

HALF WAY HOME

How the governor
got foster care reform
50 percent right
(and how to fix
the other half)

**National Coalition for
Child Protection Reform
53 Skyhill Road (Suite 202)
Alexandria, VA 22314
(703) 212-2006
www.nccpr.org**

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How the governor got foster care reform 50 percent right (and how to fix the other half)

A report from the National Coalition for Child Protection Reform

By Richard Wexler, NCCPR Executive Director

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ABOUT NCCPR

The National Coalition for Child Protection Reform is a non-profit organization whose members have encountered the child protection system in their professional capacities and work to make it better serve America’s most vulnerable children. **Board of Directors: President:** *Martin Guggenheim*, former Director of Clinical and Advocacy Programs, New York University Law School, author, *What’s Wrong with Children’s Rights* (Harvard University Press: 2005). **Vice President:** *Carolyn Kubitschek*, attorney specializing in child welfare law, former Coordinator of Family Law, Legal Services for New York City. **Treasurer:** *Joanne C. Fray*, attorney with extensive experience with litigation involving the care and protection of children and termination of parental rights, Lexington, Mass. **Directors:** *Elizabeth Vorenberg*, (Founding President) former Assistant Commissioner of Public Welfare, State of Massachusetts; former Deputy Director, Massachusetts Advocacy Center; former member, National Board of Directors, American Civil Liberties Union; *Annette Ruth Appell*, Associate Dean, William S. Boyd School of Law, University of Nevada, Las Vegas; former member of the Clinical Faculty, Children and Family Justice Center, Northwestern University Law School Legal Clinic, former Attorney and Guardian ad Litem, office of the Cook County, Ill. Public Guardian; *Marty Beyer, Ph.D.*, clinical psychologist and consultant to numerous child welfare reform efforts; *Ira Burnim*, Legal Director, Judge Bazelon Center for Mental Health Law, Washington, DC; former Legal Director, Children’s Defense Fund; former Staff Attorney, Southern Poverty Law Center; Prof. Paul Chill, Associate Dean, University of Connecticut School of Law; Prof. Dorothy Roberts, Northwestern University School of Law, author *Shattered Bonds: The Color of Child Welfare* (Basic Civitas Books: 2002); Witold “Vic” Walczak, Legal Director, Greater Pittsburgh Chapter, American Civil Liberties Union Foundation of Pennsylvania; Ruth White, former Director of Housing and Homelessness, Child Welfare League of America. **Staff:** *Richard Wexler*, Executive Director. Author, *Wounded Innocents: The Real Victims of the War Against Child Abuse*. (Prometheus Books: 1990, 1995).

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UNDERSTANDING THE SYSTEM

The problems for Jane Williams^{*} four youngest children – ages 21 months to 11 years – began while their mother was working. An older child was supposed to be baby-sitting, but he'd left them unsupervised. They were found wandering alone in a K-Mart.

They appeared healthy and well fed. An investigator for the Department of Social Services in Virginia Beach gave the family a "safety plan."

But when the caseworker stopped by the next day, everyone was gone. There was nothing in the plan that said they couldn't move, but the caseworker decided the family had "absconded."

They were found, safe and sound, at Jane's sister's house in Hampton. Nevertheless, the caseworker and two police officers seized the children on the spot.

As *The Roanoke Times* reported, DSS "was concerned the children weren't in school and that the mother distrusted the government and lived a 'secretive life-style.'"

To get her children back, Jane would have to take a psychiatric exam, make sure her children were in school, and get a better job. (Why the quality of her job was any of DSS' business is not indicated.)

The psychologist found that Jane's only mental health problem was "the post-traumatic stress she'd suffered because of her children's removal."

But that didn't stop Virginia Beach DSS.

According to the *Times*:

The agency granted visitation, withdrew it, restored it, withdrew it again. The requirements she needed to follow were 'continually changed and increased,' the [Virginia] Court of Appeals later wrote, even though she was making progress toward meeting the original goals. The mother said a social worker instructed her not to tell her youngest that she was his mother. In front of [the child], the appeals court said, the worker referred to the mom as 'the Nice Lady.'

After two years, a trial court gave [Jane] custody of the other three children, but said her bond with the youngest was "not sufficiently formed." It awarded custody to the welfare department.

A year later ... the Court of Appeals ruled there was no evidence [Jane] had ever abused or neglected her children. The judges instead rebuked the welfare department, noting that the mother's therapist had described the agency as 'adversarial and judgmental ... almost to the point of intimidating.' ...

So the appeals court did something it almost never does: reversed the termination. But by then, the children had been in foster care for three years. They had been separated not only from their mother, but also from each other, enduring 17 separate placements in all. Such multiple placement is among the most extreme forms of emotional abuse that can be inflicted on a child.

Yet whenever Jane would fight for her children and question what was being done to them, the child welfare agency labeled her "disruptive."¹

^{*} -Not her real name

The only thing unusual about this case is the Court of Appeals decision. Ask any lawyer who diligently represents birth parents who find themselves up against the might of a county Department of Social Services and you can get plenty more examples just like it.

“Any lawyer who has done much work in this area can come up with several examples in which the definition of imminent danger has been elastically translated by agencies to include situations in which the only threat was to middle-class sensibility and middle-class lack of understanding.”

*--Hugh O'Donnell,
Client Centered Legal Services of
Southwest Virginia*

One such lawyer is Hugh O'Donnell, Executive Director of Client Centered Legal Services of Southwest Virginia, one of the few legal services agencies in Virginia that will even take such cases.

In a landmark article for the *Appalachian Journal of Law*, O'Donnell writes that “any lawyer who has done much work in this area can come up with several examples in which the definition of imminent danger has been elastically translated by agencies to include situations in which the only threat was to middle-class sensibility and middle-class lack of understanding.” O'Donnell writes of seeing children removed from their homes for “head lice; having a boyfriend; displaying anger toward hospital personnel;

or my particular favorite, being a victim of domestic violence.”²

The problem with that is not that it hurts parents, though of course it does. The problem with the widespread needless removal of children is that it does so much harm to the children themselves.

Indeed, while those who take children often justify their action by claiming they have to “err on the side of the child,” in fact, there probably is no phrase in the child welfare lexicon that has done more harm to children than “err on the side of the child.”

- When a child is needlessly thrown into foster care, he loses not only mom and dad but often brothers, sisters, aunts, uncles, grandparents, teachers, friends and classmates. He is cut loose from everyone loving and familiar. For a young enough child it's an experience akin to a kidnapping. Other children feel they must have done something terribly wrong and now they are being punished. The emotional trauma can last a lifetime.

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?”

- All that harm can occur even when the foster home is a good one. The majority are. But the rate of abuse in foster care is far higher than generally realized, far higher than is reported in official figures (which involve agencies investigating themselves) and far higher than in the general population.³ That same alumni study found that one-third of foster children said they'd been abused by a foster parent or another adult in a foster home. (The study didn't even ask about one of the most common forms of abuse in foster care, foster children abusing each other). Other studies have found simi-

larly alarming results.

Switching to orphanages won't help -- the record of group homes and institutions is even worse. (For full details on the wealth of studies concerning the harm of needless foster care, see *Facing up to the evidence base*, page 7)

Furthermore, the more a foster care system is overwhelmed with children who don't need to be there, the less safe it becomes, as agencies are tempted to overcrowd foster homes and lower standards for foster parents. If a child is taken from a perfectly safe home only to be beaten, raped or killed in foster care, how is that "erring on the side of the child"?

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

These are the problems that lie at the heart of Virginia's child welfare failure; they are at the root of the state's well-known problems of allowing children to bounce from foster home to foster home and then abandoning them at age 18, less likely than their counterparts in any other state to have found a permanent home.⁴

But with one notable exception, these problems are barely addressed in Governor Timothy M. Kaine's proposals to improve child welfare in the current biennium. They also are shunted aside in the First Lady's "For Keeps" initiative. Indeed, by slamming the door on birth parents through-

out the process of developing ideas, implicitly accepting the stereotypes that suggest they are all sadistic brutes unworthy even of being heard, the initiative risks making some of these problems worse.

The more that workers are overwhelmed with children who don't need to be in foster care, the less time they have to find children in real danger.

One of the governor's two proposals is excellent. He proposes to go part way toward addressing a primary paradox of child welfare: The more expensive the option the worse it is for children. Safe, proven alternatives to family foster homes are a better option, and cost less, than foster homes. Foster homes are a better option, and cost less, than group homes. Group homes are a better option, and cost less, than institutions.

While we are critical of foster care in general, we recognize that there are a relatively small number of children for whom it is essential. For those children a foster home can be, literally, a lifesaver. But while it is possible to have good foster homes, there is no such thing as a good group home or a good institution.

That's not because those running the institutions don't mean well. In many cases they do. And many of the frontline staff do their best. But "congregate care" as it is called is *inherently* harmful – the very nature of the care, depriving a child of any form of real family, does harm.

So the governor has wisely proposed to change financial incentives for counties, providing less state money for warehousing children in institutions and more for placing

them in “community-based settings.”

But while the governor proposes to shift money from worse settings to better settings, he allocates no additional new money for the best setting of all: a child’s own family. Instead, \$22.6 million in state funds that could have gone for such help is being diverted instead into a giant pay raise for, mostly, middle-class foster parents. This giant pay raise would catapult most Virginia foster parents to among the highest paid in America, with rates far above the national average for most children.

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Another \$7 million in state funds would go into a recruiting campaign to find more foster and adoptive parents. But, as is discussed in detail later in this report, even as Virginia ignores a huge untapped reserve of foster parents – children’s own relatives – the governor’s initiative does nothing to promote kinship care.

Governor Kaine has bragged about how popular the pay raise is politically.⁵ But that makes it no less troubling morally.

Both the proposal concerning institutionalization, which we favor, and the proposal concerning the raise for foster parents, which we oppose, are based in part on recommendations from the Annie E. Casey Foundation’s Strategic Consulting Group. The Casey Foundation also helps to fund NCCPR. This report was not discussed with

the Foundation before its release.

Who is in the system

When child welfare makes headlines it’s almost always because of the torture or murder of a child at the hands of a parent. Such cases get enormous public attention – as they should. But the parents in such cases bear no resemblance to those who typically lose their children to foster care.

