



DONALD N. DUQUETTE
FRANK E. VANDERVORT
VIVEK S. SANKARAN

313 Legal Research Bldg.
625 South State Street
Ann Arbor, Michigan, 48109-1215
734.763.5000
Fax: 734.647.4042

February 18, 2009

“A Long Overdue Wakeup Call”

STATEMENT OF VIVEK S. SANKARAN, Clinical Assistant Professor of Law, University of Michigan Law School Child Advocacy Law Clinic

Today, the National Coalition for Child Protection Reform (NCCPR) provides a long overdue wakeup call to the Michigan child welfare system. Its report paints a picture of a system that needlessly wastes money by favoring the most expensive and least effective options for children and details the ways in which the system routinely frustrates, humiliates and overwhelms the very families it seeks to heal. Not surprisingly, less than 40% of foster children in Michigan are reunified with their parents, a frighteningly low number.

The children in this state deserve a child welfare system that gives them a real chance to be with their loving families but all too often, that fails to occur. Instead, the system often focuses on how to keep children in foster care, rather than explores how to keep kids out.

Consider the following cases.

1. Rachel¹ (age 7), Suzie (age 6), Mary (age 4) and Jessica (age 2) would like nothing more than to return to their parents' home, from which they were removed over a year ago by the Department of Human Services for “environmental neglect.” At the first court hearing, the court-appointed lawyer for the parents mocked them for being illiterate, “dirty,” and “too poor” and told them that the removal was “best thing that ever happened.” A year has passed, the parents have completed all of the requirements of their case service plan and the children have regular unsupervised visits with their parents. Yet the children still remain in foster care. The reason? In the eyes of the State, the parents are still too poor to care for them. They don't have the money to buy beds for the kids and despite making serious efforts to locate long-term employment, like thousands of other Michiganders, they've been unable to find steady work in this economic crisis. But rather than support the reunification of the family (by, for example, buying beds for the children), the Department of Human Services would prefer to

¹ The names of all of the children have been changed to protect their confidentiality.

waste thousands of dollars to keep the children in foster care and deprive them of their right to be with their parents.

2. There is nothing that 13-year-old Johnnie would rather do than go live with his mother and two sisters. This past September, the court ordered that he return to his mother's care but due to his serious emotional needs, ordered in-home wraparound services to assist in the transition. Despite the court order, those services were never provided. The Department stated that because the mother lived in another county, it needed approval from state officials in Lansing before being able to provide the service. Officials in Lansing denied the request in spite of the court order. And the court refused to force the Department to comply with its previous order. While the bureaucratic finger-pointing was occurring, Johnnie was expelled from school, had attacked his older sister and was hospitalized at a psychiatric institution. Without the intensive in-home services in place, the placement broke down and Johnnie quickly returned to foster care. The Department's decision to pay \$161 per day to a group home to care for Johnnie rather than provide his family with the less expensive and more effective in-home services has irreparably damaged his relationship with the family. He hopes that some day soon, he'll get a real chance to be with his family.

3. DeSaun (age 14), Justin (age 10), Michael (age 8) and Jamisha (10 months) are anxiously awaiting the day that the court permits them to return to their mother's care. The children entered foster care after their mother, a long-time domestic violence victim, relapsed after she encountered her ex-husband at a family reunion. After the removal, the mother immediately accepted responsibility for her actions, admitted her mistakes and agreed to cooperate fully with the services the Department had recommended for her. She has been clean for over five months, yet rather than embrace this mother willing to address the problems in her life, the system responded in an unforgiving manner. She was denied visits for the first 22 days of the case and was then restricted to seeing her children to one hour a week; even after the court authorized a church member to supervise the visits in more family-friendly settings, the Department simply ignored the order. It prohibited phone contact between the children and their mother and automatically blamed the mother for all of the children's problems in foster care including their moves to multiple foster homes and schools. The mother's input was never solicited when drafting her service plan, as required by Department policy, and when the oldest child was in a serious car accident, the Department only notified her twenty-four hours later and then refused to allow the child to see her until the next regularly scheduled visit, days later. And instead of fighting zealously for what the four children desperately seek – to return to their mother's home – their court-appointed advocate simply rubber-stamped the Department's recommendations in the guise of the "child's best interests." The children only hope that the court is willing to trump the recommendations of their "zealous advocate."

These three stories typify a system that moves too slowly, refuses to collaborate with parents and other family members, and maintains a focus on a family's weaknesses as opposed to its many strengths. By looking for reasons to keep children in foster care as opposed to ways to return them safely to their families, the system expends millions of dollars to further outcomes that ultimately inflict unnecessary damage to children. As recommended by the NCCPR, a paradigm shift in child welfare is needed in Michigan, one in which families are valued and strenuous efforts are made to keep children with those who love them most. Here are a few specific ways in which that can be done.

1. **Strengthen the right to counsel for parents in child welfare cases.** Court-appointed counsel receive inadequate supports in child welfare cases. Currently each county maintains the ability to determine how much court-appointed attorneys get paid, what type of training, if any, they receive, and at what juncture they are appointed. All too often, this translates into parents' attorneys being woefully underpaid, minimally trained and appointed too late in cases. Adopting statewide standards on compensation, training and the timing of appointments will address these issues. Michigan should follow the lead of Connecticut, Massachusetts and other states that have reformed their systems in this manner.
2. **Fully fund in-home services for families to prevent removals and prolonged stays of children in foster care. Expand the Parent Partner program so that every parent in the system has the opportunity to work with one.** As the NCCPR report details, funding for in-home services for families has been marginalized within the Department and has been repeatedly cut. The Families First Program, whose success has been touted throughout the country, remains in the periphery of the Department's priorities. The Department spends more than \$200 million a year in payments to foster care providers while allocating less than \$70 million for prevention and family preservation programs. Additionally, the Parent Partners program, which matches parents with other parents who successfully reunified with their children, has received rave reviews but still only exists in Wayne County and even there, only for a few families. If the system sincerely wants to produce better and cost-effective outcomes for children, it must refocus its priorities and prioritize programs that keep children safely with their families.
3. **Improve the judicial decision-making surrounding the initial removal of children.** As so vividly demonstrated this past summer in the infamous Mike's Hard Lemonade case, Michigan's process of removing children from their parents is seriously flawed. Removal decisions are not based on individualized findings of imminent harm to the child and all too often, the Department errs on the side of placing children in foster care rather than conducting the rigorous assessment needed to determine what the best option is for the child. This problem is exacerbated by the lack of meaningful judicial review of the Department's decision. All too often, the initial court hearings are perfunctory and the Department's recommendations are blindly accepted. The legal standard to

remove children must be heightened in order to force courts to engage in a meaningful review of the Department's actions.

4. **Protect the rights of non-offending parents who are willing and able to immediately care for their children.** In Michigan, courts have the power to strip non-offending parents – those parents who have done nothing wrong – of their custodial rights to their children based solely on the actions of the other parent. This practice, which needlessly places children in foster care rather than in the home of a fit parent, further frustrates and disempowers the non-offending parent and raises significant constitutional concerns. Legislation should be passed to end this practice immediately.

These are just a few recommendations to plant the seeds for the much needed “paradigm shift” in child welfare. Talented and creative leaders can be found in the Department, the Judiciary and the private sector. But all too often, leaders in this State have settled for creating Blue-Ribbon Commissions rather than pushing and funding the innovations recommended by those very Commissions. It is my hope that today will mark a new beginning in child welfare in which the individual needs of families are prioritized and parents of children in foster care are given a meaningful role in the process.