

# PRI

## Progressive Research Institute of Nebraska

*Investigate. Educate. Activate.*

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February 20, 2013

To the Nebraska Legislature, other lawmakers, policy makers, practitioners and concerned citizens:

The Progressive Research Institute of Nebraska (PRI) has drafted a report and recommendations to help solve identified problems within Nebraska's child welfare system.

PRI is a nonprofit think tank based in Omaha that envisions a more democratic, racially integrated, economically just, healthy and safe community in Omaha and throughout Nebraska. We seek to expand democratic and economic rights (e.g., employment, education, healthcare and housing) to all citizens, and to improve the economic well being especially of the poor and middle class. We work towards these goals by researching and distributing information on issues of concern, and through forums, workshops and partnerships for civic action. Child welfare is one of our primary areas of interest.

In 2012 we hosted a series of three public forums aimed at identifying issues and developing long-term solutions to the troubles facing our state's child welfare system:

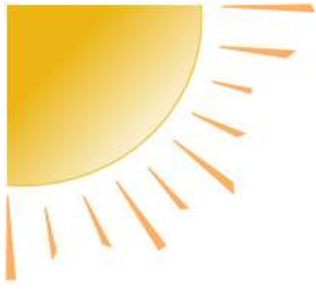
- In May 2012 we provided a platform for those most affected by the system to report experiences and personal recommendations for needed changes to laws, policies, and practices;
- In July 2012 we used those reports to help participants find solutions to the problems identified in the first forum; and
- In November 2012 we invited the public to provide input and feedback to the draft solutions we developed based on the public input offered during our first two public forums.

This report is the culmination of that work.

Based on the evidence, we have concluded that a set of four destructive problems are embedded within the norms, values, policies and practices of Nebraska's child welfare system. These four problems can be categorized under these headings: (1) Equity; (2) Accountability; (3) Civil Liberties; and (4) Economics. These are the four areas in which Nebraska's child welfare system falls substantially short. In this report, we use evidence to demonstrate the deep-rooted troubles facing our state's child welfare system, and provide specific recommendations to overcome entrenched problems. We hope this report will provide a unique addition to the considerable work currently underway to reform Nebraska's child welfare system.

Sincerely,

Karen Abrams  
Chair, Board of Directors  
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# **Report and Recommendations to Overhaul Nebraska's Child Welfare System**

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**February 2013**

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## ACKNOWLEDGEMENTS

The Progressive Research Institute of Nebraska extends a heartfelt “thank you” to the dozens of people who attended and actively participated in our three-part series of Child Welfare Forums during the spring, summer and fall of 2012. Participants at those events included parents whose parental rights had been terminated, extended birth families of adopted children, foster parents, foster children, case workers, social workers, mental health therapists, Department of Health & Human Services administration and staff, child and family advocates, various other child welfare service providers, and concerned members of the general public. We couldn’t have produced this report and accompanying recommendations without your input, feedback and suggestions.

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**The Progressive Research Institute of Nebraska** is an independent nonprofit think tank based in Omaha, Nebraska. The Institute was founded in 2009. Our mission is to research and disseminate information about critical issues essential to expanding democratic and economic rights, in order to improve the quality of life in the metropolitan Omaha area. PRI envisions a more democratic, racially integrated, economically just, healthy and safe community in Omaha and throughout Nebraska. We seek to expand democratic and economic rights (e.g., employment, education, healthcare and housing) to all citizens, and to improve the economic well-being primarily of the poor and middle class. We work towards these goals by sponsoring and disseminating research on issues of concern using respected scientific approaches, and through forums, workshops and partnerships for civic action.

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## Executive Summary

This report organizes the problems afflicting Nebraska's child welfare system into four categories: Equity; Accountability; Civil Liberties; and Economics.

Evidence from child welfare research affirms the value of family preservation, and reveals the trauma associated with child removal and foster care, supporting the contention that these interventions should be a last resort.

A thread running through our findings is that racism and economic bias are largely to blame for the exorbitant rate at which children are removed from their families here in Nebraska. Requiring cultural competence of Nebraska's child welfare workforce would help alleviate many of the problems faced by families now caught up in the system.

Nebraska's child welfare system (including the Department of Health and Human Services, judges, attorneys and service provider contractors) is not accountable. We recommend performance audits at every level of the system, and performance reviews of individual child welfare workers, along with the strict enforcement of statutes that require public access to information.

Civil liberties are seriously undermined in a child welfare system in which parents are expected to prove that they are innocent, that is governed by vague and ambiguous laws, and when there is little accountability within the courts overseeing cases. Systematic racial and economic bias within the system is a primary factor in the deterioration of civil liberties, because people are treated unfairly due to the color of their skin and/or their socio-economic status.

Finally, there is an economic incentive to many of the players within Nebraska's child welfare system to continue to channel children into foster care as opposed to keeping them in their families. Even federal funds intended to assist impoverished children and families are funneled by the state to foster and adoptive parents rather than directed to keeping families together.

While much remains to be done to reform Nebraska's child welfare system, in this report we offer many concrete, achievable, evidence-based recommendations to substantially improve the system, and thereby improve outcomes for the children and families most in need.

# INTRODUCTION

In this report, the Progressive Research Institute of Nebraska (PRI) proposes strategic solutions to overhaul Nebraska's child welfare system. During 2012, PRI hosted a three-part series of forums aimed at identifying issues and developing long-term solutions to the troubles facing the state's child welfare system. In June 2012 we provided a platform for those most affected by the system to report experiences and make personal recommendations for needed changes. In July 2012, participants used the reports from the first forum to identify solutions to problems with child welfare laws, policies, and practices. Based on the public input from those first two forums, PRI presented a draft set of recommendations to the public in November 2012 for input, feedback and suggestions. The following report and strategic recommendations are the culmination of that work.

