

Cycle of Failure

HOW MICHIGAN KEEPS “THROWING THE FIGHT” FOR CHILDREN – AND HOW TO MAKE THE STATE A CONTENDER AGAIN

By Richard Wexler, NCCPR Executive Director, February 18, 2009

Executive Summary and Summary of Key Recommendations

At a gathering of grassroots family advocacy organizations last September, Susan Kelly, senior director for strategic consulting and systems improvement for Casey Family Programs, and a leader of child welfare reform efforts in Michigan for decades, recalled a different kind of meeting a few weeks earlier.

Kelly was meeting with 14 boys at the Wayne County Juvenile Detention Center. The boys all had to wear prison uniforms, though for most, their “crime” had been running away from a foster care placement.

In Michigan, the bureaucratic term for these children is “dual jacket.” Each had a child welfare case – they’d all been taken from their parents – and, now that they’d run from wherever the state put them, they had a juvenile justice case as well.

“When we went around the group and asked, ‘who is there for you right now?’ You know what the answers were? ‘My father, my mother, my granny, my auntie,’” Kelly said. But these children didn’t know that the State of Michigan had made it much harder for their mothers, fathers, grandparents and other relatives to be there for them. All of these children had had their rights to their families terminated – but no one had bothered to tell them.

“We left that room thinking, ‘What have we done to these children?’” Kelly said.

What Michigan had done to these children was betray them. Some were betrayed by being taken from those mothers, fathers, grandparents and other relatives when it wasn’t necessary. All had been betrayed by being severed from them forever, without their knowledge, and without the state offering them anything in return.

They and thousands like them were betrayed by decades of child welfare failure in Michigan. They were betrayed by political expedience. They were betrayed by a powerful network of private providers – a “foster care-industrial complex” - that rationalizes harm as help and hate as love. And they were betrayed by a take-the-child-and-run mentality that not only harms the children it is supposedly intended to help but also overloads the system, starving it of resources, choking off innovation, and actual-

ly making it harder to find children in real danger.

Some of the children betrayed by the State of Michigan are well known. Some are less known. And, because of the pervasive secrecy surrounding child welfare, which does nothing to help the system protect children and everything to help it protect itself, there are many we will never know at all.

●Michigan betrayed the children of Teresa and Darren Bloodworth. No one ever accused the Bloodworths of abusing their three children. No one said they beat the children or tortured them or raped them. Their only crime: living in a dirty home that needed repairs to remove lead-based paint.

Yet the Bloodworth children were torn from their parents and thrown into a foster home where the foster mother often

abused another foster child.¹ Indeed, the Bloodworth children may have been lucky to escape with their lives.

- Michigan betrayed the children of Sabrina Murphey. No one accused Murphey of beating or torturing her children. Murphey's only crime was to have been beaten herself, by the children's father.

Yes, witnessing domestic violence can be harmful to children – but taking them from the non-offending parent is far, far worse. One expert has testified that, for a child, being taken from a battered mother is “tantamount to pouring salt into an open wound.”² But for the children of Sabrina Murphy, DHS' policy boiled down to “please pass the salt.”

“They treated me like I was nothing. The foster care system treated me like I was a piece of pavement to walk on.”

--Sabrina Murphey

Murphey suspected one of her children was being abused in foster care. But no one would listen. “They treated me like I was nothing,” she said. “The foster care system treated me like I was a piece of pavement to walk on.”³

- Michigan betrayed Johnny Dragomir. No one ever accused Johnny's mother, Elena Andron of abusing Johnny. No one ever accused her of neglecting him. No one ever said she didn't love him. Her only crime was losing her job as a factory worker in Dearborn. Her only mistake: turning to the Michigan Department of Human Services* for help when she couldn't afford

to care for her son, who could neither walk nor speak.

Instead of providing financial assistance and bringing help into Andron's home, DHS threw the child into foster care; this time, a state licensed group home.

But his mother soon became alarmed as her son started losing weight. She would call the home, sometimes four times a day to complain. And she says the group home quickly responded – by branding her irrational and barring her from even visiting her son.

By the time Johnny Dragomir died, on March 7, 2007, he had lost half his body weight. The Wayne County Medical Examiner says the cause of death was malnutrition.

The group home reportedly closed shortly after Johnny's death. But it still has its license.⁴

- And Michigan betrayed the children of Casey Jo Caswell. Caswell had plenty of problems – most notably a tendency to latch on to lousy men; which is what some women do when they have little education and no way to support themselves.

As the *Detroit News* reported in a keenly-observed story:

Caswell admits she was unable to properly care for [her] baby. She couldn't support him financially or provide him with a stable home. But at least, she says, she never abused him.

"There were times when I didn't have money for both of us to eat, so [my son] ate and I didn't," she said. "I loved being his mom."

* During the time period discussed in this report, the agency responsible for child welfare in Michigan has been called the Department of Social Services, the Family Independence Agency and the Department of Human Services. For the sake of simplicity, this report always will use the most recent name.

When one of those men beat her, and the child, Caswell did the right thing – she got rid of the man. But, homeless and jobless, she also made that terrible mistake: she sought help from DHS.

DHS offered no help with housing, no help with a job, and no help with education. No help with anything that would allow her to be self-supporting and not depend on men. They gave her only one option: Surrender the child to foster care. Then they issued the cookie-cutter no-services “service plan” and told her she’d have to get a job and get housing before she could get her child back.

Once, during a counseling session, the boy was playing with two plastic horses, when he said: “This little horse is going to die if he can’t be with his mother.”

Meanwhile, it seems, the DHS worker had fallen in love – with the middle-class foster parents who lived in a nice big home. The boy went there first as a foster child; then it became his adoptive home.

And each time Caswell would have another child, the caseworker would rush the baby into the same foster/adoptive home.⁵

Neither the caseworker, nor anyone else, noticed how unhappy the boy was with his foster parents. Once, during a counseling session, the boy was playing with two plastic horses, when he said: “This little horse is going to die if he can’t be with his mother.”⁶

In fact, the conveyor belt carrying babies from impoverished birth mother to middle class foster parents didn’t stop, Cas-

well says, until one day the caseworker told her “You have to stop having babies because the Hollands don’t want any more.”⁷

That’s Tim and Lisa Holland. They were the foster parents. Casey Jo Caswell’s first born was named Ricky. And Ricky Holland’s comment in that therapy session proved prophetic.

If she had it to do all over again, says Caswell, “I would’ve kept him with me, instead of asking the state for help.”⁸

But if you really want to know how fanatical Michigan can be about a take-the-child-and-run approach to child welfare, if you really want to know how much an adoption-at-all-costs mentality pervades DHS and the courts, consider this: During the time after Ricky Holland had disappeared, but his body had not yet been found, during the time police already strongly suspected the Hollands of murdering Ricky, the Michigan Department of Human Services gave the Hollands final approval to adopt another foster child in their care.⁹

And remember the Bloodworth children – the children taken from their parents only because of a dirty home and lead-based paint? They, too, had been placed with Tim and Lisa Holland.¹⁰

*There is more on all these cases and others in the **full report**, pages 22 to 27.*

In some respects Michigan is sadly typical. Many states have child welfare systems that never rise above mediocrity, some never even reach it. But Michigan is a state with many good people who keep trying to make that system better, only to be beaten down by that foster care-industrial complex.