Of all children who entered Virginia foster care in 2006, there were allegations of sexual abuse or physical abuse in any form in 18 percent of them. Drug or alcohol abuse was alleged in 22 percent.

In contrast, the largest single allegation, by far, seen in 46 percent of cases, was “neglect.”⁶ And broad, vague definitions make it easy to confuse neglect with poverty.

- 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.⁷

- 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.”⁸

- Families struggling to keep their children out of foster care are stymied by two major problems: homelessness and low public assistance grants, according to two New York City studies.⁹

- A study of “lack of supervision” cases by the Child Welfare League of America found that in 52 percent of the cases studied, the service needed most was what one might expect -- day care or babysitting.¹⁰ But the “service” offered most often was foster care.

- In Genesee County, Michigan, which includes Flint, from 2000 to 2003, the foster-care population doubled – and even the head of the county child welfare office

Facing up to the “evidence base”

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

Indeed, evidence that those old, non-innovative programs are a failure is routinely ignored. The evidence is overwhelming that foster care hurts children – and group homes and institutions hurt them more.

There has long been a wealth of evidence that when children are left in their own homes and the families are given intensive support, this approach is not only more humane (and less expensive) than foster care it also is safer than foster care. A series of studies of Intensive Family Preservation Services have proven this.¹¹

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

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

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

- The children left in their own homes were less likely to become pregnant.
- The children left in their own homes were less likely to be arrested.
- The children left in their own homes were less likely to be unemployed.¹²

So now, when a governor proposes to reduce the financial incentive to institutionalize children and increase the incentive for keeping children in “community-based settings” there are 15,000 children, who, we suspect, would like to thank him. But when the same governor proposes to spend \$22.6 million on a pay raise for foster parents and no new dollars on safe, proven alternatives to foster care, there are 15,000 children, who, we suspect, would like him to know he’s making a mistake.

And this is not the only such study. A University of Minnesota study, released in 2006, also compared children in foster care to comparably-maltreated children left with their own families who got little or no help. Once again, on average, the children left in their own homes did better.¹³

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

This study also found that one in three of the alumni reported being abused by a foster parent or another adult in a foster home.¹⁴ The study didn’t even ask about one of the most common forms of abuse in foster care, foster children abusing each other. And other studies find the rate of abuse in group homes and institutions is worse.¹⁵

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

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

University of Florida Medical Center researchers studied two groups of infants born with cocaine in their systems. One group was placed in foster care, the other with birth mothers able to care for them. After six months, the babies were tested using all the usual measures of infant development: rolling over, sitting up, reaching out. Consistently, the children placed with their

birth mothers did better.¹⁶ For the foster children, being taken from their mothers was more toxic than the cocaine.

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

Surely, then, it would be wise for there to be more state funding for ways to keep children out of a system that churns out walking wounded four times out of five – and more respect for the “evidence base.”

said one of the main reasons is they’re removing children from women forced to leave their children with unsuitable caretakers while they go to jobs they must take under the state’s welfare laws.¹⁷

- The National Commission on Children found that children often are removed from their families "prematurely or unnecessarily" because federal aid formulas give states "a strong financial incentive" to do so rather than provide services to keep families together.¹⁸

And across the country, several people who have run child welfare systems have acknowledged that their own systems take away too many children.

- In Washington D.C., where the foster care system was run for several years by the federal courts, the first receiver named by the court to run the agency found that between one-third and one-half of D.C.’s foster children could be returned to their parents immediately -- if they just had decent housing.

- A former District Administrator in Broward County Florida estimated that 35 percent of the children in that county’s foster care system could have remained safely in their own homes had the right kinds of help been provided.¹⁹

- The former head of one of the nation’s largest child welfare systems, Los Angeles County’s, put the figure at up to 50 percent.²⁰

And it’s not hard to find such cases in Virginia. Some are cited at the start of

this report. And sometimes, Virginia authorities seem to go out of their way to make an impoverished family’s life more miserable:

Consider a case of official cruelty in Virginia that made *The New York Times*. It involved Carol Williams, who couldn’t raise three children in the Bronx on her \$24,000-a-year salary. To do better, she took a second job, but had to send the children to live with their grandmother in Virginia. But Virginia authorities, alleging abuse, took away the children.

As Ms. Williams mother worked her way up the economic ladder in New York, she thought she finally was making enough to reclaim her children. Not so fast, said the authorities in Virginia – now that mom was making a little more money, she “owed” Virginia \$12,000 to help reimburse the state for the cost of caring for the children it had taken away.²¹

Though the state calls it child support, there is a better word for forcing a loving mother to pay money to people who took away her children against her will in order to get those children back: Ransom.

And if the harm to children is not enough, consider the harm to taxpayers. There is no way an impoverished parent can afford the entire cost of foster care, and when ransom – sorry, “child support” – is assessed, it is not for anything like the full cost. So for every day a child’s release from foster care is delayed because a parent can’t come up with the ransom, the cost to tax-

payers goes up. Sometimes attempting to wreak vengeance on a “bad mother” can have a high price indeed.

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But for calculated cruelty it would be hard to top what the Powhatan County Department of Social Services did to Darlene Carter, her daughter, and four grandchildren. Ms. Carter was disabled, her daughter suffered from two different forms of diabetes. On Ms. Carter’s monthly disability payment all they could afford to rent was a house with no toilets and no running water.

Whenever ordinary Virginians heard about the family’s plight they responded as one would expect from Virginians: with kindness and generosity. First, a volunteer school mentor described the family’s plight to the Board of Supervisors – which did nothing. That caught the attention of the *Richmond Times-Dispatch* which ran a front-page story.

The story led to an outpouring of help from concerned Virginians. But each time help was about to arrive, Powhatan DSS would snatch it away. As the *Times-Dispatch* reported:

A local furniture company, responding to Carter's description of how her three granddaughters shared a double bed, donated four single beds and linens for all so

the grandchildren, now 12 to 17, each could have their own bed.

But when the beds arrived, along with them came a \$35 charge from Social Services for the bedding. ...

Social Services Director Ann Shelton said there was a good reason for the fee.

"We felt they needed to pay something," Shelton said, adding her department's mission is to enable families to be self-sufficient. That includes teaching basic life and household management skills. "There needs to be responsibility, and sometimes you have to teach that in baby steps."

Shelton never explained how she concluded that a grandmother who had managed to raise four healthy grandchildren while living in a house with no toilet and no running water was insufficiently “responsible.”

Worse, when Carter was offered a three-bedroom mobile home, DSS refused to release funds, donated by *Times-Dispatch* readers, so Carter could buy land to put it on.

Having blocked every means to escape from their decrepit house, Powhatan County DSS ultimately found a way to run the family out of town entirely – they threatened to take away the children because of the poor housing conditions. The family moved in with relatives in another county.

“I was born in Powhatan County,” said the children’s mother, “and they ran me away from home.”²²

Paging “Mr. Green”

One section of Huge O’Donnell’s law journal article is headed simply: “Truth No.1: Child Protection Is a Poverty Issue.” O’Donnell writes:

“Though the litany states that child abuse and neglect can and does occur at all economic levels and social classes, the people I see in court in these cases are nearly

always people who are at or near the bottom of the economic heap. In our society, the lack of power is typically associated with the absence of that critical party whom some lawyers in Southwest Virginia used to refer to euphemistically as 'Mr. Green.' There is, perhaps, no better index of powerlessness than being caught in the headlights of an effort by the Department of Social Services to take one's children."

"Most people who are going to have their kids removed are people on the wrong side of poverty – or skirting the line so closely they can't get ahead," Matthew Clark, a lawyer who often represents parents in these cases told *The Roanoke Times*. "One weekend in jail, or a slip-up at work, then you have the anonymous tip the child is being neglected and, lo and behold, social services is part of your life."²³

But, O'Donnell argues, the system fosters "an almost willful blindness" to the role of poverty.²⁴

There is one time when that blindness is overcome. There is one time when it is possible to get the people who run child welfare systems to own up to the problem of taking away children because of poverty – when they're trying to deny their tendency to take away children because of race.

In Virginia, 24 percent of children are African-American, yet they represent 44 percent of Virginia's foster children.²⁵ And no, Black parents are no more prone to abuse their children than white parents.

Virginia is not unusual in this regard. But bring up the fact that all over the country Black children are taken from their parents at rates far higher than their representation in the general population, and the child welfare establishment almost always clears its collective throat and replies "Well, yes, but that's because Black families are more likely to be poor."

Of course, this is the same child welfare establishment that also insists it never

takes children because of poverty.

In fact, there is ample evidence of racial bias over and above the class bias.

"In our society, the lack of power is typically associated with the absence of that critical party whom some lawyers in Southwest Virginia used to refer to euphemistically as 'Mr. Green.'"

*--Hugh O'Donnell,
Client Centered Legal Services of
Southwest Virginia*

- A study by researchers at The Children's Hospital of Philadelphia found that when doctors examined children, "toddlers with accidental injuries were over five times more likely to be evaluated for child abuse, and over three times more likely to be reported to child protective services if they were African-American or Latino."²⁶

- A study of decisions to "substantiate" allegations of maltreatment after they are reported found that caseworkers are more likely to substantiate allegations of neglect against Black and Latino families – and the only variable that can explain the discrepancy is race.²⁷

- A comprehensive federal study of child maltreatment found that "even when families have the same characteristics, African-American children and Latino children, to a lesser extent, are more likely than white children to be placed in foster care."²⁸

- But perhaps most telling is what happens when caseworkers are given hypothetical situations and asked to evaluate the risk to the child. The scenarios are identical – except for the race of the family. Consis-

tently, if the family is Black, the workers say the child is at greater risk.²⁹

“The child protection process is designed in a way that practically invites racial bias. Vague definitions of neglect, unbridled discretion, and lack of training form a dangerous combination in the hands of caseworkers charged with deciding the fate of families.”

--Prof. Dorothy Roberts, author, Shattered Bonds: The Color of Child Welfare (Basic Civitas Books: 2002).

Prof. Dorothy Roberts, author of the definitive book on child welfare and race, *Shattered Bonds: The Color of Child Welfare* (Basic Civitas Books, 2002), and a member of the NCCPR Board of Directors has written: “[T]he child protection process is designed in a way that practically invites racial bias. Vague definitions of neglect, unbridled discretion, and lack of training form a dangerous combination in the hands of caseworkers charged with deciding the fate of families.”³⁰

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.