Based on the evidence, we have concluded that a set of four destructive problems are embedded within the norms, values, policies and practices of Nebraska's child welfare system. These four problems can be categorized under the headings of: Equity; Accountability; Civil Liberties; and Economics. These are the four areas in which Nebraska's child welfare system falls substantially short. And, we think the system's weaknesses in these areas are the primary contributors to two important facts: (1) Our state "removes children from their homes at a rate almost twice the national average" (Breazile 2013, p. 9),<sup>1</sup> making Nebraska second worst in the nation on this score (KVC Nebraska, 2011; Wexler, 2012b); and (2) Poor and minority families are negatively affected by the system at staggeringly higher rates than other groups, compared to their share of the population (Alliance for Racial Equity in Child Welfare, 2009; Bass, 2004; Duva, 2010; Hill, 2006; Summer, 2012; Walsh, 2010). This is particularly true here in Nebraska (Dunn, 2012; Nebraska Appleseed, 2012; Wexler, 2012b).

Our state's child welfare system requires profound changes. The Progressive Research Institute of Nebraska recommends that our state's child welfare system fundamentally change its core values and practices to ones that prioritize supporting and preserving families. This essential transformation will position the system to meaningfully address the following four key problem areas:

1. **Equity:** Nebraska's child welfare system fails to fairly and equitably treat children and families. In large part, the system's unfairness is rooted in a culture of racial and economic bias that is embedded in state statute, and permeates the system's norms, values, policies, procedures and practices at every level (e.g.,

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<sup>1</sup> According to Voices for Children in Nebraska, "The U.S. rate of entry into foster care during 2011 was 3.4 children in every 1000. Nebraska's rate between April 2011 and March 2012 was 5.6 children in every 1000" (Breazile, 2013, p. 9).

Department of Health and Human Services, judiciary, attorneys, contractors, law enforcement, etc.).

2. Accountability: The system is the opposite of open, responsible and trustworthy—and this is particularly true for the children and families caught up in it. State law as well as system rules and regulations are frequently vague and ambiguous, and therefore open to wide and varying interpretation. Furthermore, the system makes only limited data available through the Department of Health and Human Services website, and access to additional data and other information is frequently blocked or outright denied.
3. Civil Liberties: The system fails to adequately support the civil liberties and civil rights of children and families. Due process and the presumption of innocence have largely been abandoned by the system.
4. Economics: A profound and all-encompassing problem of the system is associated with economics. The fact is that child welfare is a growth industry on which the state depends for federal funding, and on which an interconnected web of government officials, private sector companies and nonprofit agencies and organizations, as well as individuals, depend for jobs, financial support and other resources.

In this report, we use evidence to demonstrate the deep-rooted troubles facing our state's child welfare system, and provide specific recommendations<sup>2</sup> to overcome entrenched problems. We hope this report will provide a unique addition to the considerable work currently underway to reform Nebraska's child welfare system.

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<sup>2</sup> See Appendix A for a detailed list of recommendations; while we were unable to address in the body of this report every single recommendation that came out of our 2012 Child Welfare Forums, they are all included in this appendix.

## CORE VALUES: Preserve and Support Families

*“Primary responsibility for the development and well-being of children lies within the family” (Langford, 2009, p. 8).*

It seems logical that “helping families fulfill their potential to be good parents is an essential part of efforts to improve outcomes” for those families and their children (Langford, 2009, p. 1). And, in fact, research demonstrates that when the values of family preservation, support and engagement are properly incorporated into effective practices within a child welfare system, children and families do benefit (Brodowski, 2012; Langford, 2009). The core values and practices of family preservation, support and engagement should be at the heart of Nebraska’s child welfare system.

Family preservation is a value and set of practices that make it a top priority to “protect family functioning by having family needs and resource challenges explicitly addressed” (Hooper-Briar, 1995, p. 17). Family preservation strategies work to increase the strength and stability of families and are intended to prevent the kind of crises that might result in a need for foster care in the first place (Stoltzfus, 2002).

A crucial component of family preservation is family reunification, which “refers to the process of returning children in temporary out-of-home care to their families of origin” (Child Welfare Information Gateway, 2011b, p. 2). Family reunification is a set of practices that preserves and protects families by emphasizing the importance of bringing families back together that have been split apart: “Renewed attention to family reunification is imperative if the child welfare system is to create a more consistent and coherent approach to unifying and supporting families” (Wulczyn, 2004, p. 110).

Nebraska’s rate of reunification is actually quite high: In 2010, “Over two-thirds of children were reunited with their birth families,” representing “one of the highest reunification rates in the country” (Breazile, 2013, p. 17). However, this figure is deceptive because it is also true that Nebraska removes children from their homes at a staggering rate—at about twice the national average (Breazile, 2013)<sup>3</sup>. If the state is removing children from their families for unacceptable reasons, it should not be considered a great achievement when those families are later reunited.

A second value and set of practices to preserve and support families is called family engagement, based on the principle that people support what they help create.

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<sup>3</sup> According to a 2012 Nebraska-focused report by Richard Wexler, Executive Director of the National Coalition for Child Protection Reform, Nebraska’s rate of child removal is “more than *triple* the national average” when poverty is factored in (Wexler, 2012, p. 5). For a lengthy discussion of the intersection between child removal and poverty in Nebraska’s child welfare system, see the section of this report on Equity, starting on p. 10.