Many of the people standing in the way of reform actually mean well. Rationalization is powerful. If you’ve built an empire on collecting endless *per diem* payments for tearing children away from everyone they know and love, and warehousing them far from their homes in bucolic “treat-

ment centers,” what do you do when a mountain of research says it doesn’t work? Do you do what’s hard and face up to it, scrap the program and start over? Or do what’s easy: ignore the research, live “in denial” and point to the cottages and pretty grounds and good intentions in the hope that will divert everyone’s attention – including your own – from the failure of the actual program.

And, of course, not everyone means well. As Prof. Ronald Davidson, Director of the Mental Health Policy Program at the University of Illinois at Chicago Department of Psychiatry, and a key figure in reforming the child welfare system in Illinois, has written: “Sadly, there is a certain element within the child welfare industry that tends to look upon kids in the way that, say, Colonel Sanders looks upon chickens...”¹¹

It may be hard to believe now, but there was a time, in the first half of the 1990s, when you could ask almost any child welfare leader which states were on the cutting edge of doing right by vulnerable children, which states were closest to getting child welfare right, and, over and over, you’d get the same answer: Alabama – and Michigan.

Today, Alabama really is a national leader. Nobody looks to Michigan anymore.

Instead, people point to Illinois. Twelve years ago, that state had more than 50,000 children in foster care on any given day.¹² Today, the number is under 16,000.¹³ Independent court-appointed monitors say that, as foster care plummeted, child safety improved.¹⁴

Michigan’s tragic history is one in which innovators reach out to bring to the state the best ideas from around the nation, only to have each one sabotaged and marginalized by a child welfare establishment desperate to preserve its perks, its prerogatives and, most of all, its *per diems*.

As a result:

- Although the rate at which children are taken from their parents has very slowly declined in recent years, probably due largely to reforms in Wayne County, Michigan still takes away children at a rate far above the rate in systems widely regarded as, relatively speaking, models. Thousands of children are needlessly traumatized by being taken from everyone they know and love, some are abused in foster care, where the rate of abuse is far higher than generally recognized.

“Sadly, there is a certain element within the child welfare industry that tends to look upon kids in the way that, say, Colonel Sanders looks upon chickens...”

--Prof. Ronald Davidson, Director,
Mental Health Policy Program,
University of Illinois at Chicago

- Michigan places nearly twice as many children as Illinois in the worst, and most expensive, form of “care” – group homes and institutions.

- Time after time in recent years, children have been taken from their birth parents only to die in the duly-licensed foster homes of strangers. It happened to Timothy Boss, Joshua Causey, Johnny Dragomir, Isaac Lethbridge, Allison Newman, and, of course, Ricky Holland.

Yet the “solutions” proposed by public officials repeatedly call for more of the same. Over and over they demand that it be made even easier to tear apart families and throw the children into the duly-licensed foster homes of strangers.

- It’s not just children needlessly

taken from their parents who are harmed.

We all know the horror stories about children left in dangerous homes in cases that turn out to have more “red flags” than a Soviet May Day parade. That problem is not the opposite of the problem of wrongful removal – it is *directly related* to the problem of wrongful removal.

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All the time, money and effort wasted investigating false allegations and trivial reports that should have been screened out by county child abuse hotlines, and all the time, money and effort squandered on needless foster care overwhelm the system, making it harder for workers to find children in real danger. So all children wind up less safe.

The problem of high caseloads is serious and real. But it’s due more to a surfeit of cases than a shortage of caseworkers.

Real solutions require doing more to keep children out of foster care in the first place. But Michigan’s record in that regard has been dismal.

- Michigan has virtually abandoned almost all serious efforts at prevention and family preservation – funding what little is done almost exclusively with relatively small amounts of federal money left over af-

ter slashing the welfare rolls. And, of course, with welfare growing again, that funding now is in danger as well. (**Full report:** *The coming TANF train wreck*, p. 19)

- Michigan’s Intensive Family Preservation Services program, Families First, nationally recognized as among the nation’s best, with an outstanding track record for keeping children safely in their own homes, has been marginalized within the state Department of Human Services, its budget repeatedly cut. (**Full report:** *pages 41 to 43*).

- In some cases, big, powerful private agencies are being paid by Michigan taxpayers to provide help to troubled families, and then simply refusing to do it because they don’t want to venture from their suburban headquarters into inner-city neighborhoods. (**Full report:** *An x-ray of DHS’ soul*, p. 13).

- Michigan accepted an innovative waiver that would have allowed \$100 million a year in federal foster care money to be used for safe, proven alternatives as well – only to back out at the very last minute, and slink away from the deal. Florida accepted the same deal and, as a result, has made enormous progress in turning around its once dreadful child welfare system. (**Full report:** *Squandering \$100 million the Michigan way*, p. 64).

- Michigan appears poised to back away from still another successful innovation, the Family to Family initiative.* Last year, DHS reduced the level of participation in the program at two key sites, Wayne and Macomb counties. (**Full report:** *The campaign against Family to Family*, p. 59).

- A comprehensive study, the Michigan *Race Equity Review*, found that the Michigan system is permeated with racial bias, and repeatedly confuses poverty with

* Family to Family is an initiative of the Annie E. Casey Foundation. The Foundation is a long-time funder of NCCPR, though it is not funding this report or our current advocacy in Michigan.

NO LICENSE, NO GRANDCHILD

Michigan's war against grandparents

President Obama speaks often of how important his grandmother was in his life. The President was raised for eight years by Madelyn Payne Dunham who, sadly, died just before the election. Today, we would call it "informal kinship care."

In the future, children with the potential to become the next Barack Obama, but happen to live in Michigan, may not be so fortunate. That's because a group whose hubris leads it to call itself "Children's Rights" (CR) is waging war against grandparents like Madelyn Payne Dunham, and the Michigan Department of Human Services has surrendered.

DHS signed a consent decree to settle a lawsuit brought by CR. Much of the decree is reasonable. But it contains one exceptionally odious clause that threatens vulnerable grandchildren.

Of course, in Mr. Obama's case, no agency like DHS was involved – again, fortunate for the future President. But in cases where DHS used to be able to turn immediately to a grandparent, the consent decree imposes severe new restrictions. It requires that any relative who steps forward to care for a loved one whose parents are accused of maltreatment meet all the same hypertechnical licensing requirements imposed on total strangers. With only limited exceptions, the new rule is: No license, no grandchild.

Of course there are certain bare minimum standards, directly related to health and safety, that every foster home should meet. But Michigan's foster care licensing requirements run to ten single-spaced pages.¹⁵ There are 41 separate requirements just for bedrooms and their contents. There's also a requirement that every dwelling unit on a floor higher than the second have at least two means of egress. Odds are the 954-square-foot tenth-floor apartment where Madelyn Payne Dunham raised her grandson wouldn't qualify.