And that includes cases in which the problem is substance abuse. Once again, the issue is not what’s best for the parent – but what’s best for the child. And drug treat-

ment for the parent almost always is a better first choice than foster care for the child. (For more on this, see *Facing up to the “evidence base,”* page 7.)

The judge made us do it

The quickest way to know that leaders of a child welfare agency are being disingenuous is when they say something like “Oh, we never take away children on our own, a judge has to approve everything we do.”

For starters, it’s simply not true. In every state, child welfare agencies have the power to remove children from their own homes entirely on their own authority. Either the worker can do it herself, or she can call law enforcement and have the police do it for her. In theory, it’s supposed to be an emergency – but the worker gets to decide that, too.

Only a few days later does the case reach a judge. At that point, on one side is a lawyer for the child welfare agency who’s had those days to prepare a case. On the other side is, almost always, an impoverished, overwhelmed birth parent who, if she has a lawyer at all, just met him outside the courtroom minutes before the hearing.

The standard of proof is not “beyond a reasonable doubt,” the standard used to convict a child murderer, or even “clear and convincing,” the middle standard in American law. No, the standard required to continue holding the child in foster care indefinitely is merely “preponderance of the evidence,” the lowest standard in American jurisprudence, the one used to determine which insurance company pays for a fender-bender.

Presiding over it all is a judge who knows that he can approve hundreds of such removals and, though the child may suffer terribly, the judge is safe. Send one child home over an agency’s objection and have something go wrong, and the judge’s career

may well be over.

And, of course, the entire hearing, and almost all records, are secret. (NCCPR believes juvenile court hearings in these cases, and most records, should be open.)

In these cases, judges are far more prone to wield rubber-stamps than gavels.

So it is no wonder that, in these cases, judges are far more prone to wield rubber-stamps than gavels.

To get the child back, the parent then will have to comply with a “service plan.” But these typically are cookie-cutter documents with little in the way of real services. They are more likely to be a series of hoops the parent must jump through such as “get a job, get better housing.” (No one has ever explained why, since lacking a job is not grounds to take away a child in the first place, it should be a condition getting the

child back.)

As for services, they are likely to be things that, in some cases make everything worse. Almost every parent is forced into “counseling” and “parent education” even when there is no evidence the parent needs either. But complying with those requirements will only make it harder to get the concrete help the parent really needs.

As attorney Mathew Clark told *The Roanoke Times*:

In some cases adversarial stances by social workers set up parents to fail. Moms and dads without reliable transportation struggle to make it to counseling sessions while hanging onto their jobs. If they miss an appointment, Clark said, the welfare department punishes them by revoking visitation with their children, then faults them later for not bonding with their kids.³¹

But Governor Kaine’s proposals address none of these issues. Nevertheless, they are far from a total loss. In fact, one of his proposals represents a bold step forward.

THE GOOD NEWS: CURBING THE WORST FORM OF CARE

There is probably no group in child welfare more skilled at public relations than what has been aptly called “the group home industry.” They offer up lovely brochures, and offer tours of beautiful campuses, all the while uttering soothing platitudes about the “structure” and “stability” they supposedly provide to young people.

Oh, it’s not that they’re against families, they tell us. It’s just that the children they take supposedly are only those who are so difficult and so disturbed that they can’t handle a family setting.

There are just two problems with all this: 1. The claims are not true. 2. Residential treatment doesn’t work.

There are far better alternatives. And to his credit, Governor Kaine has recognized this. He wisely proposes to alter the financial incentives for Virginia’s counties, offering less aid to institutionalize children, and more aid to care for them in community-based settings.

Yes, this will save money – remember the paradox of child welfare: the worse the option, the more it costs. But more important, it will save children.

It takes five single spaced pages just to summarize some of the research about the harm of institutionalization (See Appendix A). The North American Council on Adoptable Children (NACAC) has reviewed much

“Are you guys in favor of *anything*?”

The first section of this report criticizes foster care. It talks about how often it damages children emotionally and rates of maltreatment in foster homes.

But then the next section says group homes and institutions are even worse – and supports a proposal to divert funds from those institutions into alternatives which include foster homes.

Some might wonder, or say they wonder, if there is anything we favor.

Actually, we’re in favor of quite a lot. Mostly, we’re in favor of safe, proven alternatives to placing children into any kind of substitute care. We list some of those options in the section of this report called *What else could you buy for \$22.6 million?* More are listed in Appendix B, NCCPR’s publication *Twelve Ways to do Child Welfare Right*.

And, as we’ve sought to emphasize in this report, some children really do need to be taken from their parents – and when that happens, the best option almost always is placement with a relative, followed by placement with the family of a stranger.

But the fact is, as soon as you start taking children from their parents, you enter a realm of bad options.

That’s because the moment you intervene coercively in the life of a family you do harm. Sometimes you must do it anyway, because failing to intervene will cause even more harm. But always, there is harm. And when we must act this way, placing a child with another family is likely to do less harm than placing the child in an institution.

Child welfare systems often lose sight of this. And no wonder.

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

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

More than thirty years ago, three of the leading scholars of child welfare of the 20th Century, the late Albert Solnit, Joseph Goldstein, and Anna Freud, proposed an alternative phrase. They said “best interests of the child” should be replaced with “least detrimental alternative.”³²

“Least detrimental alternative” is a humble phrase. It recognizes the fundamental fact that whenever we intervene in family life we do harm. Similarly, the governor’s proposal to change financial incentives is wise because it encourages use of the least detrimental alternative.

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

of this scholarly literature concerning children raised in institutions.³³ The findings are grim:

- In one study, 25 percent of adult women institutionalized before age five exhibited a personality disorder, compared to none in a control group. The institutionalized women had a great deal of difficulty functioning as parents themselves.

- “Children denied the opportunity to form a consistent relationship with a caregiver in their early years, such as institution-

alized children, are at serious risk for developmental problems and long-term personality disorders.”

- “Even good institutions fail to provide children with long-term, stable affectionate relationships that are critical to later social relations.”

- Even teenagers fare worse in institutions than in other settings. Institutionalized teens fared worse even than teens in foster homes according to one major study.³⁴ And a survey of teenagers with a history of

long term, out-of-home placement, published in a leading peer-reviewed scholarly journal, revealed that the teenagers found institutions to be a significantly worse option than their own families, care by relatives, adoption, or even foster care.³⁵

The NACAC review aptly summed up the study findings: “The teens felt “less loved, less looked after, less trusted, less wanted ...Teens described a powerful code of behavior dictated by institutional peer-group subculture, encompassing drugs, sex, and intimidation.”

The research on the harm of institutionalization is so overwhelming that the federal government now rates state child welfare systems in part on their ability to *reduce* the number of children under age 12 in institutions.³⁶

Of course, few institutions call themselves orphanages nowadays. Taking a cue from the advertising industry, they’ve “rebranded” – now they’re “residential treatment centers.” And, it is claimed, only by institutionalizing children in RTCs can these children get the help they need.

But “residential treatment” doesn’t work either.

Not that they don’t have success stories – of a kind. Almost every RTC can trot out one or two young people who did well, supposedly because of the institution. (It is interesting to see, however, how often even these success stories are back working at the RTC itself, unable to cope with any other setting.)

When the flagship campus of KidsPeace, one of the nation’s largest providers of what might best be called McTreatment, came under fire for using “restraints” 2,900 times in a year, and sending seven children to the hospital with broken bones³⁷ (the institution says it has now fixed the problems and the State of Pennsylvania has restored its full license) all the place could do to show “success” was to trot out

its own self-evaluations and refer a local reporter to a graduate who was managing to hold down a steady job and was in a “two-year relationship.”

What was her experience at the RTC like? Apparently not great for her self-esteem. According to a local newspaper story:

*In her more-than two years at KidsPeace she was assaulted, or assaulted others, several times, and was restrained countless times, she said. "Deserved most of it," [she] recalled....*³⁸

If that’s a “success story,” what are the failures like?

But none of the claims of the residential treatment industry holds up to objective scientific scrutiny.

- A review of the scholarly literature by the office of the U.S. Surgeon General found only “weak evidence” for the success of residential treatment.³⁹

- A second review, by the University of North Carolina, found “when community-based services are available, they provide outcomes that are equivalent, at least [to residential treatment centers].”⁴⁰

- Another study found that when children aged ten and older left residential care, for 59 percent of them their next stop was detention, a psychiatric hospital, another residential placement or wherever they went when they ran away.⁴¹

- A longitudinal study – looking at what happened to young people seven years after leaving residential treatment, found the results were even worse. Seventy-five percent of them were back in the only places they understood – institutions. They were in psychiatric centers, and jail.⁴²

In response to this mountain of research, Gary Jones, the government affairs chair for the trade association for Virginia’s residential treatment industry offered this, in testimony opposing the governor’s plan:

“Notably, The Child Welfare League of America has firmly concluded that residential care is a necessary service to provide children in the continuum of care in the social service system.”

Former Child Welfare League of America President Shay Bilchik admitted that they lack "good research" showing residential treatment's effectiveness and "we find it hard to demonstrate success."

But the Child Welfare League is, in fact, the trade association for residential treatment centers, and other child welfare agencies across the country. In other words, it is the national equivalent of Mr. Jones' own group.

To say that CWLA favors residential treatment is like saying the liquor industry favors drinking.

What *would* be notable is if even CWLA actually admitted to the lack of evidence that residential treatment works

Oh, wait – they did! Former CWLA President Shay Bilchik has admitted that they lack "good research" showing residential treatment's effectiveness and "we find it hard to demonstrate success."⁴³ (Of course, being the head of a trade association, Bilchik's "solution" was to let RTCs take in children with less serious problems – so the RTCs could then "solve" them!)

Crises of conscience

Perhaps most significant, every once in awhile the people running an RTC have a crisis of conscience. It's happened at least

twice in the past decade.

Both times, they studied their own programs, - and found that they weren't working.