*“Family engagement is a family-centered and strengths-based approach to partnering with families in making decisions, setting goals, and achieving desired outcomes. It is founded on the principle of communicating openly and honestly with families in a way that supports disclosure of culture, family dynamics, and personal experiences in order to meet the individual needs of every family and every child”* (Child Welfare Information Gateway, 2010b, p. 1).

When the values and practices of family preservation, support and engagement are appropriately integrated into the practices of a child welfare system at every level, it means child welfare workers recognize families not just as partners, but as respected leaders in planning the approaches that will be used to achieve desired child welfare outcomes (Brodowski, 2012). As partners, families and child welfare workers together build upon families’ existing strengths and capacities in order to succeed. And that is all accomplished within a context of cultural competence that affirms family racial and cultural identities (Langford, 2009).

Nebraska’s Department of Health and Human Services (DHHS) does not list core values for its Division of Children & Family Services (DCFS is the office within DHHS that is responsible child welfare services). While DCFS does state that it is in its mission to “help families care for themselves” (NDHHS-DCFS, n.d.b), that can be interpreted as only the vaguest, most oblique reference to the values of family preservation, family support, and family engagement.

*“...there is no escaping the fact that a transformed child welfare system that focuses on safety, permanency, and well-being outcomes requires parent and family engagement and family support.... parent and family involvement within a system of care requires mutual respect and meaningful partnerships between families, professionals, and communities”* (Brodowski, 2012, p. 24).

## **Foster Care: Discontinuity and Trauma**

It is not our contention that Nebraska should preserve, support and engage families because that’s the nice thing to do. Rather, our argument is that proper implementation of family preservation, support and engagement practices improves outcomes for children and families; furthermore, there is plentiful scientific evidence that the alternative—an increased dependence on foster care—results in substantially worse long-term outcomes, in particular for children of color and poor children who are disproportionately represented among the foster care population.<sup>4</sup> As a result, it is clear

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<sup>4</sup> For a detailed discussion of the disproportionate negative outcomes on children of color and poor children, see the section of this report on Equity, starting on p. 10.



that—for the vast majority of Nebraska’s child welfare cases<sup>5</sup>—it is in the best interest of children and their families for children to remain in their own homes, both during and after a family’s involvement with the child welfare system (Bruskas, 2008; Cooper, 2010; Doyle, 2007, 2008 and 2011; Fisher, 2005; Friedman, 2000; Newton, 2000; Oosterman, 2007; Pecora, 2008; Troutman, 2011; Wotherspoon, 2008). Foster care, and certainly adoption, should be last resorts.

Although foster care is designed to be a temporary arrangement, the American Academy of Pediatrics (2012) states that the average length of time a child stays in foster care is 33 months—that is nearly three years. According to Nebraska’s Foster Care Review Office (2012), the 2,084 children aged 10 and under who were in foster care on June 30, 2012, had already spent an average of 15 months—that’s well over a year—in foster care. So, the “temporary” nature of foster care is certainly debatable.

In addition, most children in foster care experience multiple foster placements during their time in the child welfare system (The Pew Charitable Trusts, 2007a; The Source, 2004). Being separated from one’s family, combined with multiple foster placements, are traumatic experiences that will affect a child’s health and well being throughout his/her lifetime (Bruskas, 2008; California Child Welfare Council, 2012; Cooper, 2010; Doyle, 2007, 2008 and 2011; Fisher, 2005; Friedman, 2000; Newton, 2000; Oosterman, 2007; Pecora, 2008; The Pew Charitable trusts, 2007a and 2007b; Stukes Chipungu, 2004; Troutman, 2011; Wotherspoon, 2008).

According to specialists on child and adolescent psychiatry, foster care is one of the “notable chronic adversities” that creates an environment “of persistent stress and challenge to healthy development” (Friedman, 2000, p. 1). Children who “endure the trauma of being separated from parents” experience “confusion, fear, apprehension of the unknown, loss, sadness, anxiety, and stress” that puts them at risk for post-traumatic stress disorders (Bruskas, 2008, p. 70). When the long-term health and life outcomes of children placed in foster care are compared to those who remain with their families, foster children are two to three times more likely to be arrested, are more likely to end up in the juvenile justice system, more likely to become teenage parents, and are less likely to hold a job (Doyle, 2008).

Being taken from one’s family, followed by multiple transitions in foster care placement, seriously disrupts a child’s attachment to his/her primary caregivers. Insecure attachment, in turn, is associated with multiple developmental, behavioral and mental health problems (Bruskas, 2008; Cooper, 2010; Doyle, 2007 and 2011; Fisher, 2005; Friedman, 2000; Newton, 2000; Oosterman, 2007; Pecora, 2008; Troutman, 2011; Wotherspoon, 2008). It has also been demonstrated that the transitions associated with

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<sup>5</sup> While it is true that serious and damaging child sexual and physical abuse and neglect does occur in Nebraska—and that our state’s child welfare system must do all it can to protect those children—it is also true that the overwhelming problem the system confronts among the families it targets is physical neglect, a problem that is highly correlated with poverty (for a detailed discussion of this issue, see the section of this report on Equity, starting on p. 10).

foster care can disrupt a child’s general health care (Doyle, 2011; Stukes Chipungu, 2004). And, absenteeism and frequent school changes have been shown to negatively affect academic achievement (Mehana, 2004; Pecora, 2008; Stukes Chipungu, 2004). Children in foster care “miss many school days while in transition from home to home in addition to facing the challenges of new schools; this will affect their attendance and comfort level, which in turn can impact their school experience as well as long-term performance outcomes” (Bruskas, 2008, p. 71).