In Michigan, grandparents like Dunham who want to take in a grandchild placed by DHS must either move or obtain a waiver or variance. That's likely to be very difficult, with workers fearful of making any exceptions lest they incur CR's wrath should something go wrong. Worse, these new requirements are retroactive. Michigan now faces the very real prospect of a mass expulsion of children from the homes of loving grandparents.

That would, of course, be devastating for the children. But one group might actually benefit: The state's big, powerful, private agencies. Because while private agencies supervise 48 percent of cases in which children are placed with strangers, they oversee only 16 percent of kinship cases.¹⁶

Contrary to pernicious stereotypes about extended families, study after study has shown that placing children with relatives is not only more stable and better for children's well-being, it's also safer than what should properly be called "stranger care."¹⁷ The most recent such study specifically finds no difference between licensed and unlicensed kinship care homes.¹⁸

So it's no wonder that in Michigan, an independent casereading demanded by CR itself found that while fully one-third of children first placed with strangers endured two or more moves, that happened to only one-fifth of the children first placed with a relative¹⁹ - in spite of the fact that relatives get far less help from the state to take care of the children.

And, in fact, CR's primary justification for its war against grandparents isn't safety, it's money. Under federal regulations, unless a foster home is licensed, the state can't receive federal reimbursement for the case. And if it *is* licensed, the state must pay the grandparents as much as it does strangers. So CR would argue they're only trying to help.

That is in keeping with the way CR seems to see children: as numbers on a spreadsheet or files on a shelf. See children as flesh-and-blood human beings and other solutions come to mind, such as pressing to change the federal regulations and demanding that states use their own money, if necessary, to reimburse grandparents the same way they reimburse strangers.

In the meantime, DHS should go back to court and seek to reopen the consent decree to protect vulnerable grandchildren.

The group that so arrogantly calls itself "Children's Rights" doesn't know much about either children or rights. Because if you ask almost any child who is old enough, he'll tell you himself: If mom and dad can't take care of me, I have a right to be raised by grandma and grandpa.

“neglect.”²⁰ (*Full report: An x-ray of DHS’ soul, p. 13*).

●Michigan still hasn’t recovered from the demagogic attacks against family preservation launched by former Lt. Gov. Connie Binsfeld and her disciples.

Although adoption is a vital part of any well-functioning child welfare system, and can be, literally, a lifesaver for some children, the Binsfeld mentality scared people at every level into taking away children needlessly, and encouraged an adoption-at-all-costs mentality that has created a generation of legal orphans, with no ties to birth parents and little hope of adoption. (*Full report: pages 42 to 58*).

● In bizarre rulings apparently unique in the nation, Michigan courts have allowed DHS to remove children from custodial parents just because a non-custodial parent has “admitted” neglect. (*Full report: Michigan’s “express lane” to indefinite foster care, p. 52.*)

●And even though placement with relatives is far better for children than what should properly be called “stranger care,” Michigan has caved into demands to wage what amounts to a war against the state’s grandparents.

Few people remember the name of the character played by Marlon Brando in the movie *On The Waterfront*. The washed-up prizefighter was named Terry Molloy. He had a shot at glory but was forced to throw the fight. But even people who never saw the film know his most famous line: “I coulda been a contender.”

Michigan is the Terry Molloy of

child welfare. Over and over it has a chance to be a contender for excellence in child welfare. And over and over, it throws the fight.

But it doesn’t have to be that way.

Over and over Michigan has a chance to be a contender for excellence in child welfare. And over and over, it throws the fight.

There are many good people working in the trenches in Michigan child welfare. When a group of birth parents addressed the giant “task force” now studying Michigan child welfare, they spoke of terrible injustices done to their children. But they also made a point of singling out good workers who gave them both help and hope when they needed it most. Said one parent: “I had a wonderful foster care specialist who breathed life into me.”

Michigan can turn that kind of case-work from the exception to the rule. And it won’t even take more money to do it, only the will, and the willingness to battle the entrenched interests that have stymied reform so many times before – this time, without throwing the fight.

In our full report we offer 37 specific recommendations that will help Michigan become a contender again.

Wrongful removal drives everything else

The consequences of Michigan’s repeated failures are well known, including

case after case in which children were taken from their birth parents, sometimes need-

lessly, only to die in stranger care. Those failings are summarized in our full report. Indeed, everyone knows the Michigan child welfare system is a mess, but almost everyone ignores the fundamental cause.

That fundamental cause is *not* lack of money.

While it is very difficult to compare the amount that states spend on child welfare, and the available data are fairly old, it is possible to come up with a rough estimate. Michigan spends on child welfare at a rate that is above the national average, well above the rate in Alabama's system, which is, relatively speaking, a model, and probably at least equal to the rate in Illinois, another model.²¹

Michigan might as well take that \$100 million – or possibly much more - it spends on congregate care and burn it on steps of the State Capitol on a cold winter's day. At least then, some passers-by in Lansing could keep warm.

The reason Michigan isn't getting more bang for its child welfare buck is because of the great paradox of child welfare: The more an option costs the *worse* it is for children. Safe, proven alternatives to ever taking a child away in the first place cost less than family foster homes, which cost less than group homes which cost less than the worst form of "care" of all – institutions.

Michigan throws its money away by taking away far too many children needlessly – proportionately far more than either Illinois or Alabama, for example. And then it

throws far too many of those children into institutions.

The cost of warehousing children in institutions is staggering.

Nationwide, although only about 17 percent of children are in congregate care (institutions plus group homes), paying for that care eats up 45 percent of all foster care spending.²²

But if Michigan is like the nation as a whole, odds are more than \$100 million, perhaps more than \$200 million per year, was spent on institutionalization – almost all of it wasted.²³

If the children were benefitting, it would be worth every penny and more. But they're not. Overwhelming evidence, to be discussed in detail in our next report, shows that institutionalization does children no good, and often does them harm. Because of that evidence, in New Jersey, the reform plan developed as a result of a consent decree negotiated by the group that calls itself "Children's Rights" (hereafter, simply "CR") bans the placement of young children in group homes or institutions – and the state has been remarkably successful. Today, of all foster children under age 10, only three percent are in any form of congregate care.²⁴ Sadly, there is nothing similar in CR's consent decree in Michigan.

For all the good it does for children, Michigan might as well take that \$100 million – or possibly much more - it spends on congregate care and burn it on steps of the State Capitol on a cold winter's day. At least then, some passers-by in Lansing could keep warm.

Still more money is being wasted traumatizing families with needless child abuse investigations. (*Full report: Reality check, p. 45.*)

In contrast to the huge amount lavished on substitute care, the total amount spent on prevention and family preservation programs for the entire state of Michigan in FY 2008 was only \$70 million. That in-

cludes programs that define “prevention” very broadly.²⁵ But even this figure vastly overstates Michigan’s commitment to doing what really works in child welfare.

Because about four years ago, Michigan effectively abandoned state spending on prevention and family preservation. Since at least 2005, and probably earlier, virtually every dime the state of Michigan spends to help families stay together comes from the federal government. And almost all of that federal money comes from surplus funds in the Temporary Assistance for Needy Families program (TANF). This is money intended to be used to help impoverished families become self-sufficient.