"The state would ask us at the end of each year what we did with their money," says Patrick Lawler, CEO of Youth Villages in Tennessee, "and we would tell them the truth. We spent it."⁴⁴

EMQ Child and Family Services in Northern California had a similar crisis of conscience. Both institutions radically reformed; rebuilding their programs to empty most of their residential beds and instead bring the help to the children, not in institutions, but either in their own homes or foster homes. As Lawler explained:

In the 28 years I have been entrusted with caring for other people's children, some of whom come from dire circumstances, I have learned firsthand there is no substitute for a child's birth family. I used to think we could do a better job of raising these children. We know better now. The best way to help a child is to help his or her family. Extensive research bears this out.

*We studied the research, redesigned our existing programs and developed new ones to ensure that the emphasis is on strengthening the child's family...There are sad circumstances when children cannot be placed with their birth parents or relatives. In these cases, foster and adoptive parents play vital roles in ensuring long-term success for these children.*⁴⁵

EMQ and Youth Villages had more than a crisis of conscience in common: For both, the biggest obstacle to reform was not finding better ways to help the children. Rather, it was what EMQ itself calls "the group home industry" – which tried to stop the states from reimbursing these innovative alternatives.⁴⁶

So the research proves it, leaders of institutions themselves say it, and even the

When institutions go bad

All of the harm done to children when they are institutionalized occurs even in good institutions with dedicated caring staff. But not all institutions necessarily fit that description.

In Danville, the Hope Haven Residential Home came under investigation after male staffers allegedly had sex with underage female residents. The home, which had received more than \$1 million in 2004 and 2005, denied the charges, but surrendered its license. A Deputy Chesterfield County Administrator at the time, Bradford Hammer, said the case was “the first of many red flags regarding the quality of care in the CSA system.”⁴⁷

The problem seems to be inherent in “congregate care,” since all over the country, even institutions reputed to be among the very best have had serious difficulties.

- SOS Children’s Village in Florida, repeatedly has been cited by backers of institutionalizing children as proof that such places can work. But between 1999 and 2001, 33 reports were filed with Florida’s child abuse hotline alleging abuse of children at the 50-bed facility; 21 were “substantiated” or “indicated.” During the same time period 13 “house parents” and 14 “parent assistants” quit or were fired. (So much for institutions providing “stability.”)⁴⁸

- Another facility touted as a national model, even featured on national television when former House Speaker Newt Gingrich first proposed shipping poor people’s children off to orphanages, was the main campus at Maryville, near Chicago. But then, Maryville was revealed as a place of terror for many of the children confined there, according to documents obtained by the *Chicago Sun-Times*. The newspaper reported that “the place is often up for grabs, with staff struggling to handle suicide attempts, sex abuse, drug use, fights and vandalism...”⁴⁹

In 2001, police were called to Maryville 909 times.⁵⁰ After a 15-year-old left her Maryville “cottage,” was gang raped by other Maryville residents and escaped from her attackers, she says the kindly staff at her “cottage” wouldn’t let her in until they had filled out a report about her “running away.”⁵¹

In 2004, Illinois pulled all 270 state wards out of Maryville⁵² – something it could do because it had done such a good job of reducing needless foster care and institutionalization. As a result, in Illinois, substitute care is no longer a “seller’s market.”

Just last year, scandal engulfed a huge player in the residential treatment industry, KidsPeace. There were 2,900 “restraint incidents” in a single year at the main KidsPeace campus in Pennsylvania – a rate that even the former head of Boys Town called “a crisis proportion.” There were the seven incidents of broken bones. The State of Pennsylvania suspended new admissions and put the campus’ license on “provisional status.” Another KidsPeace facility in Upstate New York was taken over by another agency after what a former high ranking staffer said were too many kids, too few staff and “several very scary incidents.”

The Washington Post tells this story about a resident at a facility run by another big national outfit, Devereux:

At first, Kenny liked Devereux.

“It looked all pretty from the outside, like a resort almost,” he would recall.

Devereux counselors told Kenny he could earn privileges with good behavior. But Kenny, then 15, stumbled. He smoked marijuana and had sex with girls on his unit. There were rival factions of teens at the center, and they frequently got into fistfights. Kenny was among them. Combative children were strapped into “safety coats” and injected with Thorazine, a powerful psychotropic drug, Kenny later would say. ...

*The streets had prepared Kenny for the treatment center. In many ways, it was a culture he recognized. Tough kids were respected. Weak ones became prey. Kenny was one of the tough ones. ...*⁵³

Representatives of the industry generally respond by arguing that the problems are isolated and/or fixed. In some cases, both are correct. The *Post* story did not claim that the problems were endemic to Devereux, SOS Children’s Village has not had further reports of problems, and Pennsylvania has restored a full license to KidsPeace, which reportedly has significantly reduced

the number of restraints. (KidsPeace operates only foster care programs in Virginia and none of them has been implicated in the current controversy).

But residents don't always view the problems as "isolated." As is noted elsewhere in this report, a comprehensive study of institutionalized teenagers found that they "described a powerful code of behavior dictated by institutional peer-group subculture, encompassing drugs, sex, and intimidation."

Another study found three times more physical abuse and twice the rate of sexual abuse in foster homes than in the general population. But in group homes there was more than ten times the rate of physical abuse and more than 28 times the rate of sexual abuse as in the general population, in part because so many children in the homes abused each other.⁵⁴

And the very nature of institutionalization makes such problems difficult to avoid. Foster children are institutionalized against their will; their parents are powerless to prevent it and powerless to see what conditions are really like or advocate for their children when they have been harmed. And since these are mostly institutions for the poor, they easily can become poor institutions.

That helps explain why, for example, a Los Angeles County Grand Jury report found, according to the *Los Angeles Times*, that "Many of the nearly 5,000 foster children housed in Los Angeles County group homes are physically abused and drugged excessively while being forced to live without proper food, clothing, education, and counseling..."[emphasis added]⁵⁵

A year later, the *Times* found that "children under state protection in California group and foster homes are being drugged with potent, dangerous psychiatric medications, at times just to keep them obedient and docile for overburdened caretakers...Under the influence of such drugs, children have suffered from drug-induced psychoses, hallucinations, abnormal heart activity, uncontrollable tremors, liver problems, and loss of bowel control..."

The *Times* found that it happens to children as young as 3 "and even a 22-month-old knew the word 'meds.'"⁵⁶

Indeed, the misuse and overuse of psychiatric medication on institutionalized foster children has been the subject of a scathing report by the Texas state comptroller and outstanding investigative reporting in Florida.

In 2003, a study of group homes and institutions in New York, revealed what The New York Times described as "a daily life full of barbarisms..."

"Teenagers recount being raped, having their rooms set on fire, being pressed to join gangs and routinely having their few nice possessions stolen. Insiders and outsiders ... agree that staff members not only fail to protect children but also engage in violence and intimidation themselves."⁵⁷

Such exposes almost always set off a cycle. The legislature holds hearings, perhaps a new law is passed, the institutions come under closer scrutiny – for a while – they produce their corrective action plans, and things improve. Until everyone forgets and the cycle begins anew.

What else should one expect when a vulnerable population that is often feared is taken from those who truly love them and then sent behind closed doors, out of sight and out of mind.

But even were no child ever overmedicated or physically mistreated, the governor would be right and the "group home industry" would be wrong. Because unlike family foster care, which can be a good alternative for some children, institutionalization is inherently harmful, and so should be used far more rarely than it is used today.

Even if an institution can avoid going bad, why take the risk? Why not truly "err on the side of the child" and avoid institutionalizing children entirely in many more cases. That's exactly what Governor Kaine wants to do.

former head of their trade association admits it: There is no evidence that residential treatment works. But then, common sense should be enough to figure that out.

Imagine if we were starting from

scratch to figure out how best to help severely-troubled young people. And suppose somebody said, "I've got a great idea! Let's take teenagers with the most difficult problems and throw them all together in one

place – just at the time in their lives when they are most influenced by their peers.” If anyone suggested that, people might well wonder about *his* mental health. And yet, thanks to an accident of history – and the enormous political clout of the group home industry - that is exactly what we do.

The group home industry’s reasoning is circular, and it is cruel: Deny families the support they need to make a placement work, then justify your institution’s enormously-expensive existence on grounds that the children couldn’t stay in families.

But instead of facing up to the fallacy, the group home industry cites the very severity of the children’s problems as justification for their existence. They piously proclaim that they wish these children could be cared for by families – really they do – but it’s just impossible; the children’s problems are too severe. After all, they say, many of the children already have been through multiple foster home placements and it didn’t work – or to use the charming phrase often heard by RTC operators, “these children blow out of foster care.”

Once again, there are two problems with this argument.

First, the problems are not always so severe.

This is what a single mother in the Bronx named Rose Mary Grant had to do every week, just to get to the RTC that housed her 11-year-old son, Issa, as de-

scribed in a keenly-observed story in the Westchester County, N.Y. *Journal-News*.

“Starting from her brick apartment tower, Rose walks a block to Gun Hill Road, takes the 28 bus to the subway station, catches the 5 train to Harlem, makes her way down 125th Street, boards the Metro-North train to Dobbs Ferry, and rides a shuttle ... At each step, she places two metal crutches ahead of her and swings forward on two prosthetic legs.”

But Issa was not paranoid, he was not schizophrenic, he was not delusional. And he did not “blow out” of anybody’s home. The only label pinned on him was Attention Deficit Hyperactivity Disorder. Sometimes, at home, he was seriously out-of-control. But his handicapped, impoverished single mother couldn’t do what middle-class and wealthy families do: find a good psychiatrist and hire home health aides.

And there was no mechanism in New York to pay for better alternatives. So instead, mother and child suffered for a year, while taxpayers shelled out at least \$86,000 to warehouse the boy in residential treatment.⁵⁸

This is precisely the problem that Governor Kaine’s initiative will address in Virginia.

Of course, some children in institutions do have very serious problems. But for these children as well, there are far better alternatives. Yes, sometimes such children fail in families. But that is almost always because those families – be they birth families or foster families – didn’t get the help they needed. And that’s because the money that could buy that help is being thrown away on institutionalizing children.

The group home industry’s reasoning is circular, and it is cruel: Deny families the support they need to make a placement work, then justify your institution’s enor-

mously-expensive existence on grounds that the children couldn't stay in families.

EMQ broke this vicious circle. So did Youth Villages. And so does Milwaukee County, Wisconsin's pioneering Wrap-around Milwaukee. As the *Journal-News* reported:

[Wraparound] cut the number of Milwaukee children in RTCs by 90 percent, dramatically shortened their stays, reunited hundreds of families, reduced the incidence of crime and saved millions of dollars in treatment costs. It became a national model for treating emotionally disturbed children, offering a more effective and economical means of helping youngsters without the traditional reliance on costly and controversial institutions.

