998, before Kearney took office.

All the wrongful removal of children, all the misery of children torn from loving homes, all the abuse of children in overcrowded, substandard foster care – it was all for nothing.

All the wrongful removal of children, all the misery of children torn from loving homes, all the abuse of children in overcrowded, substandard foster care – it was all for nothing.

The Florida child welfare system operates like a fire department that responds to every false alarm by breaking down the door, chopping holes in the walls, overturning the furniture and flooding the entire house. If anyone complains, the fire chief says: "We were just erring on the side of safety. You never know when there might be a real fire."

Meanwhile, across town there *is* a real fire. But the building burns to the ground, because everyone is so busy at false alarms that there's no one left to extinguish real flames.

The legislature learned at least a little bit from its mistakes, modifying some of the worst features of what was formerly the Kayla McKean law. But Kathleen Kearney still refuses to face up to the consequences of her actions. In responding to *Shadow of the Sunshine State*, she hid behind judges, arguing that their rubber-stamp approval of removals – like the removal in the Grubb case – justified her agency's actions. And she hid behind her predecessor, actually putting forward data from his administration as if it reflected her own regime.⁹

The Spreading Panic

In *Shadow on the Sunshine State* we documented the foster care panic that swept the state after Kearney took office, ripping children from their homes and overloading the foster care system.

That panic continues – indeed it has spread.

Exactly how much it has spread depends on who you ask, and when you ask them.

According to a February 22, 2001 e-mail sent to NCCPR by the DCF communications office, at the end of fiscal year 1998, the last full fiscal year before Kathleen Kearney took office, there were 10,938 children in foster care in Florida. Just before Kearney took office in January, 1999, the figure had risen to 12,680, probably because of several highly-publicized child abuse deaths during this period, including the death of Kayla McKean. By January, 2001 it was up to 14,191. Overall, that's more than a 29 percent increase in two-and-a-half years, with an 11 percent increase since

Kearney took office.

All this at a time when, nationwide, the social problems that lead to child abuse, and child abuse itself are declining, so the foster care population should, in fact, be declining, as well.

And these figures may well underestimate the true scope of the increase.

Almost exactly one year before NCCPR received these figures from the DCF Communications Office, the very same office answered the very same question – with very different figures.

In an e-mail dated February 23, 2000, the communications office claimed there were only 8,467 foster children at the end of Fiscal Year 1998, rising to 10,431 a year later. (No figure was available at that time for January, 1999).

A graph on the DCF website last year, showed that by January 2000, the figure already had risen to 13,862. The graph does not appear to be on the site at this time, but NCCPR has a hard copy.

And news accounts put the current figure at between 15,000¹⁰ and 18,000.¹¹ In other words, by these figures, the increase since the end of FY '98 is not 29 percent. It's between 75 percent and 112 percent.

Adding credence to the 15,000 figure: a DCF Senior Management Analyst says the agency has projected that the total number of children in non-relative foster care will reach at least 15,993 by June 30, 2001.¹²

These data indicate that the Florida foster care population will nearly double in the three years ending June 30, 2001. Other estimates suggest it may have more than doubled already. And for almost the entire time, Kathleen Kearney has been in charge.

But even that may be an underestimate. Last June, for example, the DCF District office for Miami-Dade and Monroe Counties told the state it had 4,000 children in foster care. Over the following five

months, it discovered 1,000 more.

In some cases workers forgot to enter the information in computers. In other cases they listed a child as living with birth parents when he was really in foster care. In still other cases, the worker listed one child and forgot his siblings.

Said attorney Gievers: "If the department doesn't know about the kids, it not only boggles the mind, it makes you say a prayer quickly that the kids who have been 'misplaced' are o.k."¹³

And all of these figures cover almost exclusively non-relative placements. As of January, 2000, according to the website data referred to above, there were another 15,327 children in the care of relatives.

Furthermore, one-day "snapshot" numbers don't account for all the children who pass through the system over the course of a year.

An indication of how many children are missed by the snapshot can be seen in figures compiled by the Center for Florida's Children. They found that statewide, in just the one year following the death of Kayla McKean in November, 1988, the number of children removed from home and placed in "emergency shelter" increased by 80 percent.¹⁴

What do these kinds of numbers mean around the state?

- In Jacksonville, dozens of children remained trapped in a psychiatric center for weeks after they could have been discharged – because there was no place for them to go. An 11-year-old boy, healthy enough to leave

after a week had to stay for more than two additional months because there was no treatment program available.¹⁵

- In Hillsborough county, one family has 12 foster children, all age 5 and under. Another has 13 children, most of them teenagers. And in another home foster parents aged 73 and 67 care for seven children – none of them more than two-years-old. Not only does that exceed guidelines for 24-hour foster care, it's even over the limit for a day care home.

The couple is loving and, many would argue, heroic. But they acknowledge that to a greater degree than they would if they had a more manageable number of children, they have to keep the children strapped in to high chairs and otherwise gently prevented from moving around the house. And they say there's usually no time to read to the children.¹⁶ Worse, they are being set up for burnout, or a tragic accident.

- Also in Hillsborough County, average caseloads for DCF workers, which already were unmanageable at 38, have increased to 49,¹⁷ and on at least 15 occasions children were forced to sleep in a DCF office.¹⁸

- In Palm Beach County, the backlog of uncompleted investigations has topped 1,000, and workers try to juggle an average of 43 cases each.¹⁹ Says the executive director of the county's Children's Services Council: "Until we start slowing the tide of kids entering foster care, the system is never going to be salvageable."²⁰

Scenes From a Courthouse

Last year, attorney Michael Dolce, Legislative Assistant to State Sen. Walter "Skip" Campbell (D-Tamarac) released a study of Florida's dependency system. The report begins with a series of vignettes from two typical days in a Florida court. All of the cases below were witnessed by Dolce or people he interviewed:

- “A child will go to bed curled up in anguish because yet another day went by, more than 30 now, in which he has not seen his mother. A court-approved case plan ... dictates that mom be at work during all of the hours that supervised visitation is offered. ...”

- “A child will awake in foster care, very excited, anxiously awaiting the arrival of her mother. She has counted the days. She may go to bed tonight weeping. Her DCF caseworker will never arrive to supervise visitation.”

- “If she could understand, a child would see her mother offered a case plan for rehabilitative services today, five months after the infant was taken from her mother. By law, these services should have been offered no later than 60 days after the department took the baby.”

- “A child’s mother will not have met her attorney, even though the attorney was appointed by the court four months ago.”

- “A child will awake in foster care, having been taken from his parents several months ago because of bruising. Today, the DCF will admit in court that they have ‘no basis to prove the source of the bruising.’”²¹

The Inside Story

Some of the most damning data come from a sample of case records from nine of the state’s districts, plus Sarasota and Manatee Counties, conducted by DCF itself, and obtained by NCCPR. (All of the data we received are included as appendix 2 to this report). The sample was done as a kind of dress rehearsal for an upcoming federal audit. The DCF official who conducted the sampling says she is confident that the samples are representative.

