

# NATIONAL COALITION FOR CHILD PROTECTION REFORM

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

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For further information, contact:  
Richard Wexler, Executive Director, NCCPR  
(703) 212-2006  
Carole Shauffer, Executive Director,  
Youth Law Center, (415) 543-3379, [www.ylc.org](http://www.ylc.org)

**UPDATE: Thanks to the efforts of NCCPR and our allies, the law discussed in this release was, in fact, repealed and the new law strengthens the preference for kinship care. The Utah child welfare system no longer is under federal court oversight.**

## COURT OVERSIGHT OF UTAH CHILD WELFARE SHOULD CONTINUE UNTIL DCFS CORRECTS BACKGROUND CHECK BLUNDER, CHILD ADVOCATES SAY

*The report discussed in this release is available online at  
[www.nccpr.org/reports/utah09282007.pdf](http://www.nccpr.org/reports/utah09282007.pdf)*

The Utah Division of Child and Family Services should not be freed from oversight by a federal court until it keeps its promises to undo a tragic misinterpretation of federal law, a national child advocacy organization said Friday.

Because Utah misunderstood how to implement the so-called Adam Walsh Child Protection and Safety Act, and persuaded the legislature to change state law to conform to that misunderstanding, hundreds of children have spent days, sometimes weeks trapped in institutions, even when safe, loving grandparents and other relatives were available to care for them, according to the National Coalition for Child Protection Reform, which released a report on the issue Friday.

“Even as state officials engaged in an orgy of self-congratulation this summer over the impending exit from the *David C.* consent decree, which has governed child welfare in the

## BACKGROUND CHECK BLUNDER/2

state, children were trapped in shelters because of a bureaucratic blunder by the state Division of Child and Family Services,” said NCCPR Executive Director Richard Wexler.

“Months after promising to undo the mistake, and even after DCFS Director Duane Betournay explicitly acknowledged that his agency had erred, DCFS has evaded, DCFS has stalled, and DCFS has dissembled. DCFS should not be freed from the consent decree until the children are freed from the shelters.”

NCCPR first notified DCFS that it had misunderstood the law in April. “Instead of acting immediately to free the children from needless institutionalization and get them into the arms of loving relatives, the agency stalled.

“In May, NCCPR and the Youth Law Center, a public interest law firm that has successfully fought the needless institutionalization of children all over the country, obtained a series of assurances from Betournay. (The Youth Law Center should not be confused with the National Center for Youth Law, which brought the *David C.* lawsuit.) Betournay promised that new technology would speed the background checks and that this technology would be used statewide, he promised to learn more about who is in his agency’s own shelters and find ways to curb their misuse and overuse, and he promised he would return to the legislature in January and ask the legislature to undo the change in state law.

“But now there are disturbing indications that he intends to keep none of these promises,” Wexler said. “*The Salt Lake Tribune* exposed the fact that the new technology often didn’t work. We’ve seen no new data on the shelters and no evidence of efforts to curb their use. And instead of asking the legislature to undo the damage, Betournay and his boss, Department of Human Services Director Lisa-Michele Church, made a series of grossly misleading statements to a legislative committee, statements apparently intended to scare them away from action,” Wexler said.

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The Adam Walsh act added a new, extra set of sometimes time-consuming background checks which must be done on all prospective foster parents, including relatives. The law was unclear about whether these new, extra checks had to be completed before the children could be placed.

“Forty-nine states waited for clarification from the federal government, and they got it: clear, definitive guidance from the federal Administration for Children and Families that states are free to place children with relatives while the checks are completed.

“But Utah jumped the gun and amended state law to bar such placements based on a misunderstanding of the law,” Wexler said. “We know of no other child welfare system anywhere in the country that made this mistake; and, so far, DCFS has not reported finding one either – though they’ve been looking for several months.

“Lisa-Michele Church has paid lip service to the value of kinship caregivers, calling them ‘angels among us.’ But to a greater degree than any other state, Utah treats these ‘angels’ as suspects. That is in keeping with Utah’s longstanding hostility to kinship care – the proportion of children placed with relatives in Utah is among the lowest in the nation.

“The results have been tragic for children,” Wexler said.

“Try to imagine the trauma for a young child. The child suddenly is taken from everyone he knows and loves by DCFS. Perhaps the move really was necessary to keep the child safe, perhaps not; either way, for a young enough child it can be an experience akin to a kidnapping.

“First the child is institutionalized, his ‘care’ in the hands of rotating shift staff. Every time the child gets used to someone, the shift changes and that person is gone. It’s like undergoing multiple foster-care placements every day. Then the child is uprooted again to spend a couple of weeks with total strangers.

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“And all the while, waiting in the wings, is someone who was ready from day one to comfort this child and cushion the blow of substitute care: Grandma. But grandma is denied custody of the child for weeks on end.”