"Wraparound Milwaukee demonstrates that the seemingly impossible can be made possible: Children's care can be seamlessly integrated. The services given to children not only work, in terms of better clinical results, reduced delinquency, and fewer hospitalizations, but the services are also cost-effective," the President's New Freedom Commission on Mental Health said in October. "Imagine the nationwide impact on our juvenile justice system if this program were implemented in every community."

Institutions have long argued that their role is crucial because most of the children have no stable homes. But Wrap-around advocates say institutions have been too quick to write off families; Wrap-around seeks out families and finds ways to make them work.⁵⁹

Children in Wraparound programs don't "blow out of foster care" – they may never even need to be *in* foster care, because all the help the birth family or the foster family needs, at the intensity the family needs, is brought into the home. Wrap-around moves the system, instead of moving the child.

Still more evidence of the extent of needless institutionalization, and needless substitute care, can be seen in what happened when Illinois did something similar to what Governor Kaine wants to do now: change financial incentives.

In 1997, a child was more likely to be trapped in foster care in Illinois than in any other state – there were more than 50,000 children in foster homes, group homes and institutions at any one time.

Then, in Illinois, where the child welfare system is state run, the state changed the incentives for private agencies holding children in substitute care. Instead of rewarding the agencies for each day they kept the child in care, they started rewarding the agencies for providing safe, permanent homes for children.

Wraparound moves the system, instead of moving the child.

Lo and behold: Remember all those children institutionalized supposedly as an absolute last resort, because there simply was no alternative? Turns out there were alternatives. Suddenly the "dysfunctional" became functional and the "intractable" became tractable. Today, fewer than 17,000 children are in Illinois substitute care on any given day, and Illinois takes away children at one of the lowest rates in the nation.

And it's all been done while improving child safety. We know that because Illinois operates under a class-action lawsuit settlement. The system is watched by independent, court-appointed monitors. And *they* say that as foster care has plummeted, child safety has improved.⁶⁰

Don't say no, just "yes, but..." it do death

So how does an industry with a largely worthless product fight reform: The group home industry will never say no to reform. Rather, they try to "Yes, but..." it to death.

First, they pretend they're not institutions at all. How can you call us an institution? They say. Look how beautiful the grounds are. The children live in pretty cottages. They have "house parents." It's so "home-like."

But children are not fooled by pretty buildings. Children know the difference between "home-like" and home. They know the difference between a Potemkin Village family and a real family.

No matter what it may look like, a building that houses large numbers of children, most of them strangers to each other, to be cared for by paid staff hired to dispense indiscriminate pseudo-love to whoever walks in the door - staff likely to change every year or two or, in some cases, with every shift, is not a home. It's a dormitory. And a collection of dormitories is an institution.

Then, they'll claim that the institution provides "structure" and "stability." Stash the children in our institution, they say, and they won't bounce from foster home to foster home.

But stability means that the *human beings* in a child's life remain constant. Between the shift changes and the staff turnover, a child in an institution may have to cope with ten different caregivers - none of whom loves him - in a single day.⁶¹

Even in institutions using "house parents," those house parents typically quit every year or two, making an institution every bit as unstable as multiple foster home placements.⁶²

The way to prevent children from bouncing from foster home to foster home is

to take away fewer of them in the first place, and provide the necessary support for the rest - as EMQ, Youth Villages, and Wrap-around Milwaukee all have proven.

As for "structure," that's a euphemism for the almost sadistic never-ending game of "May I?" that constitutes life in a group home or institution.

As for "structure," that's a euphemism for the almost sadistic never-ending game of "May I?" that constitutes life in a group home or institution.

As one former group home resident has written: "You have to ask permission for everything: to get food from the fridge, cook, watch TV, use the phone, go in the backyard or take a shower."⁶³

Listen to a family that became mentors to a resident of a group home and invited him to spend his weekends with them:

*"His first visit we're all waiting for him to come down to breakfast. I go up, he'd been in the group home so long, he was making hospital corners on his bed. He thought he couldn't eat breakfast until the bed was perfect."*⁶⁴

Children don't need this kind of rigidity - but institutions do. They need it in order to keep large numbers of troubled children in line and prevent their institutions from descending into chaos. So they turn around and claim that, by amazing coincidence, all the things that ensure that their institutions run smoothly happen to be "therapeutic" for children.

The group home industry will piously proclaim that they too favor alternatives. They, too love foster homes, and

therapeutic foster homes – and they absolutely adore Wraparound – just as long as these siphon not a single child, or dollar, from their institutions. That is essential, they claim, because, after all, there always will be *some* children who need to be institutionalized, they'd hate to see a system that didn't have a full "continuum of care," we must guard against anything that smacks of "one size fits all" etc. etc.

"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..."

*--Dr. Ronald Davidson, Director,
Mental Health Policy Program,
Department of Psychiatry,
University of Illinois at Chicago.*

The argument goes beyond disingenuous all the way to Orwellian. One-size-fits-all is what Virginia has now, and the one size is institutionalization.

According to the Annie E. Casey Foundation's Strategic Consulting Group, which studied the Virginia system, ideally no more than ten percent of children should experience a first placement in a group home or an institution. The national average is 18 percent. But in Virginia it's 24 percent – and for teenagers it's 52 percent.

Furthermore, even though Virginia's Comprehensive Services Act funds programs that involve far more than children in the child welfare system, congregate care eats up 45 percent of the entire CSA budget. In contrast, only nine percent is spent on community-based services.⁶⁵

It is, of course, impossible to get

away from one-size-fits-all when the group home industry is scarfing up all the money that could be used for alternatives.

If all else fails, try fear

If trying to "yes, but..." reform to death fails, the industry tries scare tactics. Here's what the *Journal News* found in Milwaukee:

"I remember meeting with groups of people and folks saying, 'Let's get some reports out that show they (Wraparound) are going to start hurting kids now,'" said Cathy Connolly, president of St. Charles Youth & Family Services, which operates Milwaukee's largest institution. "Well, nobody could ever bring the reports to the meetings, 'cause there were none that existed that said we were doing anything all that great. We didn't really have any solid anything that demonstrated we were able to fix kids."

Connolly and her colleagues lobbied fiercely for the status quo. She was remarkably candid about the reason:

"There were a couple big fears... The first was, 'How are we going to financially sustain ourselves?'"

Eventually, however, Connolly's agency embraced the new approach. She told *The Journal News*:

"I think, looking back on it now, what we're doing for kids today is far more helpful."⁶⁶

Another example of fear-mongering can be seen in Maine. As that state worked to reduce needless congregate care, reformers cited the remarkable success of Illinois.

That prompted a high-ranking official at a big residential treatment provider to try to smear Illinois. He wrote an e-mail to a key committee saying he'd been hearing "persistent rumors" that the reduction in foster care was accompanied by an increase in

juvenile justice placements. Of course, the author of the e-mail was quick to duck responsibility for the vile, false rumor he was spreading – insisting he'd simply heard it and wanted to know if it was true – thereby forcing reformers to disprove it.

Add Governor Kaine's proposed 26 percent more, and many Virginia foster parents will be among the highest paid in the country

But that was not difficult. The reformers obtained statements from Ben Wolf, of the Illinois Branch of the American Civil Liberties Union, whose lawsuit sparked the Illinois reforms, and from Cornelia Gruman, longtime editorial writer on child welfare and juvenile justice for the *Chicago Tribune*, showing that the claim was flatly untrue.

They also received a letter from one of Illinois' leading child advocates, Dr.

Ronald Davidson, Director of the Mental Health Policy Program at the University of Illinois at Chicago Department of Psychiatry. He declared the rumor to be “a complete fabrication” and he added:

I don't mean to be rude, but such willful ignorance ought to be confronted directly, especially since this sort of misinformation is typically spread by persons who – purporting to have the best interests of children in mind – attempt to influence important public policy discussions in ways that actually undercut and derail the genuine interests of children and their families.”

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...⁶⁷

As to the official who spread the rumors: He worked at the New England branch of KidsPeace – the same outfit now under scrutiny for all those problems at its flagship campus in Pennsylvania.

So legislators should be on the lookout for similar tactics as Virginia's group home industry mobilizes against Governor Kaine's sound, sensible proposal.

THE BAD NEWS: \$22.6 MILLION WASTED

While the proposal that makes sense may be hard to pass, the proposal offered by Governor Kaine that may be easy to pass doesn't make sense.

It's the proposal to give foster parents a huge pay raise.*

The governor is sure that “everybody thinks it's a good idea.”⁶⁸

Not quite.

It is, in fact, a bad idea to lavish a 26 percent raise on mostly middle-class foster parents while adding not one dime in new spending for safe, proven alternatives to forcing children to endure the trauma of substitute care in the first place.

It is a bad idea to take money that could be spent on day care so children don't lose their parents because of lack-of-supervision charges and give it instead to foster parents who already make more than the birth parents ever did – and who may be eligible to have the state subsidize day care for those very same children when they become their foster children.

* Backers of the plan prefer the term “reimbursement” to pay. And, in fact, because it is considered reimbursement the money is tax free. But the basic payment under discussion here is a flat amount. Foster parents don't have to submit receipts. If they spend more, they dip into their own pockets, but if they spend less, they don't have to give any back. So in real-world terms, it's more like pay.

It is a bad idea to take money that could go to a rent subsidy so a child's own home can be made safe and spend it instead on the strangers taking the same child into their middle-class foster home.

And it is a bad idea to add this raise to previous raises totaling 40 percent over the past three years.⁶⁹ Add Governor Kaine's proposed 26 percent more, and many Virginia foster parents will be among the highest paid in the country – even though there is no evidence that low pay is a major reason for any alleged “shortage” of foster parents.

The issue is not that foster parents are undeserving. Most foster parents care deeply about the children they take in. Many are true heroes. They take understandable offense at claims that they are “in it for the money.”

Often, however, their reply to the allegation is that they can't be in it for the money because they get so little money. If the governor's giant raise becomes law, that argument no longer is valid. While it would still be difficult for a good parent to provide absolutely everything a child needs without dipping into her or his own pocket – something good foster parents who really love their foster children are glad to do – the raise will make it relatively easy for bad foster parents to, in effect, turn a profit. Thus, in addition to all the other problems, the pay raise will create an incentive for the wrong people to go into foster parenting.