Among the findings from the records sampled:

- In District 10 (Broward County) there was no record that children were properly immunized in nearly one third of cases.

- In District 11 (Miami-Dade and Monroe Counties), only 23 percent of foster children got their medical checkups on time.

- In five districts, nearly half or more of foster children were placed in over-

crowded foster homes. In District 14 (Hardee, Highlands, and Polk Counties), 86 percent of the children were in overcrowded foster homes.

- In three districts, at least a quarter of the foster children were moved more than three times in just one year.

- In several districts, between one-quarter and one-third of the time there wasn’t even a complete “case plan” in the file – meaning parents could not even know what hoops they had to jump through to get their children back, and there was no way to know if children were getting the services ordered by the court. In no region – including DCF’s highly touted model privatization initiative in Sarasota -- did more than two-thirds of parents take part in preparing the plan.

And even where there is a “case plan,” it may not be worth the paper it’s printed on. Though the plans are supposed to be custom-tailored to the specific needs of

families, in fact they often are “cookie cutter” documents filled with what two DCF officials themselves called “gobbledy guck”²² prescribing “services” the parents don’t need.

Worse, there are times when the plans may include services parents can’t get to because they lack transportation – and the people drawing up and approving the plans know it. Or the plan may require both that the parents work and that all visits be supervised. But supervised visits only are available during the same hours the parents are required to work.²³ Nevertheless, the parents must jump through the hoops or lose their children forever.

- In many districts, records indicated that six-month judicial reviews of cases, required under state law, occurred less than half the time.

- The record wasn’t much better for the 12-month permanency hearings required under the so-called Adoption and Safe Families Act. Typically case records showed such hearings occurring in only about two-thirds of cases – and even then, the “12 month” hearings often weren’t actually held within 12 months. In District 14, the hearings apparently were held in fewer than a quarter of cases.

- Some of the most shocking data concerned how often DCF foster care counselors actually saw the children on their caseloads.

They’re supposed to meet with the children at least once a month. But in only two districts did that happen more than 40 percent of the time.

In District 11, monthly meetings occurred in only 23 percent of cases. In District 13 (Citrus, Hernando, Lake, Marion and Sumpter Counties) it was 21 percent. In District 12 (Flagler and Volusia Counties) it was 20 percent and in District 14, monthly meetings occurred in only five percent of cases sampled.

For meetings with birth mothers in cases where the stated goal was reunification, the record was even worse. In two districts, Manatee County and District 10, in not one sampled case did the meetings take place monthly. The same was true for meetings with fathers in Districts 12 and 13.

- Among the most important ways to cushion the blow of foster care placement is to keep siblings together. But the sampled records indicate that almost every district examined failed dismally in this regard. No district managed to keep siblings together more than 60 percent of the time, most managed it only about half the time. And the worst record was in Sarasota, where siblings were kept together in only 14 percent of the cases sampled.²⁴

In contrast, in Pittsburgh and surrounding Allegheny County, Pennsylvania, which has rebuilt its system to emphasize keeping families together, siblings are kept together 82 percent of the time (see “Getting it Right in Pittsburgh, p.21).

The Danger to Children

The emotional abuse inflicted on these children should, by now, be obvious. But the foster care panic also continues to endanger children’s physical safety.

The Gievers lawsuit charges that the Florida foster care system has “caused these children to suffer harm which is often more severe than that which caused them to be removed from the custody of their parents ... and which will leave them with long-lasting physical and emotional wounds more serious than any injuries caused by their families.”²⁵

Or, as Bernard Perlmutter, director of the Children and Youth Law Clinic at the University of Miami put it: “[The children] are worse off in foster care than they ever would be with their natural parents.”²⁶

Just days before the release of this report, DCF claimed that, as of September 2000, “only” 1.9 percent of children are abused in foster care, down from 6.5 percent in the 1999-2000 fiscal year.

But attorney Gievers says data given to her by DCF puts the figure at 9 percent.²⁷

And DCF’s own review of case records, dated August, 2000, suggests the problem actually is far worse.

When it comes to abuse in foster care there is an enormous incentive for DCF to see no evil, hear no evil, and speak no evil.

Of the seven areas providing figures, not one reported abuse in fewer than seven percent of the homes for which records were reviewed.

The review found that even in Sarasota, there was documented evidence of abuse in foster care in 12 percent of the cases. And in Miami-Dade and Monroe Counties, there was evidence that foster parents abused the children entrusted to them in nearly one-third of the records sampled.

Furthermore, in only 30 percent of these cases is there evidence that DCF made “an appropriate change in the placement” after the abuse was discovered.²⁸

This raises serious questions about the reliability of the lower figures DCF has been using.

And even the case record reviews don’t even begin to tell the story. DCF looked only for abuse by foster parents. They didn’t even ask about foster children abusing each other – a problem that is among the least reported, and a problem that increases when foster homes are over-

crowded. In Hillsborough County, for example, *The Tampa Tribune* reports that such cases have doubled.²⁹

And even these figures greatly underestimate the problem. For abuse in foster care to make it into a case record it means first that someone, often the foster child himself, must come forward and disclose the abuse – quite possibly to the very worker who placed him in that home in the first place. The worker then must investigate her own bad decision, and report her own failing to her superiors. And, of course, if abuse is substantiated, the children should be moved out of the home, but because the system is so overwhelmed with needless placements, there often is no place else for those children.

So when it comes to abuse in foster care, there is an enormous incentive for DCF to see no evil, hear no evil, and speak no evil.

One year after settling a suit against the system in Broward County, attorney Howard Talenfeld said: “We’re still seeing very significant problems, like child-on-child sexual abuse, caretaker-on-child sexual assault, scores of children who are still on the street and the fact that permanency is not being achieved for children in care.”³⁰

But don’t be surprised if Broward County soon announces that the number of cases of child-on-child sexual abuse has changed. Why? Because, according to the Ft. Lauderdale *Sun-Sentinel*, “staff is currently redefining what constitutes assault.”³¹

Last May, a Hillsborough County foster mother, Marjorie Moss, was arrested on 40 felony counts of child abuse and neglect. Allegations include punching children, locking them outside for hours with no food or water, holding their heads under hot water, and threatening them with a gun. Her husband Charles was charged with six counts of felony child neglect. They vigorously deny the charges.

The case file runs 227 pages and goes back seven years. It is replete with warnings to DCF. As is often the case, good foster parents were among the first to sound the alarm. Said one such foster parent: "This isn't something that fell through the cracks because they didn't know."