## **Recommended Solutions to Changing Core Values**

Family preservation and reunification, family support and family engagement should be at the heart of Nebraska’s child welfare core values and practice.<sup>6</sup> To accomplish this will take hard work, because institutional norms and values will not change overnight. The fact is that “leadership at the agency and community levels is critical for setting an organizational culture that values and respects parent and family involvement” (Brodowski, 2012, p. 21).

Nebraska must ensure that policy is very specific in defining these family-centered values and practices,<sup>7</sup> and properly train the child welfare workforce to successfully carry out these new policies. Then additional policy must be developed that holds the overall system—including the child welfare workforce—accountable by conducting performance reviews and audits to determine the degree to which the new standards have been applied, as well as the extent to which desired child welfare outcomes have been achieved as a result.<sup>8</sup>

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<sup>6</sup> Prevention is written into state statute as a principle guiding state action: “Prevention, early identification of problems, and early intervention shall be guiding philosophies when the state or a department, agency, institution, committee, court, or commission plans or implements services for families or children when such services are in the best interests of the child” (Nebraska Legislature, n.d.a). It is up to those of us who advocate for children and families to hold the all branches of government—executive, judicial and legislative—responsible for enforcing existing statute.

<sup>7</sup> Nebraska must research and then adopt the evidence-based practices of family preservation, support and engagement that have been shown through program evaluation to produce the best outcomes.

<sup>8</sup> See the Accountability section of this report, starting on p. 17, for a lengthier discussion of this topic.

## EQUITY: Fair Treatment For All

Nebraska's child welfare system fails to fairly and impartially treat children and families. The evidence indicates that the system's unfairness is in large part rooted in a culture of racial and economic bias that is embedded in state statute, and permeates the system's norms, values, policies, procedures and practices at every level (e.g., DHHS, judiciary, attorneys, contractors, law enforcement, etc.).

Equity should be embedded within the system, both as an underlying principle and as a characteristic of Nebraska's child welfare norms, policies and practices. If the actions and decisions of Nebraska's child welfare system were imbued with the principle and characteristics of equity, the agencies, organizations and individuals within the system would all be making decisions and taking actions that were:

- Fair;
- Unbiased; and
- Trustworthy.

Good intentions are not sufficient. Nebraska must back up good intentions with real and lasting changes to policy and practice.

While equity in our child welfare system does require equal treatment for children and families with the same needs (Hill, 2006), equity does not mean treating all individuals, families and situations the same. Equity entails recognizing that humans—and human conditions—are often unique, and then paying special attention in order to ensure that individuals and families are treated fairly despite these differences. In other words, equity requires the system to act impartially—without prejudice and preconceived notions. Finally, equity requires the system to be dependable and reliable.

### Racial and Economic Bias

*“The disproportionate removal of children of color and poor children from their homes should be acknowledged as a crisis in child welfare warranting immediate action. Discriminatory...treatment is evidenced throughout the child welfare system”* (Stukes Chipungu, 2004, p. 87).

Both children of color and poor children are overrepresented in the child welfare system compared to their numbers in the population at large (Alliance for Racial Equity in Child Welfare, 2009; Bass, 2004; Breazile, 2013; Cahn, 2009; Dunn, 2013; Hill, 2006; Government Accountability Office [GAO], 2007; Jones, 2006; Rivaux, 2009; Stoltzfus, 2005; Stukes Chipungu, 2004; Summer, 2012; Walsh, 2010). This is despite that fact that research demonstrates that these segments of the population are no more likely to abuse or willfully neglect their children than white and/or wealthy families (Bass, 2004; Hill, 2006;

Breazile, 2012). This overrepresentation is a grave problem called “disproportionality,” and it reflects the fact that racial and economic bias is entrenched at every level of the system.<sup>9</sup>

Interestingly, DHHS doesn’t make data about the poverty levels of children targeted by child welfare available on its website. And, it certainly doesn’t make any effort to illustrate the relationship between poverty and neglect among the data available online. Nebraska’s apparent lack of interest in this information is not unique; in fact, “The role of poverty in child neglect cases has been largely ignored” nationwide (Duva, 2010, p. 63). We will address the troubling issues related to the intersection of poverty and neglect within Nebraska’s child welfare system in much greater detail, below. First, we will address the sobering subject of minority overrepresentation in our child welfare system.

### Overrepresentation of Children of Color

*“Children of color represent 27.0% of Nebraska’s child population (ages 19 and under). However, children of color made up 44.5% of children in out-of-home care on December 31, 2010” (Breazile, 2012, p. 44).*

The disproportionate representation of children of color in Nebraska’s child welfare system is illustrated by the statistics offered above and further substantiated by this fact: The ratio of black children in foster care to total children in foster care in Nebraska is 21.1%, while the ratio of blacks to the total population in Nebraska is only 4.7% (Dunn, 2013). What this means is that the ratio of black children removed from their homes by the Nebraska Department of Health & Human Services in 2012 was “about 4.5 times higher than would be expected from the size of the total Black population in the state” (Dunn, 2013). And, this figure of 4.5, called the disproportionality index, is more than twice as high as the 2010 disproportionality index for black children in the United States as a whole, which was 2.0 (Summers, 2012).