In other words, almost all of Michigan’s prevention and family preservation money comes from the draconian restrictions on public assistance for poor families first initiated at the federal level in 1996 when TANF replaced “welfare as we know it.” So Michigan’s prevention and family preservation money was, in effect, stolen from other uses that could have helped the same families. Michigan turned surplus TANF money into a child welfare slush fund.

And it gets worse. In some cases, Michigan may well have effectively taken money that should have been used to help poor families keep their children, and transferred it to middle class and wealthy adoptive families who had those children handed over to them by the state. The settlement with CR actually may increase these transfers. (**Full report:** *The coming TANF train wreck*, p. 19).

An extremely rough, back-of-the-envelope estimate is that Michigan spends anywhere from \$300 million to \$444 million per year on foster care in all its forms. (DHS was unable to come up with an estimate of its own.)

Were Michigan simply to take away children at the same rate as Illinois, those costs could be cut at least in half. That

means the state and counties, which pay a sizable share of substitute care costs in Michigan, could save anywhere from \$100 million to \$148 million per year, and possibly more. (That doesn’t include additional savings Michigan could achieve by reducing the proportion of the remaining foster children who are institutionalized.) Because Michigan failed to accept the waiver, an *additional* \$50 to \$74 million in savings would revert to the federal government.²⁶

Like a tapeworm in the system, the foster care-industrial complex drains Michigan child welfare of life and energy and gives back nothing in return. And it is sufficiently brazen to recommend that the legislature take actions that may be illegal, in order to preserve the *status quo*.

All that money diverted to needless substitute care drains resources from better options and drains creativity from the system.

Why does it keep happening? Because of that “foster care-industrial complex” of big private agencies with their blue-chip boards of directors embedded in the business, political, civic, and religious elite of every Michigan community. Governors, DHS directors and legislators come and go; but the foster care-industrial complex is always there.

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You're only damned if you don't

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

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

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

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

ture take actions that may be illegal, in order to preserve the *status quo*.

So while more money certainly could be helpful, the lack of it is not the major obstacle to helping Michigan's vulnerable children. The major obstacle is simply this: Michigan takes too many children from their homes and places too many of those it takes in institutions.

The data behind the cases

It's hard to dismiss so many cases like those described at the start of this summary with exactly the same pattern as some kind of "aberration" in a system that, otherwise, supposedly wouldn't even *think* of taking away a child needlessly. But that won't stop DHS and the private agencies from trying.

Spokespersons for child welfare agencies seem to turn into robots when asked about these issues – push a button, get a boilerplate response: "Our first goal is always to try to keep families together," they say. "We're all for prevention," they say. "Foster care is a last resort," they say. "We can't take children on our own authority, a

judge has to approve everything we do," they say. (**Full report:** *Reality Check*, p. 45). "We're damned if we do and damned if we don't," they say.

And none of it is true.

The evidence of wrongful removal goes way beyond the case histories. For starters, there's the fact that if states took away children only when absolutely necessary, then the rates of child removal across the country would be roughly the same – once you included both the biggest factor in actual maltreatment and the biggest factor confused with neglect: poverty.

In fact, rates of removal vary enormously. Some states are considerably worse than Michigan. But states that repeatedly are pointed to as national models for child safety do far better:

- Thanks to a class-action lawsuit brought by the Bazelon Center for Mental Health Law, Alabama is rebuilding its entire child welfare system to emphasize keeping families together. (The Center's Legal Director is a member of NCCPR's Board of Directors.) Alabama takes away children at one of the lowest rates in the nation, a rate

25 percent below the rate in Michigan.²⁷ But the state has cut the rate of reabuse of children left in their own homes in half,²⁸ and an independent, court-appointed monitor has found that children are *safer* now than they were before the changes.²⁹ That's why the *New York Times* put the story of the Alabama reforms on its front page.³⁰

- That's also the lesson from Illinois, whose progress was noted earlier. Illinois takes away children at an even lower rate than Alabama, and less than half the rate of Michigan. 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.³¹

But you don't have to look outside Michigan to see such disparities. Again, once poverty is factored in, a child is more than three times as likely to be taken from his parents in Macomb, Isabella, or Ingham Counties than a child living in Wayne, Bay or Shiawassee Counties.³²

And when one compares Wayne County to the rest of the state, the average rate of removal for the rest of the state is double the rate in Wayne County.

This may be because, in a county that sees as much poverty as Wayne, people may be less likely to confuse that poverty with "neglect." Conversely, relatively wealthy counties, such as, for example, Grand Traverse, which see relatively little poverty, may be much more likely to confuse it with neglect, explaining why Grand Traverse has the third highest rate of removal in Michigan.

Racism also appears to be a factor.

We know that Black families are no more likely to abuse or neglect children than white families. Yet racial disparities permeate Michigan, and American, child welfare.

But the degree varies. In Wayne County, with a relatively low rate of removal, a Black child is 1.69 times more likely to

be in foster care. But in affluent, predominantly white Macomb County, with one of the highest rates of removal, Black children are more than five times as likely as white children to be in foster care. In Oakland County, where the rate of removal is double the rate in Wayne, Black children are more than three times as likely to be in foster care as white children.³³

That should come as no surprise, given the war waged against families by the former Oakland County District Attorney, who took to having his own office take the children when DHS wouldn't.

It is possible to take proportionately far fewer children than Michigan takes while improving child safety. Therefore, there is no excuse for Michigan failing to do either one.

It's possible, of course, that places like Oakland and Macomb Counties are, in fact, cesspools of depravity, with double and triple the amount of child abuse found in Wayne or Bay Counties. It's more likely that large numbers of children in innocent families suffered because both a take-the-child-and-run mentality, and racial bias, have taken root in the Oakland and Macomb child welfare systems.

Similarly, you may be sure that some in Michigan's foster care-industrial complex will claim, falsely, that it's the counties taking lots of children who are right and the others are ignoring lots of child abuse.

We know the claim is false because other states with lower rates of removal than Michigan have outstanding records of child safety. That shows it is possible to take far

fewer children, and it is the counties – and states – with high rates of removal that are out of line.

Similarly, in several other states, counties with low rates of removal tend to have the better safety outcomes. DHS, however, was unable to provide such data for Michigan, even though it must report the statewide outcomes to the federal government. (In general, NCCPR has encountered only one other state child welfare agency, the one in Arizona, as incapable of providing basic data as Michigan.)

Forty percent of judges admitted that they lied, and said DHS had made “reasonable efforts” in cases where the judges really didn’t believe it.

Of course, while a high rate of removal almost always is a sign of a bad system, a low rate does not necessarily mean a system is good. There is a right way and a wrong way to reduce the number of children taken from their parents. The point of this comparison is simply that it is possible to take proportionately far fewer children than Michigan takes while improving child safety. Therefore, there is no excuse for Michigan failing to do either one.

But the evidence that DHS takes children needlessly and fails to provide the help families need to reunite goes beyond the numbers and the case histories.

Consider the results when two outside organizations commissioned by the Michigan Supreme Court to write a report on the functioning of Michigan courts in child welfare cases surveyed every constituency involved in child welfare in Michi-

gan.³⁴

Among the findings:

- Federal law requires that states make “reasonable efforts” to keep families together before resorting to foster care, when it is safe to do so. A judge has to certify either that reasonable efforts were made, or that making such efforts would have been contrary to the welfare of the child.