But a spokesman for the DCF district office said the Moss' were not "necessarily a bad foster family. Mrs. Moss was actually involved in training other foster parents."³²

Why would DCF show so much tolerance for alleged abuse in foster care? Reacting to another such case, a guardian ad litem in Palm Beach County said: "They can't close the homes because they have no place to put the children."³³

Indeed, the Gievers lawsuit charges that "defendants operate the foster care system with a much greater tolerance for child abuse committed by their own foster parents, group home parents, and institutional personnel ... than they show toward children neglected or abused ... by their own parents."³⁴

But even that is not the worst of it. In *Shadow on the Sunshine State*, we documented the impact of foster care panics around the country. We showed how in

each case, agency chiefs and politicians promised that massive removal of children would save lives. We documented how, instead, with the system so overwhelmed with children wrongfully taken from their parents, workers had even less time to find children in real danger and total child abuse deaths actually went up.

In one sense, Florida did better. Child abuse deaths didn't go up. But they didn't go down either. In 1998, there were either 80 or 82 child abuse fatalities, depending on which DCF source you use.³⁵ In 1999, the number was 81³⁶ – a figure well above the average for the previous five years, which was 75.4.³⁷

As noted earlier, the Florida foster care population may have nearly doubled in two-and-a-half years. That did incalculable damage to the psyches of thousands of children. It did nothing to make children safer.

The casualties continued to mount in 2000. Among them, Joshua Saccone, who died on August 13, two months before his third birthday. DCF investigators suspect that the boyfriend of Joshua's mother threw him against a wall. The boyfriend is believed to have fled the country.

DCF Workers Get Their Marching Orders

In a couple of places in this report, we have had to quote people anonymously because they feared retaliation for their candor. Why might anyone be afraid? A clue can be found in an e-mail sent to DCF employees and obtained by *Tallahassee Democrat* columnist Bill Cotterell. The topic is what all DCF employees must do if a legislator or legislative staffer dares make contact in hope of getting an honest answer. The e-mail reads in part:

"The Secretary of Children and Families fully expects notification of any meetings with legislators and/or legislative staff PRIOR to such a meeting. You are to communicate this to all staff ... and it is to be FULLY understood that if anyone is planning to attend a meeting with legislators/legislative staff or receives a call ... MY OFFICE IS TO BE NOTIFIED AT ONCE!"

Kearney has assured legislators she wasn't trying to stifle dissent."³⁸

After his death, all the usual things happened. There were front-page stories. There was a grand jury investigation. There was a state investigation. The investigations found all the usual problems. Workers who failed to follow basic procedures. Workers who failed to communicate with each other. Workers who missed the obvious until it was too late.³⁹

The Grand Jury report found that workers in District 9 (Palm Beach County) appeared in court late, unprepared or not at all, and failed to return phone calls. The grand jurors wrote that “passing the buck has become a way of life in District 9.”

But was this because of incompetent workers or an incompetent system?

The grand jury dismissed complaints about lack of resources as “crutches to validate substandard work, lack of motivation, and lack of devotion to children.”⁴⁰

But when a system is as grossly overwhelmed as Florida’s is now, even the best workers can make the mistakes that were made in the Saccone case.

Disciplinary hearings revealed workers trying to cope with twice the national standard for a manageable caseload. A lawyer for one fired worker charges that the worker was dismissed “because this child died and it looks politically good.”⁴¹

One of the paradoxes of a foster care panic is that the most dedicated worker can become a scapegoat if the workload is so overwhelming that there is no time to follow normal procedures. On the other hand, genuinely incompetent workers can hide behind the excuse that the huge caseloads make it almost impossible for anyone to do the job well.

There’s only one way to know if “lack of resources” is just an excuse: Provide the resources, and see what happens. But there never will be enough resources as long as the system is overwhelmed with

needless placements.

Whatever the truth in this case, it’s always more expedient for DCF to blame individual workers. So as always, a few of them were disciplined in this case, in an effort to persuade the public that this would actually make a difference. In fact, the only difference it is likely to make is to scare workers in Palm Beach County into making still more wrongful removals of children from safe homes.

“Prevention programs aren’t popular with DCF officials, despite mountains of data that document how poorly children fare under the current system. When DCF starts creating and financing programs that keep children out of foster care, it will need fewer foster parents and have more resources to spend on training and helping those foster parents who are needed.”

--Ed Horton
Former DCF Regional Director

Certainly that is likely to be the result of the district’s decision to fire everyone remotely connected with the case, and then reinstate those found innocent after investigation and/or appeals hearings. As the acting district administrator at the time put it “For safety reasons we wanted to get anybody out of the office who may have touched this case.”⁴²

The two real lessons of the Saccone

case have been largely ignored.

First, there's been a huge effort to sell Floridians on the notion that turning over investigations to law enforcement is a panacea. But in the Saccone case, mistakes apparently were made both by investigators in Palm Beach County, where investigations are conducted by DCF, and in Broward County, where they now are conducted by the Sheriff's office.

"I don't dare say 'reunification' in [Kearney's] presence."

--A DCF official

And no wonder. When the job was transferred, the impossible workloads were transferred as well. As of July, 2000, the Broward County Sheriff had a backlog of 3,300 uncompleted investigations.⁴³ Apparently, overwhelmed workers who work for the Sheriff behave like overwhelmed workers who work for DCF.

The second overlooked lesson concerns the placement that might have saved Joshua's life. One of the reports alleging that Joshua was abused was filed by his father, by all accounts a man who loved Joshua deeply and took very good care of him when mother and father were married and living together. After that report was substantiated, Joshua went to live with his father. All went well until the father lost his job. Unable to care for Joshua full time, the father sent him back to his mother, having been promised, falsely, that the boyfriend was out of the picture.⁴⁴

Had DCF operated under a philosophy of helping troubled families stay together, Joshua's father might have gotten the help he needed to keep Joshua – and he might have kept Joshua alive.

Indeed, more than six months before

Joshua's death, a former DCF Regional Director for Palm Beach County, Ed Horton, called for such a change in approach. In the *Palm Beach Post*, Horton wrote:

*"Prevention programs aren't popular with DCF officials, despite mountains of data that document how poorly children fare under the current system. When DCF starts creating and financing programs that keep children out of foster care, it will need fewer foster parents and have more resources to spend on training and helping those foster parents who are needed."*⁴⁵

Eight months before he wrote those words, Horton was fired by Kathleen Kearney.

Overintervention /s The Problem

There is little dispute over the fact that Florida's foster care system is a national disgrace, and little dispute over the fact that it does enormous harm to children. But DCF remains in denial when it comes to the fundamental cause of the problem: Overintervention into the lives of innocent families and families where the problems could be solved without resort to tearing away the children.

The only way to fix foster care is to have less of it. Only when DCF abandons its take-the-child-and-run mentality, will there be sufficient resources to make foster care a safe, humane short-term solution for the children who really are in danger in their own homes, and really must be removed from their parents.