Wexler said NCCPR was particularly disturbed by statements made by Betournay and Church to the legislature’s Health and Human Services Interim Committee on Sept. 19.

“Months after Betournay promised to ask the legislature to undo the change in the law, his boss made a series of grossly misleading and contradictory statements apparently intended to back lawmakers into a corner.

“On the one hand Church claimed DCFS never wanted to delay kinship placements but was forced into it by the new federal law. But she also implied, wrongly, that, without the Adam Walsh law, there would be no background checks at all. She suggested that if the legislature moved to fix her agency’s misreading of the law, children would be less safe, and if there were a tragedy, it would be the lawmakers’ fault.

“None of it is true,” Wexler said.

“All decisions in child welfare involve balancing risks. Placing a child with a grandparent before the new, extra check is completed creates a slim chance something might be overlooked. Sadly, that risk has been exaggerated in the minds of some by widespread prejudice against extended families.

“But leaving the child with strangers during this time creates bigger risks. Several studies have found alarming levels of abuse of children in foster homes with strangers and in institutions, rates of abuse far higher than reflected in official figures which involve agencies investigating themselves. Furthermore, no matter how well-meaning the staff may be and how hard they try, and no matter how pretty the institution is, institutionalization for weeks at a time can devastate young children emotionally. And it is emotional harm that often is the most crippling of all.

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“In contrast, research shows that kinship placements are not just more stable and better for children’s well-being, they also are, on average, *safer* than what should properly be called ‘stranger care.’

“DCFS’ big bureaucratic blunder has not only endangered children’s emotional well-being,” Wexler said. “By prolonging stranger care and delaying the safer option, it has made Utah’s vulnerable children less safe.

“While DCFS keeps children in limbo for weeks because of the tiny chance a child might be harmed by grandma while an extra background check is completed, hundreds of children are *definitely* harmed by children’s needless confinement to shelters. Indeed, DCFS is treating these children like inmates, even preventing them from *visiting* relatives overnight. And while the children suffer, Utah officials repeatedly brag about the system’s imminent exit from a consent decree. Such gloating is like rubbing salt in these children’s wounds.

“Rather than own up to the error, DCFS and DHS have sewn confusion in the legislature and, more important, spread despair among vulnerable children trapped needlessly in institutions. Protecting bureaucracy has taken precedence over protecting children. DCFS’ failure to correct its error is state-sanctioned child abuse.

“Although DCFS and DHS now are spreading scare stories about safety, the real motivation for rushing to change state law was money,” Wexler said. “State officials claimed that if they did not delay placements until the new, extra background checks were completed they could lose a huge amount of federal aid for foster care.

“Betournay continues to spread scare stories about this, implying as recently as this month that tens of millions of dollars could be at risk. But even Church had to admit that all that may be at stake is federal aid for the weeks between placement and completion of the background checks.

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“And any loss of federal aid may well be made up by savings from reducing institutionalization. In addition to being the worst form of care for children, institutionalization is the most expensive. For example, institutionalizing a child at Salt Lake City’s ‘Christmas Box House’ costs \$140 per night; far more than the cost of placement with a relative.

“It is obscene to waste \$140 per-night-per-child on a bed at a ‘Christmas Box House,’ when a child already has a bed at grandma’s house – if only DCFS would let him go there.”

Wexler said the failure to own up to, and correct, its error on the background check issue raises broader questions about the future of child welfare in Utah.

“As a result of the Milestone Plan, implemented largely by Betournay’s predecessor, Richard Anderson, as part of the consent decree, Utah has made significant and real progress in improving child welfare.

“But it is at least as hard to sustain reform as it is to achieve it in the first place. It’s easy to fall back into old patterns when the court is no longer looking over everyone’s shoulders. Sustaining reform requires bold, visionary leadership from the child welfare agency.

“If the experience with the state’s misreading of the Adam Walsh Child Protection and Safety Act is any guide, it is hard to see where that leadership will come from in Utah.”

NCCPR’s report urges the relevant legislative committees not to wait until January but rather to issue guidance to DCFS immediately that it should follow federal law on background checks, using the explicit guidance from the Administration for Children and Families.

The report also recommends that the court monitor overseeing the *David C.* decree urge the court not to let DCFS finally exit from the decree until, as Wexler put it, “Betournay fully and completely keeps all of his promises to undo the damage caused by Utah’s misreading of the Adam Walsh Act.”

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**ABOUT NCCPR:** The National Coalition for Child Protection Reform is a non-profit child advocacy 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. Further information about NCCPR is available at [www.nccpr.org](http://www.nccpr.org) **Funding for NCCPR's national advocacy activities, comes from the Annie E. Casey Foundation. We thank the Foundation for its support, but acknowledge that the views expressed are those of NCCPR alone and do not necessarily reflect the opinions of our funders.**