*“Addressing the racial harm caused by the child welfare system also requires eliminating the structural flaws that make Black families vulnerable to coercive state intervention. Chief among these flaws is the system’s punitive function. Black communities have become targets of stigmatized services designed to investigate and punish deficient parents rather than preserve families” (Roberts, 2004, p. 274).*

Nebraska’s Native American children are also removed from their homes at alarmingly high rates compared to their numbers in the population at large—the disproportionality index for Native American children in 2012 was just about the same as for black children: 4.4 (Dunn, 2013). That’s a shocking three times as high as the 2010 disproportionality index for Native

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<sup>9</sup> Disproportionality can also work to underrepresent certain populations; for example, Asian children and children from wealthy families are underrepresented among child welfare populations across the United States (Hill, 2006; Stukes Chipungu, 2004).

American children in the U.S. overall (Summers, 2012). In Thurston County, NE, where two of Nebraska's tribes have reservations,<sup>10</sup> is the county with the highest rate of children removed to foster care (38.33 per 1,000) in the state (Breazile, 2013). According to Nebraska Appleseed (2012), a nonprofit social justice and public interest law firm, Nebraska's disproportionality index for Native American children removed from their homes is the second highest in the nation.

And, the unfair overrepresentation of minority children in the child welfare system (Alliance for Racial Equity in Child Welfare, 2009; Breazile, 2012; Cahn, 2009; Dunn, 2013; GAO, 2007; Hill, 2006; Jones, 2006; Rivaux, 2009; Stoltzfus, 2005; Summers, 2012) is made vastly worse by the fact that—on virtually every outcome measure related to child welfare—children of color fare substantially worse than white children:

*“Children of color involved with the child welfare system experience significantly worse outcomes than non-minority children. They have a higher occurrence of placement changes, receive fewer supports, stay in the system longer, and are less likely to be adopted or reunited with their families. Children of color also receive fewer contacts by caseworkers, less access to mental health services, less access to drug treatment services, and are placed in detention or correctional facilities at higher rates. In addition, children of color are overrepresented at all decision points of the child welfare system: reporting, investigation, substantiation, placement, and exit from care. Improvements for all children in the child welfare system are not possible without addressing and eliminating these inequities”* (Alliance for Racial Equity in Child Welfare, 2009, p. 2).

The significantly worse outcomes experienced by children of color who come into contact with the child welfare system are a clear illustration that inequity exists (Alliance for Racial Equity in Child Welfare, 2009; Bass, 2004; Hill, 2006; Jones, 2006; Rivaux, 2009; Breazile, 2012). These disparities are predominantly the result of systematically unjust and biased treatment of children of color (Stukes Chipungu, 2004). This inequity must end. No child should be prevented from achieving his or her “full health potential” (Brennan Ramirez, 2008) as a result of systemic racial bias.

In Nebraska, children of color experience substantially higher poverty rates than white children (Breazile, 2013; Omaha World Herald, 2009).<sup>11</sup> As a result of higher poverty

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<sup>10</sup> There are four federally recognized tribes in Nebraska: (1) Omaha; (2) Winnebago; (3) Ponca; and (4) Santee Sioux. Two of these tribes, the Omaha and Winnebago, have reservations in Nebraska. The Winnebago Indian Reservation lies in the northern half of Thurston County in northeastern Nebraska. The Omaha Indian Reservation lies primarily in the southern part of Thurston County and northeastern part of neighboring Cuming County, but extends partly into Burt County, NE, as well as into Monona County, IA.

<sup>11</sup> In 2011, child poverty among white children under age 18 was 14.4%, but was 40.2% for black children, 45% for Native American children, and 36% among Latino children (Breazile, 2013).

among children of color in this state, the chance they will come into contact with the child welfare system is exacerbated (Bullock, 2003; Chipungu, 2004; Duva, 2010). It is important to note that, among the 100 largest metropolitan areas in the U.S., Omaha “ranks No. 1 in the nation” for the “percentage of black children in poverty” (Omaha World Herald, 2009).

“Structural racism is one part of the complex equation that results in 61.9% of poor African American children living in areas of concentrated poverty without decent and affordable housing, excellent schools, or adequate health and consumer services, as compared to 13.7% of poor white children” (Duva, 2010, p. 64) in the U.S. overall. Because many minority families that come into contact with the child welfare system are also poor, these families are liable to suffer a double-whammy of prejudice, as victims of both racial and economic bias (Bullock, 2003).

It is important to note that while many minority families are poor, poverty alone does not explain why families of color are so overrepresented within the child welfare system:

*“A good reason to suspect that poverty cannot completely explain the system’s racial disparity are the lower chances of involvement of Latino children, who are also disproportionately poor” (Roberts, 2002, p. 48).*

## **Overrepresentation of Poor Children**

Child welfare research has established a clear relationship between poverty and allegations of neglect (Brezile, 2013; Bullock, 2003; Cahn, 2009; Loman, 2007; Paxon, 1999; Walsh, 2010). In order to understand the troubling issues related to the intersection of poverty and neglect within Nebraska’s child welfare system, it is first necessary to understand the statistics around substantiated allegations of neglect in this state:

- The vast majority (81%, or 4,586 cases) of all substantiated allegations of abuse or neglect in Nebraska in 2011 were associated with neglect (DHHS-DCFS, 2011b).
- Physical neglect accounted for 95.5% (4,386 cases) of all the allegations of neglect (DHHS-DCFS, 2011b).
- And, physical neglect accounted for 78% of the total combined allegations of abuse and neglect in Nebraska (DHHS-DCFS, 2011b).