The problem begins at the state's child abuse hotline. The hotline was swamped with 180,000 calls in 2000, 59,000 more calls than the year before. That's partly because of the general atmosphere of hysteria caused by the policies and pronouncements coming from DCF. It's also a

function of what was formerly the Kayla McKean law.

That law toughened penalties against certain professionals known as “mandated reporters,” who fail to report even a suspicion of maltreatment. So now, terrified mandated reporters are more likely to send in reports even when they don’t really believe there was maltreatment at all.

The law also says that reports from doctors, teachers and other school officials can’t be screened out by the hotline. Every one of these reports, no matter how absurd, must be passed on to the regions for a full-scale investigation.

And even where hotline workers have discretion, they are afraid to use it. As a result, 95 percent of all reports are passed on for investigation.

But according to a state-mandated study of the hotline, at least 35 percent of those calls should have been screened out. As a result, the study concludes, workers have less time for each investigation, increasing the likelihood that serious abuse will be missed.

“The hotline is supposed to be a gate,” the researcher who conducted the study said. “They’ve got the gate rusted, stuck open.” As a result, cases pile up, creating a backlog of uncompleted investigations.

“I equate that to the game of playing Russian roulette. It’s just a matter of time before some child in the backlog pool is really badly injured.”⁴⁶

The conclusions are all the more remarkable considering the source. The researcher is Richard Gelles of the University of Pennsylvania, one of the foremost national advocates of taking away more children from their parents. If even Gelles thinks that 35 percent of the hotline calls should have been rejected, the real figure probably is far higher.

The same mentality that grips the hotline, grips the investigators.

And that mentality is imposed from the top. As one DCF official put it: “I don’t dare say ‘reunification’ in [Kearney’s] presence.”

The View from the Frontlines

After *Shadow on the Sunshine State* was published, the National Coalition for Child Protection Reform was contacted by many people inside and outside the Florida child welfare system. One was a longtime child abuse “protective investigator” or P.I. This is some of what the investigator said. The investigator asked to remain anonymous for fear of retaliation by DCF.

“There is no such thing as ‘reasonable efforts’ [to keep children out of foster care]. When we write shelter petitions after detaining a child [to get a judge to approve the removal of a child from the home] we usually just put on the petition that the level of abuse was too severe or the risk was deemed too high to offer services. These comments usually are never questioned by judges or defense lawyers for some reason. It’s very easy to remove a kid, but it’s very difficult to close a case. ... We are rewarded for removing kids, not for assisting family preservation. ...

“If you remove a child you must have a shelter hearing within 24 hours. This hearing is the most crucial because this is where most arguments are raised, with the exception of the trial. The Department has a real advantage: The P.I. has prepared the report the night before or morning before, and many P.I.’s exaggerate the allegations in order to get [protective custody]. Then the defense attorney receives this shelter petition minutes before the hearing and is not adequately prepared to represent his client.”

In *Shadow on the Sunshine State*, we cited the conclusions of Dr. Ivor Groves, one of the nation’s leading authorities on child welfare, and the court-appointed monitor of the nation’s most successful child welfare reform, in Alabama, after he studied the system in Broward County. He offered his expert opinion for plaintiffs who sued over conditions in Broward foster care.

Among his conclusions:

“Children are likely entering care when family preservation could be achieved if more time was available to work with the family carefully to address the issues that actually create a safety risk to the child...Children are staying in the custody of the department longer than necessary because of lack of options for permanent placement, lack of sufficiently intensive reunification efforts resulting from high caseloads and lack of enough options for timely and intensive in-home services.”⁴⁷

Groves is not alone. Guardians ad litem, who in Florida are volunteers, assigned to try to determine the best interests of children and make recommendations, tend to give DCF the benefit of the doubt when the agency takes away children. But a source in one Florida GAL program, who asked to remain anonymous for fear of DCF retaliation, says that in her region "children are [taken away] for virtually any reason. There is an attitude of 'let someone else decide' (i.e. the court) and then you won't be

fired. Of course that means a child's life is disrupted, but that seems to mean little or nothing to the department."

The GALs acknowledge that their views are subjective, as are those of DCF workers. But after reviewing their work on 475 cases, the conservative estimate of GALs in this region is that 20 percent of the children DCF wanted to take away did not need to be removed from their homes.⁴⁸

And one of Kearney’s own regional directors has gone even further. Shortly after the first edition of *Shadow on the Sunshine State* was published, Phyllis Scott, the regional director in Broward County, estimated that 35 percent of the children in foster care in that county could have remained safely in their own homes had the right services been available.⁴⁹

Still another indication of the extent of wrongful removal comes from Florida’s participation in a federal Department of Housing and Urban Development program to provide Section 8 rental assistance specifically for families where “lack of adequate housing is a primary cause of the separation or imminent separation of a child or children from their families.”⁵⁰

In 1999, the most recent year for which data were available, Brevard County, Hialeah, Miami-Dade, Pasco County and Tampa received a total of \$3,702,937 in aid to provide 500 Section 8 vouchers for such families.⁵¹ While it is to these communities’ credit that they sought out this help, either they misled HUD in their grant applications,

or DCF does indeed tear apart families when the primary reason for the separation is simply lack of adequate housing.

Sometimes DCF goes out of its way to set up extra barriers. A grandmother testified at a public meeting that her grandchild was ready to return home and the parents were ready for the child. But DCF said no, until the parents could rent a three-bedroom house. And on top of that, DCF was requiring the parents to send the agency \$200 a week to repay “public benefits” the family had received. As the grandmother explained, as long as they had to pay DCF \$200 a month, the parents could never afford to rent a three-bedroom house. What DCF was doing amounts to a legal form of holding children for ransom.⁵²

Extended Hostility

DCF’s ingrained hostility to parents extends to extended families. Grandparents and other relatives who step in to care for children in order keep them out of foster care with strangers often are met not with gratitude but with contempt.

Such relative caregivers are treated as second-class citizens from the moment they step forward. Though they can’t qualify for aid under Florida’s Relatives as Caregivers program unless a court formally judges the children dependent and awards custody to the relatives, and though they must undergo often intrusive, belittling home studies, they receive far less financial aid than strangers would get for becoming foster parents to the same children. And the aid may result in loss of food stamps, reducing its value still further for the many relatives who are poor – an issue that doesn’t arise when children are placed with middle-class strangers.

Last summer the Kinship Support Center at Nova Southeastern University Law

School issued a report on a series of town meetings, where relatives told of the hardship they endured in order to step in and care for children.

Relatives told of DCF workers who were ignorant of the Relatives as Caregivers program and indifferent, or actually hostile, to their plight. They spoke of the bureaucratic maze they had to navigate to get even the meager benefits available under the program.

A grandmother said: “I cannot buy clothing for [my grandchild]. My refrigerator broke. My washing machine broke. I have nothing for special lessons for him. We never go to a movie or the community center to buy ice cream. ... How do you raise a child when you have less than nothing?”