But in the survey, 20 percent of the judges said they always concluded that reasonable efforts had been made – in other words their child welfare agencies were perfect. Another 70 percent said they rarely concluded otherwise.

But even more significant: **40 percent of judges admitted that they lied, and said DHS had made “reasonable efforts” in cases where the judges really didn’t believe it.** In half those cases, the judges admitted they lied because, if they didn’t, their county would have to pick up the federal share of the cost. And if that’s the proportion who will admit it on a survey ...

- So-called “service plans” are supposed to be geared to the needs of individual families. They aren’t. According to the report: “Many jurists,³⁵ attorneys, and others complained that caseworkers ... make the same recommendations for everyone.”

- Even prosecutors say parents are set up to fail. According to the report:

One prosecutor said, if you are poor, lack transportation and a job, you can’t get to all the appointments that the social workers pile on, with the result that you lose your children because you don’t comply with requirements.

- Among the most important factors in reuniting families is keeping them in touch while the child is in foster care. That means regular visits are essential. They also are vital for a child’s well-being while in substitute care. Otherwise a child is even more likely to feel alone, abandoned and terrified.

Michigan's requirements are minimal (and typical). In cases where visits are allowed at all, parents are supposed to be able to visit their children once a week. But an independent casereading done in connection with CR's lawsuit found that this requirement is almost never met. DHS also fails to meet similarly minimal (and similarly typical) requirements for caseworkers to visit birth parents and foster children.³⁶

Who is harmed?

There are some, of course, who are pleased that Michigan takes away so many children so easily and with almost no due process for families. They cling to the myth that it makes children safer.

And they have some great applause lines. Sure, adults may suffer if a child is wrongly taken, they say, but we have to put "child protection" ahead of "family preservation." We have to defend "children's rights" they say. And, over and over they tell us we have to "err on the side of the child."

In fact, there can be no child protection without family preservation. And 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. For a young enough child it can be an experience akin to a kidnapping. Other children feel they must have done something terribly wrong and now they are being punished. One recent study of foster care "alumni" found they had twice the rate of post-traumatic stress disorder of Gulf War veterans and only 20 percent could be said to be "doing well." How can throwing children into a system which churns out walking wounded four times out of five be "erring on the side of the child"?

A second study, of 15,000 cases typ-

ical of those that dominate workers' caseloads, is even more devastating. That study found that even maltreated children left in their own homes with little or no help fared better, on average, than *comparably-maltreated* children placed in foster care. (*Full report: Michigan ignores the "evidence base," p. 36.*)

- 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 and far higher than in the general population.³⁷ Switching to orphanages won't help -- the record of institutions is even worse. In fact it's so bad, that we plan to issue a separate report on institutionalization.

None of this means no child ever should be taken from her or his parents. Rather, it means that foster care is an extremely toxic intervention that must be used sparingly and in small doses. But for decades, Michigan has turned back efforts at reform and instead prescribed mega-doses of foster care.

The figures from all of these studies are far higher than official numbers indicate – because the official numbers are not objective scholarship, the official numbers are from agencies investigating themselves.

But in Michigan it's worse. In Michigan, according to a report commissioned by CR for its class-action lawsuit, DHS manipulates the data to make even the official figures concerning abuse in foster care look

lower than they really are.³⁸

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 overload 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"?

There is hardly an impoverished child in Michigan who could not, at some point in her or his life, be branded "neglected" if a caseworker so chose.

And often, they so choose.

- But even that isn't the worst of it. Everyone knows how badly caseworkers are overwhelmed – the data on that from Michigan are, well, overwhelming. With no time to investigate any case properly, workers often make bad decisions in all 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 help.

That is almost always the real explanation for the horror-story cases that rightly make headlines.

None of this means no child ever should be taken from her or his parents. Rather, it means that foster care is an extremely toxic intervention that must be used sparingly and in small doses. But for decades, Michigan has turned back efforts at reform and instead prescribed mega-doses of foster care.

How taking fewer children can make children safer

One reason systems that have reformed to embrace family preservation improve child safety is that workers are less likely to be distracted by needless foster care.

Another reason is simply that most parents who lose their children to foster 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."

And no wonder. Michigan's definition of neglect includes "...the failure to provide adequate food, clothing, shelter, or medical care."³⁹ And while some state laws include an exception for cases when a parent simply can't afford the food, clothing, shelter, or medical care, the Michigan statute does not. (Even in states where such exceptions exist, they are routinely ignored.) So there is hardly an impoverished child in Michigan who could not, at some point in her or his life, be branded "neglected" if a caseworker so chose.

And often, they so choose.

- In Genesee County, from 2000 to 2003, the foster-care population doubled – and even the head of the county DHS office at the time said one of the main reasons was the removal of children from women forced to leave those children with unsuitable caretakers while they went to jobs they must take under state and federal welfare-to-work laws.⁴⁰

- The Michigan *Race Equity Review* found that people calling DHS to try to get heat for their homes often wind up with nothing but a cold house that now has a child abuse investigator at the door.⁴¹

- As the *Lansing State Journal* Reported in 2006:

*Rising poverty also means some children enter the system solely because their parents can't afford shelter or clothing or food, said Sharon Claytor Peters, [then-] president and chief executive of Michigan's Children, a Lansing-based child advocacy group. "Neglect is directly related to the material ability to provide for kids," she said.*⁴²

Data from around the country confirm those impressions:

- Three separate studies since 1996 have found that 30 percent of America's foster children could be safely in their own homes right now, if their birth parents had safe, affordable housing.⁴³

- A fourth study found that "in terms of reunification, even substance abuse is not as important a factor as income or housing in determining whether children will remain with their families."⁴⁴

There is one circumstance, and only one, in which almost anyone in child welfare, from frontline caseworker to agency chief, effectively will admit to tearing apart families because they're poor. All you have to do is accuse them of tearing apart families because they're Black.

"No, no, it has nothing to do with race," they'll say. "We only take away more Black children because they're more likely to be poor." Of course, these are the same people who also say they never take children because of poverty.

In fact, there is an enormous body of evidence that both kinds of bias are at play.

For example, in one study, when workers were given otherwise identical hypothetical cases, they were more likely to deem the child at risk if the family was described as Black.⁴⁵

And the Michigan *Race Equity Review* found a disturbing pattern in how caseworkers evaluate parents who say they did not use drugs.

Even when the actual evidence in the file is the same, white parents tend to be

taken at their word: The case file says they have *no* history of substance abuse. If the parent is Black, the file will say the parent *denies* any history of substance abuse.⁴⁶

The biggest addiction problem in child welfare is not substance-abusing parents, though that problem is serious and real. The biggest addiction problem in child welfare is powerful, well-connected private child welfare agencies that are *addicted* to their *per-diem* payments. And they are putting their addiction ahead of the children.

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.

Some of those "in-between cases" involve substance abuse. And that raises another question: Why even bother with parents – usually mothers -- in these cases? But the reason to "bother" is not for the sake of the parents, but 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 actual physical development of the infants was better when they

were left in their own homes. For the foster children, being taken from their mothers was more toxic than the cocaine.