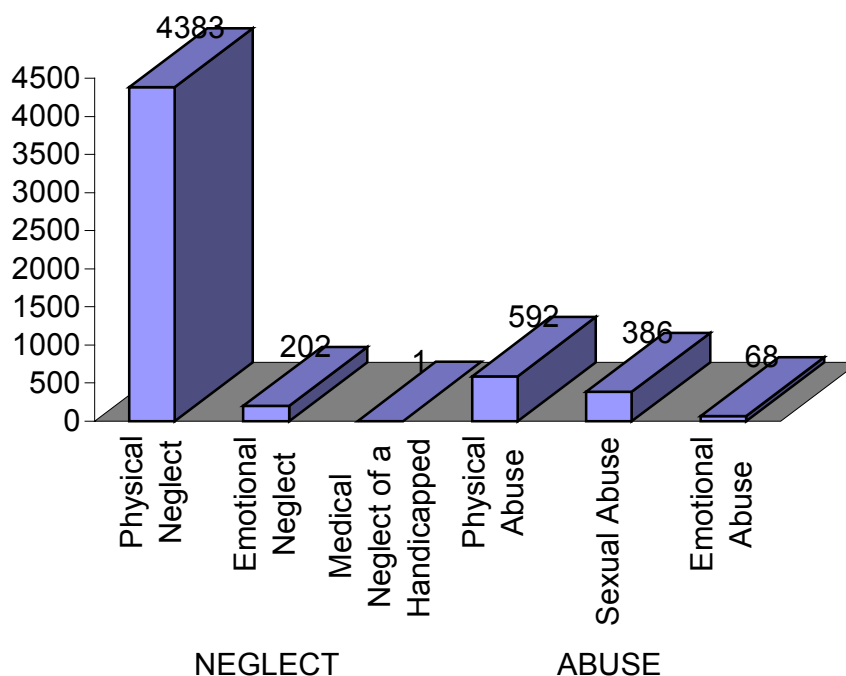
*“Neglect, which can take many forms, often results from families’ difficulties in accessing needed services and supports. For some families, there is too little income to provide their children with food, health care, and other necessities that their children need. For other families, the lack of affordable quality housing results in homelessness or substandard living conditions that pose risks to their children’s and their own safety. For yet other families, parents must work two or more jobs and struggle to provide their children with appropriate supervision while the parents are at work. Childcare for many families is unaffordable....When prevention services and supports are not available for families, the only solution often is the placement of children in foster care—which in and of itself can be a traumatic experience for children and create greater stresses on already fragile families” (The Pew Charitable Trusts, 2007a, pp. 5-6).*

Nebraska’s definition of “physical neglect” is as follows:

*“Physical Neglect means the failure of the parent to provide basic needs, for example food, clothing, shelter, medical care, supervision and a safe and sanitary living environment for the child” (NDHHS-DCFS, 2012a).*

As Candra Bullock notes in an article about the unfair treatment of low-income parents involved in child welfare, Nebraska’s definition could “easily encompass situations of poverty” (Bullock, 2003, p. 1044). Addressing this troubling reality is long overdue.

**Nebraska 2011: Number of Substantiated Cases of Abuse and Neglect by Type**



The statistics included in this chart are from the Nebraska Department of Health & Human Services, Division of Children and Family Services (2011b).

“It has long been noted in the child-abuse literature that children who are poor, have unemployed fathers, or live with single mothers are more likely than others to be reported” to the child welfare system (Paxson, 1999). And, like minority children, poor children suffer worse outcomes once they enter the child welfare system than those from wealthier families (Paxson, 1999; Walsh, 2010). According to the Carsey Institute, which conducts policy research on vulnerable children, youth, and families at the University of New Hampshire, “Children with a report of neglect from households struggling to pay for the basics were significantly more likely to be placed in out-of-home care than neglected children from nonpoor households” (Walsh, 2010, p. 1).

## Recommended Solutions to Curb Racial and Economic Bias

### Definitions

Because it is so easy to conflate poverty and neglect (Bullock, 2003; Duva, 2010; Loman, 2007), several states have created policies that help to prevent poor families from accidentally getting roped into the child welfare system. According to a 2011 report by the U.S. Department of Health & Human Services' Administration for Children & Families, "in 12 States and the District of Columbia, financial inability to provide for a child is exempted from the definition of neglect" (Child Welfare Information Gateway, 2011a, p. 5). These states are: Arkansas, Florida, Kansas, Louisiana, Massachusetts, New Hampshire, North Dakota, Pennsylvania, Texas, Washington, West Virginia, and Wisconsin (Child Welfare Information Gateway, 2011a, p. 5). Nebraska must do the same.

Nebraska must develop a practical definition of what it means for a family to be financially unable to provide for a child, and then exclude that definition from the state's definition of neglect (Bullock, 2003; Loman, 2007). What follows is an adaptation of a definition of family poverty proposed by Tony Loman (2007, slide 11) of the Institute of Applied Research. According to Loman, a family that is financially unable to provide for a child may have one or more of the following characteristics:

- Insufficient income to make purchases and/or contract needed services such as child care (as a result of unemployment, ineligibility for cash assistance, lack of cash savings, etc.);
- Lack of access to non-cash public programs (e.g., Food Stamps, WIC, Medicaid, Medicaid for Children, Head Start, childcare assistance, housing assistance, etc.);
- Lack of assistance from spouses, relatives, friends (e.g., social isolation, estrangement from family, absence of resources from friends and relatives, etc.);
- Lack of access or inconsistent access to needed services/programs over time (as a result of low education and skills training, unstable jobs, poor job advancement, lack of health care, unstable family life, etc.).

Using this or a similar definition of financial inability to provide for a child, and excluding it from Nebraska's definition of neglect<sup>12</sup> would be a big step in the direction of supporting families whose primary need is for financial assistance and other methods of reducing poverty.