“One grandmother, raising four grandchildren...testified that she had a nervous breakdown, had to stop work and go on disability. Another woman raising a special needs nephew said the child was such a problem in school that she couldn’t hold a job. Another relative had to close down her paralegal business and her husband had to take a second job in order to care for her four cousins in addition to her own three children.”

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center to buy ice cream. ... How do you raise a child when you have less than nothing?"

Said another grandmother: "I had to go begging after they brought me the children."

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

When still another grandmother who wanted custody of her grandchild appeared in court only to see the child handed over to strangers, DCF told her to just forget that her granddaughter ever existed.⁵³

The hostility from DCF is not all that surprising. It suggests a common, though largely unspoken, prejudice against extended families: If grandma raised the child who neglected the grandchild, it is believed, then there must be something wrong with grandma, and grandpa, and all the other relatives in the family.

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

relative caregivers, the answer from DCF apparently is yes.

The prejudice against extended families is contradicted by the evidence. The most extensive effort to track the success of relative placements is in Illinois. That state has found less abuse in placements with relatives than in placements with strangers.⁵⁴

It is a prejudice that can have fatal consequences.

Florida is not the only state mired in a foster care panic. The take-the-child-and-run approach has been dogma in Connecticut for even longer – since the death of a child "known to the system" in 1995.

That state's child welfare agency, also called the Department of Children and Families, placed three-year-old Alex Boucher with an aunt and uncle in Maine. But Alex had serious medical problems and when the relatives became overwhelmed and begged for help to care for the boy, Connecticut DCF refused. "They fought me tooth and nail when I tried to get services for this kid," said the aunt. "They didn't want to pay for it."

Instead Connecticut workers went on a mad rush to place Alex for adoption with a New Port Richey couple that was not licensed to be foster parents. The agency bent or broke rules to make the placement, relying on a glowing report from a private agency in Florida.

Just five days after arriving in Florida, Alex Boucher was dead. Police allege that the father who was on the fast track to adopt Alex, Jim Curtis, confessed to wrapping the little boy in a blanket so tightly that the child couldn't free himself when he choked on his own vomit.

Had Connecticut not been in such a mad rush to ignore relatives as a resource, they might have known better than to place Alex with Jim Curtis. As the *Hartford Courant* reported:

“Jim Curtis had a rather dubious background that included a recent eviction from an apartment for repeatedly fighting with other tenants and a first-degree misdemeanor charge for allegedly threatening a group of children under the age of 18 with a gun on June 26.

“The glowing recommendation from the private Florida agency has turned out to be less than reliable, as well.

“Although a foster care recruiter for the Children's Home Society wrote to Con-

nnecticut DCF workers on Aug. 28 saying the Curtises would make "excellent adoptive parents for this or any other child placed in their home," others who have met the Curtises and visited their home are baffled about the recommendation.

“Jackie Pehote, a corporal with the New Port Richey police department and the main investigating officer in Alex's death, says she wouldn't 'let a dog live in that apartment.’”⁵⁵

The Law Formerly Named for Kayla

In *Shadow on the Sunshine State*, we said that “it profanes the memory of Kayla McKean to have her name on a law that has hurt so many children.”

Her name isn't on the law anymore. It's no longer the Kayla McKean Child Protection Act. That's because Kayla McKean's grandfather declined to play the assigned role for grieving relatives: A knee-jerk demand to “crack down on child abuse.” Instead, he realized that the law onto which legislators slapped his daughter's name was doing more harm than good. He demanded that Kayla's name be removed, and the legislature complied.

Unfortunately, legislators didn't do much more than that.

The legislature did modify one of the most onerous provisions in the law. The law originally required a so-called “medical evaluation” of the child for almost every category of maltreatment. “Medical evaluation” is a euphemism for a stripsearch. The stripsearches were required not only in cases in which a DCF worker, after investigating, believed there was genuine cause to suspect physical or sexual abuse. It also was required for physical and even emotional neglect.

And it didn't matter if the DCF worker herself found no evidence of maltreatment and believed the allegation to be patently false. The stripsearch had to be performed anyway. The child did not even necessarily get the comfort of having this traumatic examination performed by the family doctor. In many cases only members of specified “child protection teams” could conduct stripsearches.⁵⁶

The law has now been modified. Stripsearches no longer are required in cases of physical and emotional neglect, a wider variety of practitioners can per-

form them and they are no longer automatically required if both a worker and her supervisor feel the report was unfounded.

However members of designated child protection teams still can override the exceptions and demand stripsearches.

The other key problem with the law is the provision barring the state's child abuse hotline from screening out reports from certain mandated reporters. As documented elsewhere in this report, this has contributed to overwhelming the system, making it more likely that real abuse will be overlooked.

This part of the law was not changed.⁵⁷

But more important than any specific provision of what was once the Kayla McKean law was the symbolic message it sent: It reinforced the "take the child and run" ethos sweeping across the state.

No tinkering around the edges will change that. To truly undo the damage done by this law a new message must be sent, a message that recognizes the failure of the take-the-child-and-run approach. The Legislature should start over, using the lessons learned from the failure of this law, and the lessons that can be learned from the success of very different approaches elsewhere in the United States.

The In-between Cases

Just as not every parent who loses a child to foster care is brutally abusive or hopelessly addicted, not every parent is entirely innocent either. Cases fall on a broad continuum, with some parents neither all victim nor all villain.

Sometimes these cases involve drug abuse. As we explained in *Shadow on the Sunshine State*, the reason it is worthwhile to work with families in these cases is not for the sake of the parents, but for the sake of the children. And the evidence for that comes from a University of Florida study of "crack babies."

In the study, one group was placed in foster care, another with birth mothers able to care for them. After six months, the babies were tested using all the usual measures of infant development: rolling over, sitting

up, reaching out. Consistently, the children placed with their birth mothers did better.⁵⁸ For the foster children, the separation from their mothers was more toxic than the cocaine. It is extremely difficult to take a swing at "bad mothers" without the blow landing on their children. Therefore, if we really believe all the rhetoric about the needs of the children coming first, we must put those needs before anything – even our anger at their parents.

But DCF has shown little interest in providing such help. Between July 1999 and March, 2000 there were 496 women on waiting lists for drug treatment in Hillsborough County alone. Only two programs in the county are geared specifically to the needs of women, and they can serve only 95 women at a time. One of those two pro-

grams wanted to open a facility where women and children could stay together during treatment. But they didn't have the money. The facility will house only the women.⁵⁹

DCF continues to show little interest in prevention of any kind. In Governor Bush's proposed FY 2002 budget, the increase in funding for child welfare goes almost entirely into hiring more investigators and workers to monitor families, and to covering the increased cost of throwing more children into foster care.⁶⁰

Even the one primary prevention program DCF claims to support, Healthy Families Florida, gets a budget increase of less than three percent, apparently for what is almost certainly a well-deserved pay raise.⁶¹ The budget for Healthy Families Florida estimates that 23,454 families need the service, but only 6,926 will get it – 36 fewer families than will be helped in the current fiscal year.⁶² (In contrast, the DCF central office public relations budget is slated to increase by more than 20 percent, to more than half a million dollars.)⁶³

And all of the worthwhile prevention initiatives that DCF tried unsuccessfully to cut last year, it's trying to cut again this year. In fact this year, DCF will try to make \$3.49 million in cuts in such programs, up from \$1.7 million in cuts last year.⁶⁴

The hit list again includes the Hibiscus Children's Center Crisis Nursery, which provides not only respite care but also concrete help for families that might otherwise lose their children to foster care.