The will to survive can induce in non-profits a form of greed that is as corrosive of common decency as the worst corporate behavior.

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 almost always is a better first choice than foster care for the child.

(Full report: When the issue is drugs, p.40).

Addicted to *per diems*

Every time anyone in Michigan has tried to face up to these challenges and fundamentally reform the system, the foster care-industrial complex has stood in the way. Michigan’s private agencies are paid for every day they hold a child in foster care. If they do what they are supposed to do and work to reunite a family or, when that’s truly not possible, try for adoption, the payment stops.

Of course the agencies will tell you they don’t even think about such things – they claim they care only about “the best interests of the child.” After all, they say, they’re non-profits. But the will to survive can induce in non-profits a form of greed that is as corrosive of common decency as

the worst corporate behavior.

This can be seen in one telling statistic: In Michigan cases where the state maintains direct supervision of a child after the child is placed in foster care, only 40 percent of children return home within a year. That’s certainly bad enough. But when children are handed over to private agencies, paid for each day they hold the child in foster care, the proportion returned home within a year falls to 30 percent. And for technical reasons, this actually understates the gap in performance.⁴⁷

The biggest addiction problem in child welfare is not substance-abusing parents, though that problem is serious and real. The biggest addiction problem in child welfare is powerful, well-connected private child welfare agencies that are *addicted* to their *per-diem* payments. And they are putting their addiction ahead of the children.

So try to divert more money to safe, proven alternatives and the foster care-industrial complex will stand in the way. Try to curb institutional care and the foster care-industrial complex will do everything it can to stop it. Try to place more children with extended families and in their own neighborhoods, through initiatives like Family to Family, and private agencies will march up to Lansing to urge that it stop – even if that may mean the state has to violate federal law.

A trade association for some of those agencies did just that in 2006, telling a legislative committee that children would be better off if they were placed with substitute parents who are “better off” – living in wealthier neighborhoods with less crime and better schools.

But 150 years of experience, and an enormous amount of research, show that children are, in fact, *worse* off, if the price of admission to a wealthier neighborhood is trading in their families. That’s why, as the independent casereading done in connection with the CR lawsuit points out: “Federal law

requires that children be placed in close proximity to their parents to facilitate visitation and reunification."⁴⁸ As the casereading also points out, even the national trade association for child welfare agencies, the Child Welfare League of America, feels compelled to say that "placement with foster families who live outside of the child's community should be avoided."⁴⁹

In addition, Michigan's legally-binding settlement with CR calls for working to keep foster children in their own neighborhoods.⁵⁰

This doesn't mean that anyone who testified at that hearing knew they were recommending a course of action that might be illegal. But Michigan legislators need to know.

Nothing changed in Illinois until things got so bad that the elected government finally took on the foster care-industrial complex.

Instead of simply handing out *per diem* payments and rubber-stamping license renewals, Illinois forced its private agencies to compete for business, and prove they were helping children. Agencies that

couldn't return enough children safely to their own homes or get them adopted would get no more referrals. Some of those agencies closed.

And lo and behold: Suddenly the "intractable" became tractable. The "dysfunctional" became functional, and, as noted at the start of this report, the foster care population plummeted from 50,000 to under 16,000. The providers also had to show the children were safe in their new placements – and independent court-appointed monitors confirmed it. Under the new arrangement, child safety has improved.

So it can be done. We know what works, there is enough money, and there are plenty of good, capable people in Michigan child welfare. All that is missing is the will to do it – the will to stop embracing all that is worst in American child welfare, start seeking out all that is best, and stand up to the foster care-industrial complex. Michigan can be a contender again.

Summary of recommendations and endnotes on following pages.

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 complete list of our Board of Directors is in the full report, and more information is available at www.nccpr.org

Funding for this publication, and NCCPR's other advocacy activities in Michigan, is provided by The Skillman Foundation.

Created in 1960, The Skillman Foundation is a private philanthropy whose chief aim is to help develop good schools and good neighborhoods for children. Though grants are made throughout Metropolitan Detroit, most grants are directed at six Detroit neighborhoods – Southwest Detroit (Vernor and Chadsey/Condon), Brightmoor, Osborn, Central and Cody/Rouge – and toward innovative and successful schools throughout the city of Detroit. With assets of nearly \$600 million, the Foundation gives away approximately \$27 million a year.

Other NCCPR activities are funded by The Atlantic Philanthropies, the Open Society Institute and the Annie E. Casey Foundation.

We thank the Foundations for their support, but acknowledge that the views expressed in this publication are those of NCCPR alone and do not necessarily reflect the opinions of our funders.

Summary of key recommendations

ALL RECOMMENDATIONS, AND FULL DISCUSSION OF EACH, CAN BE FOUND IN NCCPR'S FULL REPORT, *CYCLE OF FAILURE*

Before listing the recommendations, a word about money – actually, two words: It's there.

Michigan can afford every recommendation in this report – because there is no shortage of funds for child welfare. Rather the money is being squandered on investigating false reports and trivial cases and on needless foster care and institutionalization.

Because Michigan turned down the waiver, a portion of the savings from reducing foster care and institutionalization revert to the federal government. Even so, the state share is sufficient to fund serious reform of child welfare.

Help for families

- Stop the war against Michigan's grandparents. DHS should immediately seek renegotiation of the clause in its consent decree with the group that calls itself "Children's Rights" requiring formal licensure of all kinship care homes. If CR will not negotiate, the state should go to federal court and seek to reopen that part of the decree.

- Michigan should dramatically streamline its entire foster care licensing process.

- Grandparents and other relatives should be offered aid to meet minimum standards. *For example, if grandparents live in a home that truly is unsafe, they should be given the aid they need to fix the home or move elsewhere.*

- Whether or not they are licensed, relatives should be given financial support equal to that paid to strangers.

- Ban the placement of young children in institutions and cut overall institutionalization at least in half within five years, by building a comprehensive infrastructure of Wraparound and other alternative services.

- Michigan should meet the settlement requirements for reducing worker caseloads by hiring prevention workers, family preservation workers and drug treatment workers, not more investigators and foster care workers.

- Stop using surplus federal Temporary Assistance for Needy Families funds for any fam-

ily except a birth family and that family's extended family members, and, long term, Michigan should phase out the use of TANF as a child welfare slush fund. *TANF funds should be used only for their original purpose: concrete help to assist low income families in becoming self sufficient.*

- Understanding that much of what is labeled child neglect is, in fact, poverty, DHS must reorient its emphasis from often meaningless counseling and parent education programs, which serve largely to make the helpers feel good, to hard services to ameliorate the worst aspects of poverty.

- Michigan should fully fund its pioneering Families First Intensive Family Preservation Services program.

- The Legislature should remove the "boilerplate" language in the state budget that discourages neighborhood-based placements – and may encourage DHS to violate federal law and its own consent decree.

- Michigan should expand the Family to Family initiative to every county.

- Michigan should fully fund the "Parent Partners" program and make it available statewide.