### Differential Response & Poverty Amelioration

The enormous role that allegations of physical neglect play in Nebraska's child welfare system is a symptom of the real malady at the heart of child welfare issues in our state: *poverty*. If poverty is the most critical underlying issue facing families caught up in our state's child welfare system, then child welfare interventions must evolve to focus primarily on approaches that ameliorate family poverty. That means limiting the current focus on

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<sup>12</sup> "For example, the District of Columbia's statute for child abuse and neglect provides an exception to classifying a child as neglected, which states that the deprivation of proper care must not be due to a lack of parents' financial means" (Bullock, 2003, p. 1045).



foster care and adoption, which don't address underlying issues, and instead can result in grave consequences for children and their families. An approach to child welfare that focuses on prevention, family preservation, and reunification would support rather than punish poor families so that they can not only remain intact, but be strengthened through strategies aimed primarily at addressing the risk factors for physical neglect.

Another step that would help Nebraska's child welfare system to evolve would be for it to progress from its current model—using only the traditional, adversarial approach, based on law-enforcement techniques that universally lead to investigation<sup>13</sup>—to a broader-based approach called differential response that includes alternatives based on family need (discussed again on p. 40 of this report). For example, it would be a significant step forward for Nebraska's child welfare system to broaden its array of possible responses to reports of alleged abuse or neglect to include concrete strategies that are directly aimed at addressing the needs of families in poverty (Duva, 2010).

As Cahn notes, "If there is adequate funding for life's necessities, poverty alone will not cause neglect. Similarly, if parents received adequate support to care for their child, for example, to pay for day care or after-school programs, then this will ameliorate the lack of supervision problem" (Cahn, 2009, p. 150). Such an approach could provide poor parents with housing<sup>14</sup> and cash assistance (to help cover the cost of things such as food, clothing, furniture, utility assistance, child care, transportation, etc.), rather than punishing these families by wrenching them apart. This is a healthier approach than providing subsidies such as cash assistance and other benefits only to foster and/or adoptive parents<sup>15</sup> (Bullock, 2003; Cahn, 2009; Shook, 1999), who already tend to be of higher economic means. "Alleviating the effects of poverty on fragile families can help reduce the numbers of children coming into foster care" (Stukes Chipungu, 2004; p. 88).

## **Cultural Competence**

Cultural competence is part and parcel of "supplanting the current one-size-fits-all approach with a system more responsive to the needs of an increasingly diverse population" (Bentacourt, 2002, p. 3). Cultural competence is the "ability to interact effectively with people of different cultures<sup>16</sup>....Developing cultural competence results in an ability to understand, communicate with, and effectively interact with people across cultures" (Florea, 2012, p. 4). As we have described in detail earlier in this report, the short and long-term outcomes for children of color and poor children are significantly worse than for other children in the system. By increasing cultural competence within child welfare, Nebraska would be taking a big step forward to embrace an "agency wide commitment to act individually and collectively to eliminate decisions that lead to negative outcomes for

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<sup>13</sup> While investigation is an absolute necessity in order to protect children, it should not be the default response, and it certainly shouldn't be the only response.

<sup>14</sup> "Housing problems are both corollaries of poverty and threats to child and family well-being" (Courtney, 2004, p. 394).

<sup>15</sup> We discuss this issue at greater length in the section on Economics, beginning on p. 39 of this report.

<sup>16</sup> It is important to note, here, that "culture" can encompass socioeconomic, age and rural/urban differences.

families of color” (Alliance for Racial Equity in Child Welfare, 2009, p. 5) as well as poor families.

*“Cultural competence includes administrative and managerial teams that reflect the clients being served and that support cultural adaptation of recruitment strategies, assessment tools, interventions, and evaluative methods. Appraisals and performance evaluations must include assessments of workers’ abilities to engage in cultural competence. Supporting the development and substantiation of culturally competent models is a direct form of cultural competence, and establishing policies and procedures that are culturally rooted is necessary to guide practice on all levels” (Stukes Chipungu, 2004, pp. 87-88).*

A significant indicator of cultural incompetence within Nebraska’s legislative and executive branches was exemplified in the 2012 creation of the Nebraska Children’s Commission, charged with creating a strategic plan to reform the state’s child welfare system, and with providing “a permanent forum for collaboration among state, local, community, public and private stakeholders in child welfare programs and services” (DHHS, n.d.). Despite the overrepresentation of children and families of color in the system, none of the original 18 members of the Commission recommended by the legislature and appointed by the governor, were people of color. Adding insult to injury, when the governor later had a chance to repair that wrong when a Children’s Commission member needed to be replaced, he chose not to. The legislature’s role in all of this was that in writing the bill creating the Children’s Commission it failed to require that membership include the diversity represented within the population served by Nebraska’s child welfare system.

In order to reduce bias, a more culturally competent child welfare workforce is necessary from the top down (Alliance for Racial Equity in Child Welfare, 2009; Bentacourt, 2002; GAO, 2007; Saha, 2006; Stukes Chipungu, 2004; Wulczyn, 2004). Enhanced cultural understanding will result in greater trust “between child welfare decision makers and the families they serve,” ultimately leading to improved outcomes (GAO, 2007, p. 4).