Also on the hit list again is state funding for two centers in Jacksonville that provide a comfortable, humane place for parents to visit their children while those children are in foster care.⁶⁵

Staff at the Family Visitation Center also help arrange the transportation needed to get everyone to the visits, often a huge barrier for parents too poor to own cars.

(Both this program and the crisis nursery are described in detail in *Shadow on the Sunshine State*.)

DCF's own internal data illustrate the need for such a facility. The examination of records from Region 4, which includes Jacksonville, found that in 43 percent of the cases in which the case plan calls for visits between mother and child, the visits are not taking place according to the plan. In 56 percent of cases in which visits are supposed to occur between child and the father, they're not happening according to the plan.

And Jacksonville isn't the worst of the districts examined. Broward is. In Broward County children are not getting visits with their mothers as called for in case plans 72 percent of the time. With fathers the case plan isn't being followed 69 percent of the time. And visits with brothers and sisters are not occurring as called for in case plans 75 percent of the time.⁶⁶

Yet once again, Kathleen Kearney wants to cut \$83,000 in state funding for a visitation center – an amount that is less than the proposed *increase* in the DCF public relations budget.

DCF's rationale for the cuts is that the programs originally were funded by the legislature, without DCF asking for them. And, in fact, to the agency's credit, DCF also is trying to cut \$750,000 in funding for two orphanage schemes.⁶⁷

But there is nothing in the record of the Department of Children and Families to support their apparent belief that no idea can be any good unless *they* ask for the money.

There is one small bit of good news: Using \$2.9 million annually in federal funds, Kearney has agreed to expand the Community Partnership for Child Protection initiative – one of the innovations cited in *Shadow on the Sunshine State*, -- to 13 neighborhoods in eight counties.

But by and large, DCF still is putting

its money in all the wrong places. That's why the huge increases in overall spending aren't producing results.

It would be truly tragic if DCF's bungling how it spends money wrongly persuades the legislature that additional funding isn't needed.

As we said last year: Spend more, but spend smarter.

Failing at Adoption

One irony of the Florida Foster Care Panic is that it hasn't just prevented DCF from doing the things Kathleen Kearney doesn't want to do – like keep families together. It's even interfered with one of Kearney's top priorities – adoption.

In 1999, the first year of the foster care panic, Florida was one of only eight states which placed fewer children in adoptive homes than it had the year before. In fact, Florida's record was the second worst in the country.⁶⁸ When needless placements overwhelm a system, it makes it harder to do anything.

Privatization – As Irrelevant as Ever

In *Shadow on the Sunshine State* we referred to privatization as “the great irrelevancy,” citing evidence that child welfare systems all over the country can perform well or badly whether run by government or by private agencies. What is crucial is not who is in charge but the financial incentives that govern privatization.

If private agencies are paid for each day they keep a child in foster care, they will keep that child in foster care as long as possible. Indeed, the Gievers lawsuit alleges that that's exactly what happens now. The suit charges that the “overuse of long term foster custody ... rewards contract providers with payments for the foster children who,

contrary to law, are not moved toward real permanency and who suffer harm while being held as virtual hostages...”⁶⁹

**“It's a private organization.
There's no law that says you
can't hire family and friends.”**

**--Jerri Blair, lawyer for
Lake County Boys Ranch**

On the other hand, if privatization includes a provision to pay agencies for permanence, and penalize them for holding children in foster care, then those agencies will find safe, permanent homes for children more quickly. As *Shadow on the Sunshine State* documents, that's exactly what has happened, for example, in Illinois.

Nevertheless, DCF continues to insist that privatization per se will solve everything. The agency points to its model privatization program, in Sarasota County. But Sarasota is a wealthy, resource-rich county with proportionately fewer problems.

DCF apparently hopes that by constantly pointing to Sarasota, which looks relatively successful only when compared to the rest of the state, everyone will forget about the other pilot project in privatization – the debacle in Lake County.

There, the 32-year-old Lake County Boys Ranch was given control of all substitute care services. Months after the Boys Ranch and DCF got into a dispute over who was responsible for the death of Kayla McKean, Boys Ranch was indicted on criminal charges of Medicaid fraud.

The criminal case was dropped. The prosecutor says that's because it is now pointless to proceed, since the charges themselves led to a cutoff of all state contracts, driving Boys Ranch out of business. A civil suit still is pending.

Court documents and sworn statements charge that the problems went beyond alleged Medicaid fraud. The president of the Ranch, Tom Manning, allegedly hired friends and relatives, allegedly falsified a document in an effort to raise his own retirement annuity and is accused of using ranch equipment and staff for personal work.

Manning vigorously denies all the charges. The Ranch's attorney, Jerri Blair, says DCF waged a vendetta against the organization after the Ranch refused to take the blame for Kayla McKean's death.

But Blair's response to the nepotism charge should cause concern as Florida rushes headlong into privatization. "It's a private organization," Blair says. "There's no law that says you can't hire family and friends."⁷⁰

If, in fact, Boys Ranch is guilty – and, in fairness, the agency has yet to have a chance to defend itself in court – then DCF contracted with a bunch of thieves. If, on the other hand, Boys Ranch is innocent, then DCF helped drive the agency out of business and plunged its own privatization experi-

ment into chaos.

Either way, the turmoil in Lake County doesn't bode well for privatization-as-panacea.

Neither do recent developments in Palm Beach County. There, only one organization came forward to apply to be the "lead agency" to handle child welfare services in the county. The agency performed so poorly on DCF's rating scale that it was initially rejected. Then DCF changed its mind and said the agency was good enough after all.

The Palm Beach County experience suggests that either DCF doesn't know how to evaluate the agencies to whom it will entrust the lives of the state's most vulnerable children, or it is willing to entrust those lives to marginally qualified or unqualified agencies.⁷¹

Privatization per se is not dangerous. But it is extremely dangerous to believe DCF when it says Florida's children should just wait, wait, wait until the system is turned over to private agencies, after which everything will be fine. It won't.