Funds for these various initiatives could be made available by curbing vastly more expensive institutional placements, improving screening of calls to child abuse hotlines and using funds now committed to hiring investigators for family preservation workers instead. But

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Michigan also should seek more funding for prevention and family preservation. Here's how:

- Michigan should beg the Obama Administration for a second chance at a waiver like the one it foolishly turned down in 2006. This would allow about \$100 million currently restricted to foster care to be used for better alternatives as well.

- DHS should fast-track a statewide performance-based contracting system to end the perverse incentive private agencies now have to hold children in foster care indefinitely while their *per diem* payments roll in.

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

- DHS should create a Michigan Child Welfare Brain Trust to tap into the wisdom of outstanding experts who once worked for DHS Michigan but were recruited by other states and for other child welfare endeavors.

Due process

Improving "services" to families is not enough. Comprehensive reform of Michigan child welfare also requires meaningful due process protections for families. Therefore:

- Quality legal representation must be available to all parents who must face DHS. Those resources must include social workers who can offer alternatives to DHS cookie-cutter, no-services "service plans," and parent advocates similar to those in the Wayne County Parent Partners program.

- The Michigan Legislature should significantly narrow the definition of "neglect."

- The Michigan Legislature should pass legislation clarifying what should, in fact, be obvious: If a non-custodial parent pleads to neglect, that should have no impact on the rights of the custodial parent.

- The legislature should reexamine the huge number of grounds for termination of paren-

tal rights in current Michigan law. It should streamline these grounds and require findings of specific, serious failings on the part of parents. In particular the catch-all clause described earlier in this report should be repealed.

- The Legislature should specifically prohibit the fact that a termination of parental rights petition has been filed from being a factor in determining whether children will be allowed to visit their parents.

- The legislature should repeal the law requiring DHS to automatically petition for termination of parental rights, in most cases, whenever a parent who has lost a child to TPR in the past has another child.

- Before a call is accepted by a child abuse "hotline" and referred for investigation, the caller must be able to demonstrate that s/he does, indeed, have "reasonable cause to suspect" maltreatment. That requires a uniform, rational method for screening hotline calls. As part of this screening mechanism, anonymous calls should not be accepted.

- Reverse the current presumption that most child welfare records are closed and allow DHS to comment freely on any case made public by any other source.

- The Michigan Supreme Court should declare a statewide Family Reunification Day.

- All interviews conducted by DHS personnel in the course of child maltreatment investigations – not just interviews with children – should be, at a minimum, audiotaped. For interviews conducted at DHS offices or similar settings, videotape is preferable. Information from any interview that is not taped should be inadmissible in all court proceedings.

- The standard of proof in all court proceedings should be raised from the current standard in most states, including Michigan, "preponderance of the evidence," to "clear and convincing."

- In all places where it appears, the phrase "best interests of the child" should be replaced with the phrase "least detrimental alternative."

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NOTES:

- ¹ Jack Kresnak, "Hints of trouble: As his behavior worsens, his foster mother is on edge," *Detroit Free Press*, December 3, 2007.
- ² Decision of U.S. District Judge Jack Weinstein, *Nicholson v. Williams*, Case #00-CV2229, U.S. District Court, Eastern District of New York, March 1, 2002. The section of the decision summarizing expert testimony is available online at http://www.nccpr.org/index_files/Page339.html
- ³ Cleve R. Wootson Jr., "Mother of 6 battles court, past-due rent," *Detroit Free Press*, July 1, 2004.
- ⁴ Doug Guthrie, "\$30m suit filed in death of boy," *Detroit News*, November 4, 2008; Tammy Stables Battaglia, "\$30-million suit claims her son starved," *Detroit Free Press*, November 5, 2008.
- ⁵ Karen Bouffard, "The boy who had no chance," *Detroit News*, March 2, 2006.
- ⁶ Kresnak, note 1, supra.
- ⁷ Bouffard, note 3, supra.
- ⁸ Jack Kresnak, "Mysteries still linger around boy's short life, tragic death" *Lansing State Journal* (reprinted from *Detroit Free Press*) December 16, 2007.
- ⁹ Jack Kresnak, "Suspects and lies," *Detroit Free Press*, December 8, 2007.
- ¹⁰ Kresnak, note 1, supra.
- ¹¹ Personal communication, Prof. Ronald Davidson.
- ¹² Illinois Department of Children and Family Services, *Signs of Progress in Child Welfare Reform*, April, 2003, available online at <http://www.state.il.us/dcf/docs/SignsProg.pdf>.
- ¹³ Illinois Department of Children and Family Services, *Executive Statistical Summary*, December, 2008, available online at <http://www.state.il.us/DCFS/docs/execstat.pdf>
- ¹⁴ Personal communication, Ben Wolf, Illinois Branch, American Civil Liberties Union. Mr. Wolf is the attorney who brought the suit that produced the reforms. See also, Matthew Franck, "The Pendulum," *St. Louis Post Dispatch*, February 2, 2003.
- ¹⁵ Michigan Department of Human Services, *Licensing Rules for Foster Family Homes and Foster Family Group Homes for Children*, March, 2007, available online at http://www.michigan.gov/documents/dhs/DHS-OCAL-PUB-0010_180374_7.pdf
- ¹⁶ Personal communication, Mary Chaliman, Field Operations Executive Assistant, Children's Services Administration, Michigan Department of Human Services, December 13, 2008.
- ¹⁷ Studies cited in Mark Testa, et. al., *Family Ties: Supporting Permanence for Children in Safe and Stable Foster Care With Relatives and Other Caregivers*, University of Illinois School of Social Work, Children and Family Research Center, October, 2004, available online at http://www.fosteringresults.org/results/reports/pewreports_10-13-04_alreadyhome.pdf, and Generations United, *Time for Reform: Support Relatives in Providing Foster Care and Permanent Homes for Children*, March 2007, available online at <http://www.kidsarewaiting.org/tools/reports/files/0004.pdf>. See also, David M. Rubin et. al., "Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care," *Archives of Pediatric and Adolescent Medicine*, 162(6):550-556. Published online, June 2, 2008, at <http://archpedi.ama-assn.org/cgi/content/full/162/6/550>
- ¹⁸ Marc A. Winokur, et. al., "Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes," *Families in Society*, Volume 89, No. 3, 2008, available online at <http://www.familiesinsociety.org/New/Teleconf/081007Winokur/89-3Winokur.pdf>
- ¹⁹ Children's Research Center, *Analysis of Case Practice and Compliance with Standards in Michigan Foster Care*, February 5, 2008. Available online at http://www.childrensrights.org/wp-content/uploads/2008/05/2008-02-05_mi_case_record_review.pdf
- ²⁰ Center for the Study of Social Policy (CSSP), *Race Equity Review: Findings from a Qualitative Analysis of Racial Disproportionality and Disparity for African American Children and Families in Michigan's Child Welfare System* (Washington: January 19, 2009), available online at: <http://www.cssp.org/uploadFiles/michigan%20report%201%2014%2009%20FINAL.pdf>
- ²¹ The Urban Institute has compared the total amount that states spent on child welfare in 2004. (Cynthia Andrews Scarcella, et. al, *The Cost of Protecting Vulnerable Children V*, (Washington: The Urban Institute, May 24, 2006. Available online at <http://www.urban.org/publications/311314.html>) NCCPR divided those totals by the number of impoverished children in each state. Alabama spent \$1,157 per impoverished child. The national average was \$1,895. Michigan spent \$1,982. But the real figure for Michigan almost certainly is higher – because Michigan was one of only 11 states where the Urban Institute was unable to get complete data. Michigan was unable to calculate the amount of Medicaid money spent on child welfare. Add that in and the Michigan total probably would exceed the total for Illinois, which was \$2,170 – and Illinois was able to provide complete data.
- ²² Cynthia Andrews Scarcella, et. al, *The Cost of Protecting Vulnerable Children IV*, (Washington: The Urban Institute, May 24, 2006. Available online at <http://www.urban.org/publications/411115.html>).
- ²³ We estimate Michigan's total spending on substitute care at anywhere from \$300 million to \$471.6 million per year. See note 26, infra for further explanation of this estimate. If Michigan is like the nation as a whole, about 45 percent of foster care funds are spent on group homes and institutions.
- ²⁴ Judith Meltzer, *Progress of the New Jersey Department of Children and Families, Monitoring Report for Charlie and Nadine H. v. Corzine*, (Washington, D.C.: Center for the Study of Social Policy, October 30, 2008), chart, p.18
- ²⁵ State of Michigan Department of Human Services, *Fiscal Year 2007-2008 Report on the Details of Allocations Within Program Budgeting Line-Items in 2007 Public Act 131*, March 26, 2008, available online at http://michigan.gov/documents/dhs/DHS-Legislative-Sec514-PA131-2007-CPS_227770_7.pdf.
- ²⁶ The low end of this very rough estimate is based on the assumption that the cost of the Michigan foster care bureaucracy adds at least \$75 million to the \$223 million we know Michigan spends on "foster care payments" (*Report on the Details...*, note 25, supra) for a total cost of about \$300 million per year. This is based on DHS estimates in news accounts that the waiver was worth about \$100 million in federal money under a program called Title IV-E, and other DHS estimates that IV-E pays for roughly 28 to 32 percent of foster care costs. (Chart: *Foster Care Caseload, Funding Source Per Year*, personal communication, Anita Peters, Michigan Department of Human Services.) The higher end is based on figures compiled by the Urban Institute. They show that nationally, in FY 2004, about 68 percent of IV-E money paid for foster care maintenance, administration and training. Michigan received a total of \$227 million in IV-E payments that year. Our higher end estimate is based on 68 percent of that money going into foster care, and that figure representing one-third of total foster care spending in Michigan.