Indeed, the pay raise issue raises much deeper questions: What is a foster parent – and what is society's “social contract” with foster parents? Is a foster parent simply a worker who should be compensated for every dime expended on behalf of a child taken into her or his home? Or is a foster parent engaging in an act of charity, someone for whom helping, caring for and, often, loving a child, creates psychic satisfaction such that dipping into one's own pocket – a little – is reasonable?

A foundation of bad numbers

Much of the clamor for a huge pay raise is rooted in a report issued last year by a group which arrogantly refers to itself as “Children's Rights” (CR) – although few children are demanding the “right” to be taken from loving homes. The report is co-authored by the University of Maryland School of Social Work and an organization with a fairly obvious vested interest – the National Association of Foster Parents.

Children's Rights itself brings to all of its efforts a profound hostility to birth parents, and its report on foster parent pay is no exception – it's also an exercise in stacked-deck statistics.

The report claims to compare the amount each state now offers foster parents to a so-called “minimum adequate” rate.⁷⁰

But the current rate figures cited in the report are artificially low, and the estimate of what would be a “minimum adequate” rate is artificially high.

For starters, the report looks only at the so-called base rate in each state. In other words, the lowest monthly rate paid to foster parents. The only adjustment is for a child's age. The report looks at the rates for two-year-olds, nine-year-olds and 16-year-olds.

But most states don't have just one rate per age group. Rather they adjust the rates for how difficult the child is perceived to be. Thus, in Virginia, in addition to regular homes, there also are “special needs/specialized” foster homes, “therapeutic” foster homes and “treatment” foster homes.⁷¹ And the foster parents in every one of these homes get more than the base rate.

In addition, CR omits from its calculation various “extras” some states add to the base rate. According to the same data source used by CR itself, Virginia is unusually generous, providing an annual clothing allowance equivalent to an extra \$25 to \$37.50 per month per child. While some other states

Gov. Tim Kaine is proposing to spend an additional \$22.6 million in state dollars on a huge pay raise for foster parents. But that money could go a lot farther if it were spent on ways to keep children out of foster care in the first place.

WHAT ELSE COULD YOU BUY FOR \$22.6 MILLION?

Rent subsidies for a year for 3,138 families at an average rate of \$600 per month (about two-thirds the average fair market rent for a two-bedroom apartment in Virginia)⁷² so the children aren't taken away because of poor housing conditions.

Day care subsidies for a year for 4,346 children at a rate of \$100 per week, so the children aren't taken away on "lack of supervision" charges.

Intensive Family Preservation Services interventions for 4,109 families, a proven approach to safely keeping children out of foster care.

Inpatient drug treatment for 1,662 mothers, at facilities where their children can live with them, at a cost of \$13,600⁷³ per family. A landmark study has shown that even infants born with cocaine in their systems typically do better left with mothers able to care for them than they do in foster care.

One year of kinship care for between 4,121 and 10,761 children – made possible by paying grandparents and other relatives, currently ineligible for any financial assistance, at the same rate as is now paid to total strangers to care for the same children. (The higher figure is, of course, more than the total number of foster children in the state).⁷⁴

offer one-shot allowances, often at the discretion of the child welfare agency, few mandate it every year. Virginia's annual supplement and that of one other state are the nation's most generous.⁷⁵

When the clothing allowance is factored in, Virginia already pays its foster parents more than the national average for the oldest foster children, and near that average for the middle range. It is substantially below average only for the youngest – but the idea that this is a problem assumes that the current average is necessary to attract and

keep foster parents, something that backers of the raise have not shown.

Add in a 26 percent raise, as the governor wants, and Virginia winds up well above the national average for all but the youngest children. (See chart, page 26). For older children, Virginia's rate will exceed that in all but, four other states.⁷⁶

Furthermore, because these payments are considered "reimbursement" they're tax-free. And foster parents don't have to pay for their foster children's health insurance – it's covered by Medicaid.

Even more insulting to foster parents

are the premises behind CR's calculation of what is a "minimum adequate" rate of reimbursement. A phrase like that conjures up images of providing just enough money to give a child food, clothing and shelter. One assumes that the rest will be provided by foster parents – because they care about the children they are taking in.

But no, CR argues that, even when foster parents have taken in a child because of a lack of supervision charge after birth parents could not afford day care, the foster parents should be reimbursed for every penny it costs *them* to provide day care for the same child.

The best way to reduce a "shortage" of foster parents is to curb the demand rather than increase the supply.

And that money that could have gone to birth parents to pay the rent? It should go to foster parents to cover any "extra" cost on their utility bill because their foster child left the lights on – or, maybe, opened and closed the refrigerator a few times (now that he's out of the group home and doesn't have to ask permission).

But there's more: That "minimum" reimbursement rate includes every penny a foster parent spends on after school activities and admission to movies and amusement parks. CR even wants the government to pay a foster parent to buy his foster child a teddy bear or a video game.⁷⁷

So it's no wonder that Children's Rights omits a price tag for all this. But NCCPR estimates that nationwide, paying foster parents what CR wants to pay them would cost at least an additional \$1 billion every year.

It is argued that Virginia must raise rates because the current rates are contributing to a shortage of foster parents which, in turn, is forcing the state to institutionalize children.

We disagree. The best way to reduce a "shortage" of foster parents is to curb the demand rather than increase the supply. Thus, if the \$22.6 million in state funds the governor wants to spend on the pay raise went, instead, to things like day care, rent subsidies, drug treatment and other ways to support children in their own homes, fewer children would be taken away in the first place, and there would be less need for as many foster parents. (See *What else could you buy for \$22.6 million*, page 24).

But there is another factor: Foster parents are, on the whole, better than either the governor or Children's Rights gives them credit for.

For starters, even in its own report, CR offers no evidence for the proposition that lower rates worsen foster parent shortages. And there is no evidence that states paying higher rates have less of a shortage. Indeed complaints of such a shortage are chronic in Arizona, even though that is the one state CR claims is paying foster parents enough.

Of course, if a foster parent is asked, "Would it help if you got more money?" he or she will say yes. Even a slightly less loaded question, like: "Would more money make you more likely to remain a foster parent?" will, of course get an affirmative response.

But when foster parents are asked open-ended questions like: "What are the factors that would make you more or less likely to remain a foster parent?" money tends to rank low on the list. Far more important to foster parents are things like being given adequate information about the children in their care, being consulted about their

ARE OTHER NEEDS MORE IMPORTANT THAN MAKING VIRGINIA FOSTER PARENTS AMONG THE HIGHEST-PAID IN THE NATION?

Rate (\$ per month)	Age 2	Age 9	Age 16
Current <i>lowest</i> Virginia rate	368.00	431.00	546.00
Current <i>lowest</i> Virginia rate + clothing Allowance	393.00	462.25	583.50
National Average	488.00	509.00	568.00
Current <i>lowest</i> Virginia rate + clothing allowance + governor's proposed 26% raise:	488.68	574.31	725.46

Bold face indicates rates above the national average
 Source: National Resource Center for Family Based Practice and Permanency Planning, *Foster Care Maintenance Payments*, updated January 3, 2008, available online at <http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/foster-care-maintenance-payments.pdf> (This is the same source used by Children's Rights Inc. in its report calling for huge pay raises for foster parents). Calculations by NCCPR.

children's problems, and, most important, being treated with dignity and respect.

According to the National Council for Adoption, "among foster parents who had quit the system, the two most frequently cited reasons for doing so were lack of agency support and poor communication with a caseworker."⁷⁸ (Indeed, NCCPR often asks foster parents to reflect on how they are treated and then consider that, if this is how the system treats them, they might want to imagine how the system treats birth parents).

The things one really needs to do to get and keep foster parents are things money can't buy. Perhaps CR believes foster parents are so greedy that they won't do the job unless they are repaid for every toy they buy a foster child. We disagree.

The foster parents who need the most get the least

There is one group of foster parents

which has an excellent claim on a pay raise – it's a group that, in most cases, gets no pay at all: Relatives, usually grandparents, who provide what is called "kinship care."

Unfortunately, in both the public mind and the minds of many who work in child welfare, the hostility toward birth parents often extends to their extended families. And once again, it is the children who suffer.

There are of course a great many children living with relatives in situations that have absolutely nothing to do with the child welfare system. Parents and grandparents may simply decide, among themselves, that it would be better for the children to live with grandma and grandpa for a while.

We are talking about something different here. We are talking about situations in which a county child welfare agency alleges abuse or neglect and removes the children from the home. When such a child is then placed with a relative, that is kinship care. And make no mistake – *kinship care is foster care*.

Unfortunately, state and local child welfare agencies in Virginia, and some advocacy groups, muddy the issue by using confusing terminology. Because these homes often are not formally licensed as foster homes these placements sometimes are referred to as "informal" kinship care. But the child welfare and the agency still exercises complete, formal oversight.

Worse, these placements sometimes are referred to as a way of keeping children out of the foster care system. That's wrong. When a child is taken from his parents and placed someplace else by force of law, that is foster care – even if the child winds up with grandma.

What makes kinship care so much better, however, is that, even though it is foster care, it can significantly cushion the blow for the child.

It allows children to stay with someone they know and love. Since relatives of-

ten live in the same neighborhood, it also means the child is less likely to be torn from his friends and more likely to be able to continue to attend the same school.

Because kinship parents usually will tolerate more from a grandchild (who is understandably upset at what is happening in her or his life) than the typical stranger will tolerate, the placements are more stable. Children placed with relatives are less likely to be moved from foster home to foster home.

And, most important, placements with relatives tend to be safer than what should properly be called “stranger care.”⁷⁹

But the federal government reimburses states for part of the cost of kinship care only if the grandparent or other relative meets all the same licensing requirements as a stranger.

That creates a problem. Licensing requirements often are less about genuine health and safety standards than they are about middle-class creature comforts. They may involve minimum square footage requirements or demanding a separate bedroom for every foster child.

But, like birth parents, extended family members tend to be poor – so often, they can’t meet those requirements.