Getting it Right in Pittsburgh

***Shadow on the Sunshine State* highlights a series of successful alternatives to the take-the-child-and-run approach championed by Kathleen Kearney. These approaches include Intensive Family Preservation Services programs and the Alabama System of Care, which has significantly cut foster care placements while making children safer. These innovations are summarized in Appendix 1 to this report.**

Still another example of successful innovation can be found in Pittsburgh and surrounding Allegheny County, Pennsylvania, an area with a population of 1.3 million.

In the mid-1990s, the child welfare system in Allegheny County was a pretty typical failure. Lackluster leadership had allowed the system to drift, and foster care placements were soaring.

Some very good reporting by the *Pittsburgh Post-Gazette* helped force the resignation of the agency chief. Her replacement engineered a remarkable turnaround.

- Since May, 1997 the foster care population has been reduced by 20 percent.

- 82 percent of the time, when children are placed in foster care, siblings are kept together. In Florida, no district included in DCF's internal case record sample has been able to do better than 60 percent, and roughly 50 percent is more common.

Here's how they did it. Allegheny County:

- Tripled the budget for politically popular primary prevention programs.

- More than doubled the budget for politically *unpopular* family preservation programs.

- Embraced the Annie E. Casey Foundation's Family to Family program, a program described in *Shadow on the Sunshine State* and in Appendix 1. (The Casey foundation also helps fund NCCPR).

But in some ways, the little things are the most revealing.

- There is now a housing counselor in every regional child welfare office in the county, to reduce the chances that children are taken because their families lack decent housing.

- There's a special transportation program to get parents to visits with their children while the children are in foster care – exactly the kind of help Kearney is again trying to cut in Jacksonville.

Allegheny County hasn't neglected adoption either. Adoption is up significantly (as opposed to Florida where, as noted elsewhere in this report, adoptions actually declined in 1999). But a report on the county's accomplishments states that: "from the start, we recognized that the term permanency had come to suggest adoption when, in fact, it encompasses a continuum of services designed to ensure safety and stability for children, with adoption as a final option when others fail."⁷²

Allegheny County is proving how much can be done with guts, imagination, and vision, qualities sorely lacking right now at the Florida Department of Children and Families.

The Litany of Excuses

Eight days after the publication of *Shadow on the Sunshine State*, Kearney issued a response. The response offered no source notes to allow for independent verification of her claims. And, in fact, it was inaccurate in many respects. We note this here because this update also is likely to prompt a response. We think the way Kearney responded to the first document bears on her credibility in responding to this one.

The Kearney claim: “For fiscal year 1998-99, 93% of alleged child victims remained home *during the investigation*, another 3.2 percent were placed with relatives...”[emphasis added].

The facts: Even if true, this represents a double dose of irrelevancy.

First, the term “during the investigation” is not defined. If that means “during the time it takes the worker to conclude there was maltreatment,” then, obviously, a child shouldn’t be removed before the worker even believes something has happened. Even if the term allows for investigation beyond this determination, the crucial issue is the number of children removed *after* the investigation is concluded. Even then, the raw number of such children is far less important than whether all of those children actually needed to be removed.

Second, and more important, the figures are for the 1998-99 fiscal year. What was then known as the Kayla McKean law, which played a crucial role in the Florida foster care panic, did not even take effect until that fiscal year was over. And for half this time period, Kathleen Kearney was not even running DCF. Thus, whatever the figures mean, they are largely a reflection of the performance of Kearney’s predecessor, and of how DCF operated *before* the foster care panic.

The Kearney claim: “With the vast

majority, 95 percent, there were findings of maltreatment once the investigation was completed.”

The Facts: It is unclear what Kearney is referring to here, but if she means to allege that abuse is found in 95 percent of all cases investigated, her claim is contradicted by DCF’s own “situation reports.” The most recent such report found that only 46.5 percent of investigations resulted in a finding of either “verified” or “indicated” maltreatment, almost exactly the same rate as a year ago.⁷³

Even this figure is almost certainly too high. It takes only a caseworker’s personal opinion to brand a case “verified” and data from a major national study show that workers are at least twice as likely to wrongly substantiate maltreatment as they are to wrongly label a case unfounded.⁷⁴

The Kearney claim: “The law prohibits the removal of children due to neglect that is related solely to a parent’s lack of financial means.”

The Facts: Neglect actually is defined in two different sections of Florida law. The clause Kearney refers to appears in one section,⁷⁵ but not the other.⁷⁶

More important, such clauses are routinely ignored in Florida and in other states where they exist. That is quite easy to do.

In *Shadow on the Sunshine State*, we offered the following hypothetical example:

Imagine that you are an impoverished single mother with an eight-year-old daughter and a four-year-old son. The four-year-old is ill with a fever and you need to get him medicine. But you have no car, it’s unusually cold, it’s pouring rain, and it will take at least an hour to get to and from the pharmacy. You don’t know most of your neighbors and those you know you have good reason not to trust.

What do you do?

Go without the medicine? That's "medical neglect." DCF can take away your children for medical neglect. Dress the feverish four-year-old in the one, threadbare coat he's got and take him out in the cold and rain? That's "physical neglect." DCF can take away your children for physical neglect. Leave the eight-year-old to care for the four-year-old and try desperately to get back home as soon as you can? That's "lack of supervision." DCF can take away your children for lack of supervision.

In every one of these cases, DCF could say it wasn't taking away the children because of poverty alone, even though poverty would be the real cause of the removal.

The Kearney claim: "Neither the Department nor I can remove children from their homes independently or arbitrarily. When a child is removed, the case must go before a judge who, within 24 hours, reviews the Department's decision to shelter the child."

The facts: These two sentences are contradictory. The second sentence is an admission that DCF workers *can* take away children on their own, *before* a judge ever sees the case.

But again, there is a more important point. Kearney's comment, and her general description of a system filled with checks and balances, in which families get to defend themselves and judges decide only after weighing conflicting evidence, bears no resemblance to the facts on the ground.

The 24-hour hearing Kearney mentions is largely a rubber stamp exercise. On one side is a lawyer for DCF who is fairly familiar with the case and does this kind of work for a living. On the other side is a usually impoverished, often bewildered parent. At best, the parent may get a lawyer at the hearing itself, meaning the lawyer has no real way to defend his client. At

worst, the lawyer may not even be appointed for another month, and then it is likely to be a lawyer with a huge caseload and few resources.

As for the judges, they know that if they listen to the overwhelmed parent, send the child back home and then something goes wrong, their entire career may be in jeopardy. If, on the other hand, they listen to the old pro from DCF and keep the child in foster care, the child may suffer all sorts of harm, but the judges are safe. A team of national experts who examined family court in New York City found that judges actually admit they often remove children even when they think the child welfare agency hasn't made its case, in part because of "withering media attention" if they send a child home and something goes wrong.⁷⁷

In the review in which Florida guardians ad litem estimate conservatively that 20 percent of removal attempts were unnecessary, judges denied DCF attempts to remove children less than seven percent of the time, and even that is an increase over previous years.