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²⁷ NCCPR calculates rates of child removal by comparing the number of children taken away over the course of a year, a figure each state must report to the federal government, to the total number of impoverished children in each state. Some believe it is fairer to compare to total child population. We strongly disagree but, for the record, when you run the numbers that way, the results are the same, Alabama and Illinois do better than Michigan. Entry into care data through 2006 are available here:

http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2006.htm. Data for 2007, the most recent available, are not yet online. NCCPR obtained them via a federal Freedom of Information Act request. Population data are from the Census Bureau.

²⁸ Erik Eckholm, "Once Woeful, Alabama Is Model in Child Welfare," *The New York Times*, August 20, 2005.

²⁹ Ivor D. Groves, *System of Care Implementation: Performance, Outcomes, and Compliance, March, 1996, Executive Summary*, p. 3.

³⁰ Eckholm, note 28, supra.

³¹ Wolf, Franck, note 14, supra.

³² DHS provided NCCPR with county-by-county entry into care data for the first ten months of 2008. We compared these data to census bureau estimates of the number of children living in poverty in each county.

³³ Michigan Advisory Committee on the Overrepresentation of Children of Color in Child Welfare, *Equity: Moving Toward Better Outcomes for All of Michigan's Children*, March 21, 2006, chart, p. 11. Available online at: http://www.michigan.gov/documents/DHS-Child-Equity-Report_153952_7.pdf

³⁴ All data and quotes for this section are from Muskie School Of Public Service Cutler Institute For Child And Family Policy, University of Maine, and American Bar Association Center for Children and the Law, *Michigan Court Improvement Program Reassessment*, August, 2005, available online at

http://muskie.usm.maine.edu/Publications/cf/MI_CourtImprovementProgramReassessment.pdf

³⁵ The report uses this term for judges and "referees" who sometimes are appointed to hear these cases.

³⁶ Children's Research Center, note 19, supra.

³⁷ The studies or articles citing the studies include: 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. Kundsén, "Out of Home Maltreatment: An Analysis of Risk in Various Settings for Children," *Children And Youth Services Review* Vol. 14, pp. 485-492, 1992; Peter Pecora, et. al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* (Seattle: Casey Family Programs, 2005); Leslie Kaufman and Richard Lezin Jones, "Report finds flaws in inquiries on foster abuse in New Jersey," *The New York Times*, May 23, 2003; 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; Children's Rights, Inc., "Expert research report finds children still unsafe in Fulton and Dekalb foster care," press release, Nov. 5, 2004; Memorandum and Order of Judge Joseph G. Howard, *L.J. v. Massinga*, 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.

³⁸ John Goad, *Michigan Department of Human Services: An Evaluation of the Capacity to Assure the Safety of Foster Children*, February 11, 2008.

³⁹ Michigan Department of Human Services, *Child Protection Law* available online at http://www.michigan.gov/documents/DHS-PUB-0003_167609_7.pdf. The document is a compilation of relevant statutes.

⁴⁰ Ron Fonger, "Foster care number swells; welfare-to-work one reason: Official" *Flint Journal*, September 9, 2003.

⁴¹ CSSP, note 20, supra.

⁴² "Abuse of children increases in Michigan," *Lansing State Journal*, March 29, 2006.

⁴³ 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.

⁴⁴ Ruth Anne White and Debra Rog, "Introduction," *Child Welfare*, note 43, supra, p. 393.

⁴⁵ Study cited in Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (New York: Basic Civitas Books: 2002). Many other studies are cited in the book and summarized in NCCPR Issue Paper #7, *Child Welfare and Race*, available online at

www.nccpr.org

⁴⁶ CSSP, note 20, supra.

⁴⁷ Vivek Sankaran, "Procedural Injustice: How the Practices and Procedures of the Child Welfare System Disempower Parents and Why it Matters," *The Michigan Child Welfare Law Journal*, Fall 2007. The reason this statistic underestimates the problem has to do with kinship care. Although kinship care has many advantages over stranger care, children placed in kinship care tend to stay in care longer before reunification, possibly because agencies tend to see less urgency in reunification when a child is, at least, with a relative. But private agencies handle very few kinship care cases. So private agencies should be doing better than DHS on reunification, instead of doing worse.

⁴⁸ The statute is [42 U.S.C. 6755j\(A\)](http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00000675_---000_.html) available online at http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00000675_---000_.html

⁴⁹ Children's Research Center, note 19, supra.

⁵⁰ U.S. District Court for the Eastern District of Michigan, "Settlement Agreement," *Dwayne B. v. Granholm*, Case # 2:06-cv-13548, July 3, 2008.