States have tried various approaches to dealing with this. Some states have streamlined their licensing requirements to focus only on genuine health and safety issues. Some states provide aid to help kinship caregivers meet licensing standards. Some states have special state-funded programs to provide payments to unlicensed kinship parents. Some states at least allow kinship caregivers to receive “child only” grants for their grandchildren under the Temporary Assistance for Needy Families (TANF) program – these payments are much lower than foster care payments to strangers – (in Virginia it would be \$282 per month no matter what the age of the child)⁸⁰ - but at least it would be

something. That’s what some other states do.

And what does Virginia offer kinship care parents?

Nothing.

And that may explain why Virginia uses the best form of substitute care at one of the worst rates in the country. Model systems place at least one-third of foster children with relatives, some place more than half of foster children with relatives. The national average is about 24 percent.⁸¹ In Virginia, it is, at most, five percent.⁸²

Virginia uses the best form of substitute care at one of the worst rates in the country.

The governor has proposed to allow kinship care parents to get those tiny TANF payments. But that doesn’t involve spending any of that \$22.6 million. On the contrary, this is actually projected to save a little money, because the state will move some children from strangers to relatives and not have to pay nearly as much to the relatives.⁸³

What if the governor decided to spend some of that \$22.6 million to supplement those TANF benefits for kinship caregivers? That would do far more to ease any alleged “shortage” of foster parents than a giant raise for strangers.

Spending the money to help pay kinship caregivers would provide access to a whole new category of foster parent, one that has barely been used at all in Virginia – and it would be the best category of all, children’s own grandparents and other relatives.

In fact, if the governor spent the \$22.6 million on simply giving grandma and grandpa the same kind of help that total

strangers get now, that money could be used to place anywhere from 4,121 to 10,761 children with grandparents and other relatives each year. (The higher figure, of course, is more than the entire foster care population of the state – but it should be possible to find enough relatives to equal the lower figure – other states manage to place more than half their foster children with relatives).

The reason this doesn't happen boils down to prejudice. First, there is the assumption that "the apple doesn't fall far from the tree." But as one of the nation's leading experts on kinship care has replied: "a tree has more than one branch."⁸⁴

**The research is clear:
Kinship care placements are
not only more stable and
better for children's well-being
than stranger care, they are
safer than stranger care.**

As noted above, the research is clear: Kinship care placements are not only more stable and better for children's well-being than stranger care, they are *safer* than stranger care.

But there's another bias as well. The former head of the human services agency in another state used to say that her agency wouldn't help grandparents at all because it's simply a family's obligation to take care of their own. Did this same state official return her own parents' Social Security checks on grounds that she should be picking up the costs of their retirement? We doubt it.

That state official is long gone, and that state has reversed course and embraced kinship care. But one wonders if such bias still lingers in Virginia.

Turning foster parents into welfare queens

Though I qualify as a "have," I have learned a great deal about the "other side of the tracks" in my current profession: foster mother. Most of the children I've had in my home come from young, low-income, single mothers who did the best they could but were deemed "neglectful" for being unable to provide for their children.

In some ways, I have taken these women's places. The state now pays me very well to stay home and raise their kids while they flip burgers somewhere and send a portion of their income to child support. It might be an OK situation if the kids did not cry themselves to sleep every night, missing their mothers.

I am the new welfare queen.

*--Mary Callahan, Maine Foster Parent,
in a letter to Newsweek, 2002*

At the beginning of this report, we discussed the stereotypes about birth parents – how they're all presumed to be sadistic brutes. But that only partly explains what former Maine foster parent (and current adoptive parent) Mary Callahan understands so well: When a birth parent wants a little help with housing so she can raise her own child she's a "welfare queen" but when her child is taken away because of unsafe housing, placed in foster care, and the foster parent wants significantly more money than the birth parent ever got – including payment for all additional housing costs - the foster parent is a hero.

And that, more than anything, is the heart of the issue when it comes to paying foster parents. Yes, some reimbursement for foster parents is reasonable. It's unrealistic to expect people to go deep into their own pockets to care for a stranger's children, children the foster parents don't even know until they walk in the door, and who may walk out again at any time. So it's fair for

the state to help out with the costs.

On the other hand, no foster parent who is demanding that every cent of expenditure be reimbursed can also turn around and claim to “love these children as I do my own” – a comment that often turns up in treacly feature stories about foster parents.

When a birth parent wants a little help with housing so she can raise her own child she’s a “welfare queen” but when her child is taken away because of unsafe housing, placed in foster care, and the foster parent wants significantly more money than the birth parent ever got – including payment for all additional housing costs – the foster parent is a hero.

A parent who really loves a foster child as much as her own child should be willing to pick up at least a small part of the cost of caring for that child. And, of course, many foster parents do just that.

Why would we want to completely cover the cost of what is, after all, an act of charity that comes from the goodness of the heart, for which the primary satisfaction should be psychic? If you volunteer to, say, tutor children at an after-school program,

you may have to dig into your own pocket a little. You’re not going to be reimbursed for mileage, and you may have to purchase some supplies. But, presumably, it’s worth it for the psychic satisfaction of helping someone in need.

So shouldn’t we be worried about middle-class people who volunteer to be foster parents but who are not willing to pitch in financially, at least a little?

The other argument often heard from foster parents is that they work 24/7.

In fact, being a parent of any kind may be the world’s most rewarding combination of work and play, pleasure and frustration. But shouldn’t we worry about the children of *any* parent who views every moment with them as a chore?

Mary Callahan, responded to the 24/7 argument in an op ed column arguing in favor of a cut in reimbursement for those foster parents in her state who receive the highest rates of reimbursement. Callahan wrote:

“I am not working when I am sitting around the dinner table with my children talking about the day. Or when we are in front of the television watching our favorite show -- "Lost." Or when we are driving down the road and singing to the oldies.

“Some foster parents might see this as work, but most of the time I am just living my life -- the one I chose -- with my favorite people.

“I never want to give my foster children a reason to doubt that.”

We believe there are a lot of foster parents out there like Mary Callahan – foster parents who really don’t want to be welfare queens.

THE LARGER CONTEXT: “FOR KEEPS” OR FINDERS KEEPERS?

Both of the governor’s proposals, the one that is right and the one that is wrong, have their roots in First Lady Ann Holton’s

“For Keeps” initiative.

Holton brought to this initiative her background as a highly admired and re-

spected juvenile court judge, and the initiative reflects her deep concern about and compassion for vulnerable children.

When we wrote to Judge Holton to express some of the concerns reflected in this report, she sent a gracious and lengthy reply, including a commitment to start using the term “birth parent,” instead of “biological parent,” a pejorative term intended to suggest that a child’s parent is no more important to him than a test tube.

In the letter, Judge Holton also argued that while the budget does not include an increase in funds for family preservation *per se*, the change in financial incentives will free up more money to fund in-home services.⁸⁵ That certainly would be all to the good – but it doesn’t solve the problem of essentially throwing away \$22.6 million on stranger care when it could be far better spent on family preservation and on kinship care.

And the governor’s own press release about the proposal does not specify in-home services, only “community-based settings” which appears to suggest foster homes.⁸⁶

But there is a deeper problem with the “For Keeps” initiative, perhaps also rooted in Judge Holton’s experience. Because of the obscene imbalance of resources between the child welfare agency and the defense, juvenile court judges tend to hear only one side of the story. The For Keeps initiative does not rectify that imbalance.

For example, the initiative’s first objective is to “strengthen the voices of youth in foster care and of foster parents.”⁸⁷ Those are worthy goals. But isn’t there someone missing? No constituency is more cowed, more silenced by the system than birth parents. Yet the For Keeps initiative shows no indication of having the slightest interest in anything they have to say.

Indeed, on the section of the initiative website presenting “highlights” of the

First Lady’s “listening tour” one will find the suggestions of youth in foster care, foster parents, and professionals in the system. But during the entire listening tour, it seems, no one spared even a moment to listen to birth parents.

This suggests that, although everyone in child welfare utters the same boilerplate about being in favor of “prevention” and only using foster care as a “last resort,” at the “gut level” this initiative still views all birth parents as sadists and brutes, so sub-human as to be unworthy of any voice at all. No wonder the governor isn’t proposing any new spending on keeping their families together.

But, as we have tried to make clear throughout this report, the trouble with such priorities is not that they hurt parents, though of course they do. The problem is the enormous harm these priorities do to children.

For instance, had birth parents been part of the listening tour, perhaps there would be, at a minimum, a proposal to do away with the payments we described earlier in this report as “ransom.”

Unfortunately, given the judge’s-eye-view of the system, the fact that no one thought to listen to birth parents is understandable.

A judge in criminal court who based her decisions solely on indictments probably would never believe that an accused is innocent. For all intents and purposes, that’s what it’s like in juvenile court.

Typically, judges hear only one side of the story – the child welfare agency’s. The underlying document, the agency’s “case file,” often is rife with error. It also is not intended to be objective. Like an indictment, the case file tells the agency’s side of the story.

The counterbalance is supposed to be the defense lawyer for the parent – but in most cases in Virginia, there is little mean-

ingful representation.

Even a lawyer handling a termination of parental rights case – often extremely complex, time-consuming matters widely known as the child welfare equivalent of the death penalty - can expect to be paid no more than \$500.⁸⁸ Hugh O'Donnell of Client Centered Legal Services says the typical fee is \$112.⁸⁹ A study of the Virginia system, commissioned by the American Bar Association, noted that “a number of attorneys candidly admitted that there is a disincentive to do all that could be done when representing a parent in abuse and neglect cases because of the fee ceiling.”⁹⁰

But even with higher fees, lawyers in these cases still would be on their own against the might of county child welfare agencies. They still would have no investigators or social workers to present another side of the story – and offer alternatives to those cookie-cutter “service plans” offered up by the agencies. One Virginia lawyer calls it “an amazing inequality of resources.”⁹¹

In some states, legal aid societies and legal services programs provide this kind of high quality legal representation to at least a small proportion of parents caught up in these kinds of cases. But in Virginia, most such organizations turn their backs, something O'Donnell calls “a disgrace.”⁹²

Other states have learned this lesson. Several counties in Washington State now provide high-quality defense counsel, with reasonable caseloads and adequate support staff, in these cases.

A lot of judges saw a lot of things differently when they were presented with all sides of the story. Successful reunification of families increased by more than 50 percent.