A GAL involved in the survey said judges genuinely try to do what's best for children, but faced with little more than DCF's side of the story, they often feel they have no choice.⁷⁸

The deck remains stacked throughout the process. In a criminal proceeding, the defendant must be proved guilty beyond a reasonable doubt. But the standard DCF must meet to take away a child and put him or her in foster care is no higher than the standard to determine which insurance company pays for a fender bender. This "preponderance of the evidence" standard is the lowest in American jurisprudence.

At every stage, DCF has the real power. So it is worth repeating the comments of a DCF Protective Investigator who contacted NCCPR to describe how the deck is stacked against families:

“The department has a real advantage [at the 24-hour hearing]. The P.I. has prepared the report the night or morning before. ... Then the defense attorney receives the shelter petition minutes before the hearing and is not adequately prepared to represent his client. This happens all the time.”

And just to make sure they get custody of the children, the investigator says, “many protective investigators exaggerate the allegations...”⁷⁹

Finally, Kearney displays a surprising contempt for the notion of learning from past mistakes. She claims, erroneously, that much of the material in *Shadow on the Sunshine State* dates back to 1991.

Material from 1991 and, in one case, even earlier, takes up about three pages of the 37-page report. It is in a section called “Roots of the Current Crisis.” That section is included to show, among other things, that Kathleen Kearney did not create the problems at DCF – though she certainly made them worse.

It is also there because of our conviction that “those who do not remember the past are condemned to relive it.”

For example, it was in 1991 that a survey of caseworkers found that nearly two-thirds listed among barriers to doing their jobs “responding to minor neglect reports” and “having to respond to obviously unfounded cases.”⁸⁰

Rather than learn from the 1991 findings, Kearney allowed procedures at the state hotline to become even worse. Now, ten years later, another report has made essentially the same point.

Kearney closes her response to *Shadow on the Sunshine State* with a quote from the head of the demonstration privatization project in Sarasota County, praising her to the skies, and declaring that “we ought to be shouting from the mountain

tops!”

Perhaps he hopes that if all the bureaucrats and all the “providers” shout loudly enough, they can drown out the cries of the children.

Conclusion

What’s the harder job, running the Florida Department of Children and Families or being a parent?

Any parent will tell you this is a no-brainer. Running a huge state agency is tough. But, to steal a line from the Peace Corps, being a parent is “the toughest job you’ll ever love.”

Kathleen Kearney likes to brag about her role in helping to write the so-called Adoption and Safe Families Act. Under this law, with rare exceptions, no matter how much hardship a family has had to endure, parents who lose children to foster care are expected to turn their entire lives around in 12 months.

The rationale is that the children can’t wait.

Kathleen Kearney now has had more than 24 months to turn her agency around. But every time the failings of the agency are pointed out, she insists she needs more time.

No one expects the entire job to be done in 24 months – a good strong start would be enough. But Kearney has been moving full speed backwards.

It’s not hard to imagine what Kearney, formerly a judge nicknamed “the terminator” would have done had a parent come before her with a similar record.

One year ago, we concluded *Shadow on the Sunshine State* with these words:

There is no reason to believe that Kathleen Kearney has anything but the best of motives. ... But the issue isn’t motivation.

The issue is results.

There are parents who do terrible things to children with the best of intentions. They may beat children mercilessly, for example, because they think it's the only way to get children to behave, or get them stay away from drugs or a dangerous group of peers. When parents do that to children – even if they think it's for the children's own good – those parents must be stopped. And when the State of Florida

does terrible things to children, even when it's in the name of doing good – the state must be stopped

Kathleen Kearney now has had twice as much time as she would give to a parent. Maybe it's time to consider whether Kearney's right to run DCF should be terminated – because Florida's vulnerable children can't wait.

THE LENGTHENING SHADOW/27

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⁵ 31 Foster Children v. Jeb Bush et. al., Case #000-2116-CIV-King, U.S. District Court, Southern District of Florida, *Complaint*, p.37.

⁶ *Ibid.*, p.20.

⁷ *Ibid.*

⁸ Department of Children and Families press release, *Judge Kearney Responds to Richard Wexler's "Shadow on the Sunshine State" Report*, March 23, 2000.

⁹ *Ibid.*

¹⁰ E.g., Shana Gruskin, "Lawsuit over foster care gets July 16 trial date," Ft. Lauderdale Sun-Sentinel, October 18, 2000, p.4B.

¹¹ e.g. William Cooper, Jr. "Florida hasn't reduced foster-care time, suit says," Palm Beach Post, January 25, 2001, p.4A; Shana Gruskin, "Advocate Boosts Foster Care Suit," Ft. Lauderdale Sun-Sentinel, January 24, 2001.

¹² Author's interview with John Perry, Senior Management Analyst, Department of Children and Families.

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¹⁶ Curtis Krueger, "So Many Children," *St. Petersburg Times*, March 8, 2000, p.1D.

¹⁷ Elizabeth Bettendorf, "Report: Child abuse climbs 10%," *Tampa Tribune*, October 25, 2000, p.1.

¹⁸ Wayne Washington, "No longer in state offices, foster kids still in limbo," *St. Petersburg Times*, October 21, 2000, p.1B.

¹⁹ Shana Gruskin, "Child welfare services face struggle with shortage of child-abuse investigators" Ft. Lauderdale Sun-Sentinel, November 23, 2000.

²⁰ William Cooper, Jr., "Area Judge Promotes Plan to Fix Foster Care," *Palm Beach Post*, October 18, 2000, p.1B.

²¹ Michael T. Dolce, Esq., *A Better Day for Children: A Study of Florida's Dependency System With Legislative Recommendations*. The study is undated, the observations took place in August, 2000.

²² Dolce, note 20 supra, citing his interview with DCF Assistant General Counsel Peggy Sanford and DCF Chief of Child Protection Policy Mary Allegretti.

²³ Dolce, note 20 supra.

²⁴ This information comes from a series of charts headed "Status of ASFA Reviews," prepared by DCF in August, 2000, based on a sample of cases in all regions except Districts 1,3,5,7 and 9. The charts do not include statewide averages. They were obtained by NCCPR from a source that prefers to remain anonymous. Data since have been gathered for districts 1,3,5,7 and 9, but these data were not available to NCCPR. The methodology and purpose of the survey was confirmed by Margaret Taylor, Financial Administrator, Department of Children and Families.

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²⁸ "Status of ASFA Reviews," Note 23, supra.

²⁹ Elizabeth Bettendorf, "Issues in foster care system reviewed," *Tampa Tribune*, October 26, 2000, Metro p.4.

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- ⁵⁷ The text of the law, as amended, can be found at http://www.leg.state.fl.us/cgi-bin/view_page.pl?Tab=session&Submenu=1&FT=D&File=hb0855er.html&Directory=session/2000/House/bills/billtext/html/
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- ⁷⁹ Personal communication.
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