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

Where the parents are innocent, lawyers have time to prove it. Where there

is a problem in the home that must be corrected, the lawyers have time to sit down with the parents, explain early on what they are up against and guide them through the process of making whatever changes are needed. They also can advocate for more and better services and alternatives to agency “service plans.”

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

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

We risk turning the child welfare system into the ultimate middle-class entitlement: Step right up and take a poor person's child for your very own.

The National Council of Juvenile and Family Court Judges is publicizing the results, and even the State Attorney General at the time, who had to face the better-prepared lawyers, supported the project and wanted it expanded.⁹³ (We don't know if she still holds that view in her current job – governor.) Further information about the program is available here: <http://www.opd.wa.gov/Parents%20Representation%20Program.htm>

And Washington State is not alone. New York City is letting contracts to partially replace a system much like Virginia's with well-staffed institutional providers of defense counsel – and, because they recognize that this is best for children, the city's child welfare agency strongly

supports the move.

The governor could get far more bang for those 22.6 million bucks by putting some or all of that money into a similar program in Virginia. It would significantly improve child safety, both by avoiding needless foster care and by getting cases out of the system more quickly, so workers would have more time to find children in real danger. And it would do more to ease any foster parent shortage than the governor's current plan, because it would significantly reduce the need for foster care.

But it would require a far greater expenditure of political capital than a proposal that "everyone" already favors.

The best way to build that capital would be to make this idea a cornerstone of the "For Keeps" initiative.

In child welfare, the deck is stacked against families at every turn. Class and racial bias permeate the system, families are

handed service plans with no services, no one speaks for them in any meaningful way in court. And to top it off, the federal government will pay the State of Virginia (and every other state) a bounty of \$4,000 to \$8,000 for every finalized adoption of a foster child over a baseline number. There is no comparable incentive for keeping children safely in their own homes.

The real meaning of "for keeps" almost always should be to keep the child with the family which, for the overwhelming majority, is their best hope; the family they were born with. Instead, we risk turning the child welfare system into the ultimate middle-class entitlement: Step right up and take a poor person's child for your very own.

It's the difference between "for keeps" and "finders keepers."

*SEE FOLLOWING PAGES FOR
APPENDICES AND ENDNOTES*

APPENDIX A

CLINICAL STUDIES, SURVEY REVIEW, AND PEDIATRIC RESEARCH ON RISKS AND HARM TO CHILDREN AND YOUTH SUBJECTED TO LARGE RESIDENTIAL INSTITUTIONS

This literature review was prepared by Richard A. Wayman, J.D., director of the StreetWorks Collaborative, an agency helping homeless youth in Minnesota, based on research by Mary Ford of the North American Council on Adoptable Children. Used with permission.

Survey of Scholarship concludes that institutions produce harm and poor outcomes for youth and children.

An article written in 1996 surveyed 100 years of research and medical knowledge to inform the public policy debate as to whether orphanages or large residential institutions should replace existing policies which place a priority on keeping children in family-based settings. The article's abstract concludes,

"This special article explores a century of pediatric and child psychiatry research covering five areas of potential biologic and social risk to infants and young children in orphanage care: (1) infectious morbidity, (2) nutrition and growth, (3) cognitive development, (4) socioaffective development, and (5) physical and sexual abuse. These data demonstrate the infants and young children are uniquely vulnerable to the medical and psychosocial hazards of institutional care, negative effects that cannot be reduced to a tolerable level even with massive expenditure. Scientific experience consistently shows that, in the short term, orphanage placements puts young children at increased risk of serious infectious illness and delayed language development. In the long term, institutionalization in early childhood increases the likelihood that impoverished children will grow into psychiatrically impaired and economically unproductive adults." (Frank, Klass, Earls, & Eisenberg, 1996)

Institutionalization has long-term, psychosocial effects on children into adulthood

81 adult women who were institutionalized before age five was compared in research with 41 women never admitted into residential care. The study revealed that institutionally-reared women showed higher rate of poor psychosocial function and severe parenting difficulties in adult life. A quarter of the institutional children grew up to be women with personality disorders, while none of the women never institutionalized exhibited personality disorders. Finally, the women who were institutionalized as children were predisposed to lives of poverty more than the women who were never institutionalized. (Quinton, Rutter, & Liddle, 1984)

A majority of the research on long-term childhood institutionalization involving multiple caretakers reveal that such care leads to problems with interpersonal relationships for adult survivors. (Wolkind, 1974; Berry, 1975; Rutter, 1981; Quinton, Rutter, & Liddle, 1984; Zoccolillo et al., 1992)

Children institutionalized exhibit lower cognitive and educational advancement

Several studies have documented that children reared in institutions, when compared with children raised in a family-setting, have lower IQ scores and retarded language development. (Goldfarb, 1945; Bowlby, 1951; Provence & Lipton, 1962; Spitz, 1965; Langmeier & Matajcek, 1975)

Children institutionalized exhibit social impairment with healthy relationships

Several studies have documented that children reared in poor quality institutions (large facility and small number of staff) have increased prevalence of childhood anti-social behavior and unable to form supportive relationships with others. (Goldfarb, 1945; Bowlby, 1951; Provence & Lipton, 1962; Spitz, 1965; Langmeier & Matajcek, 1975).

Even higher quality institutions (smaller facilities with large numbers of staff) fail to provide children with long-term, stable, affectionate relationships that are critical to later social relationships (Tizard & Rees, 1975). Also, insecurely attached children, such as those who have spent their early years in an institution, may lack empathy, seek behavior in negative ways, exhibit poor self-confidence, show indiscriminate affection toward adults, are prone to noncompliance, and are more aggressive. (Reinhard, 1985; Gomez et al., 1991).

Many youth institutionalized at an early age grow up with social and emotional problems.

Teenagers who were placed in orphanages at early ages, showed more social and emotional problems including higher rates of referral to psychiatric care, and a greater likelihood of disruption in their lives than a comparison group. (Berry, 1975).

A 1983 study compared adopted and foster children to children reared in institutions and found that children reared in institutions are more likely to be inattentive, unproductive, and undependable academically and socially. (Roy, 1983). Another 1975 study that institutionally reared children, in comparison to foster or adopted children, had higher levels of psychiatric referral and problems in personal and social adjustment. (Berry, 1975)

The recent study in 1990 compared 124 adults reared in adoption, foster, and residential care. The study concluded, "those who were adopted and, to a somewhat lesser extent, those formerly fostered experienced more intimate, consistent, caring, and closer attachments to their caregivers compared with those who grew up in residential establishments." (Triseliotis and Hill, 1990, p. 111)

Even teenagers placed in institutions as teenagers did worse than those receiving foster care.

A 1988 study compared teens in foster care to teens provided institutional or residential care. The institutionalized teens have impairments in familiarity and "give-and-take" relationships to a greater degree than teenagers in foster care. The institutionalized teens also exhibited coercive interactions with their institutions' staff while foster teens had a higher proportion of socially acceptable interactions between the teens and their foster parents. (Colton, 1988).

In a survey of 370 teens with a history of long-term, out-of-home placement judged institutions as significantly less supportive than foster care. (Bush, 1980) Teens in institutions felt less loved, less looked after, less trusted, less wanted.

What youth and children need is an opportunity to form a consistent relationship with a caretaker in their early years.

Institutionalized children are at serious risk for developmental problems and long term personality disorders. (Sroufe, 1991)

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TWELVE WAYS TO DO CHILD WELFARE RIGHT

Successful alternatives to taking children from their families

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

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

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

3. Intensive Family Preservation Services programs. The first such program, Homebuilders, in Washington State, was established in the mid-1970s. The largest replication is in Michigan, where the program is called Families First. The very term "family preservation" was invented specifically to apply to this type of program, which has a better track record for safety than foster care. The basics concerning how these programs work – and what must be included for a program to be a real "family preservation" program -- are in NCCPR Issue Papers 10 and 11. Issue Paper 11 lists studies proving the programs' effectiveness.
CONTACTS: Charlotte Booth, executive director, Homebuilders (253) 874-3630, cbooth@bsi-homebuilders.org, Susan Kelly, former director, Families First (734) 547-9164, susan.kelly@cssp.org

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

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

5. Family to Family. This is a multi-faceted program developed by the Annie E. Casey Foundation (which also helps to fund NCCPR). One element of the program, Team Decisionmaking often is confused with the entire program, which has many more elements. The program is described at the Casey website

<http://www.aecf.org/Home/MajorInitiatives/Family%20to%20Family.aspx> A comprehensive outside evaluation of the program, found that it led to fewer placements, shorter placements, and less bouncing of children from foster home to foster home – with no compromise of safety. **CONTACT: Gretchen Test, Annie E. Casey Foundation (410) 547-6600.**

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

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

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

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

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

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

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

Now those incentives have been reversed, in part because of pressure from the Illinois Branch of the ACLU, which won a lawsuit against the child welfare system. Today, private agencies in Illinois are rewarded both for adoptions (which often are conversions of kinship placements to subsidized guardianships) *and* for returning children safely to their own homes. They are penalized for prolonged stays in foster care. As soon as the incentives changed, the “intractable” became tractable, the “dysfunctional” became functional, and the foster care population plummeted. And children are safer. Today, Illinois takes away children at one of the lowest rates in the country. Independent, court-appointed monitors have found that child safety has improved. **CONTACT: Ben Wolf, Illinois Branch, ACLU, (312) 201-9760, ext. 420, bwolf@aclu-il.org**

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

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- ⁵ "Kaine: A 'hallmark' for foster care," *Newport News Daily Press*, Jan. 10, 2008.
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- ⁹ Studies cited in Karen Benker and James Rempel, "Inexcusable Harm: the Effect of Institutionalization on Young Foster Children in New York City," *City Health Report*, (New York: Public Interest Health Consortium for New York City) May, 1989.
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⁸³ Voices, note 4, *supra*, and Virginia Poverty Law Center, note 80, *supra*.

⁸⁴ Prof. Mark Testa made the remark at a news conference releasing the report cited in Note 79. The transcript is available online at http://www.fosteringresults.org/press/pewpress_10-13-04_fednewsbureau.pdf

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⁹¹ *Ibid.*

⁹² O'Donnell, note 2, *supra*.

⁹³ Heath Foster, "Relying on good advice can reunite troubled families," *Seattle Post-Intelligencer*, February 12, 2003, p.B1.