One way to increase cultural understanding within our child welfare workforce is to increase the number of minority workers: “Minority health care professionals in general may be more likely to take into account sociocultural factors when organizing health care delivery systems to meet the needs of minority populations” (Bentancourt, 2002, pp. 3-4). It is now understood to be true that “Minority patients tend to receive better interpersonal care from practitioners of their own race or ethnicity” (Saha, 2006, p. 3). Developing a more culturally competent workforce must also include “incorporating assessments of cultural competence skills into worker performance evaluations” (Bass, 2004, p. 15). Assessment can be based on the standards of cultural competence adopted by the state that must then be met by the individuals who work within Nebraska’s child welfare system.<sup>17</sup>

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<sup>17</sup> The National Association of Social Workers (2001) has developed just such a set of cultural competence standards.

## Kinship Care

Enhancing kinship care—otherwise known as foster care by relatives and others close to the child, such as neighbors and family friends—is another way to increase cultural competence within child welfare. When family members become foster parents, guardians or adoptive parents, they are much more likely to share the cultural roots of the child, and to live in the same or similar communities (The Pew Charitable Trusts, 2007c; Stukes Chipungu, 2004). Kinship care can also reduce the trauma associated with foster care because children remain with familiar people in familiar environments (The Pew Charitable Trusts, 2007c).

However, research also demonstrates that “Despite the greater challenges and more complicated and emotionally wrenching situations many kinship caregivers face, they are likely to receive less financial assistance and case management services than nonrelative caregivers receive. This is due in part to the inconsistent and haphazard development of licensing and foster care payment policies for kin caregivers” (Bass, 2004, p.17). This is true in Nebraska.

The Nebraska legislature would do well to borrow from the language of the Indian Child Welfare Act (ICWA) in creating new statutes to affirm the importance of relative foster care in maintaining family and cultural ties:

*“...the ICWA assumes the existence and legitimacy of extended families, validates the informal care-giving and fostering arrangements employed by extended family members, and grants rights to culturally-appropriate caregivers that are virtually identical to those of parents. The Indian Child Welfare Act is a strong affirmation of culturally-constructed kinship and tribal sovereignty alike” (Strong, 2005, p. 213).*

Increasing the number of approved relative foster care families in Nebraska will require our state to make substantive changes.<sup>18</sup> Currently, while Nebraska state statute prioritizes kinship care as the top option for children placed in foster care,<sup>19</sup> relatives are only eligible for financial assistance if they are able to attain a foster care license—a challenge for impoverished families. We recommend Nebraska revise statute to ease requirements for kinship care. Until that happens, Nebraska must provide financial assistance to relative foster caregivers to assist them to achieve foster care licensure requirements.

According to a DHHS-authorized analysis of Nebraska’s child welfare system conducted by the Boston-based Public Consulting Group (PCG), Nebraska’s DHHS has the power to increase the number of relatives approved as foster parents by waiving some of the non-

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<sup>18</sup> The Nebraska Children’s Commission supports this approach as well, noting that Nebraska’s licensure rate of 6% for kinship homes is “one of the lowest rates in the country” (Nebraska Children’s Commission, 2012, p. 11).

<sup>19</sup> “It shall be the policy of the state...when a child cannot remain with parents, to give preference to relatives as a placement resource” (Nebraska Legislature, n.d.a).

safety foster parent licensing standards currently in place.<sup>20</sup> But, PCG states that an even more powerful method to ensure an increase kinship care alternatives is for the Nebraska legislature to revise current statute and write new statute with this specific intent in mind (PCG, 2012).

*“...waiving specific non-safety requirements allow for more relative and child specific homes to be licensed, but re-writing and passing new foster care licensing regulations would allow for more relatives to be licensed. These regulations were last updated in 1999. A review of the licensing regulations and modifications would allow for less restrictive requirements allowing more relatives to have the capacity to meet the licensing standards. As the regulations stand now, many relatives don’t have the capacity to meet the requirements” (PCG, 2012, p. 36).*

### **Monitor and Evaluate System**

A system moving towards reductions in bias must create policies and procedures for tracking bias that include simple tools for those involved in the system to safely (without reprisal) share their own experiences, and that include formal methods for reporting grievances, such as instances of discrimination and other forms of bias. Currently, “The State lacks a formal grievance process for the families it serves. Although there are formal processes for foster and prospective adoptive parents to file grievances, a similar policy is not in place for families. This means there is no formal check or balance” in place to protect the right of children and families to complain (Center for the Support of Families, 2012, p. 45).

Without a formal grievance process, there are certainly no procedures in place to monitor and then evaluate the degree of bias in the system over time. Therefore, there is no way to measure whether or not the system is improving. The combination of formal grievance process, and procedures to measure progress, is necessary for Nebraska to succeed in reducing bias.

### **Enhanced Community-Based Services<sup>21</sup>**

Research demonstrates that “structural inequities, such as a lack of community-based services, negatively interact and lead to more children of color entering foster care and fewer parents able to obtain the help they need to get them back” (Stukes Chipungu, 2004, p. 80). Therefore, working systematically to improve the availability of—and access to—community-based services in poor and minority communities in Nebraska is a no-brainer; it has been demonstrated that “the lack of appropriate and accessible community-based services decreases the likelihood of successful family reunification” (Stukes Chipungu,

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<sup>20</sup> We are gratified that Thomas Pristow, Director of DHHS’ Division of Children and Family Services, told the Nebraska Legislature’s Health and Human Services Committee on January 16, 2013, that it is the intent of the department to change regulations in order to waive some of those non-safety regulations (Pristow, 2013).

<sup>21</sup> For another very important strategy to increase community-based services, see our recommendation for an “A+” *Child Welfare Waiver Demonstration Project* on p. 41 of this report.

2004, p. 80). It should be Nebraska's goal to guarantee "that all families have equal access to needed services and opportunities that enhance their well-being" (Alliance for Racial Equity in Child Welfare, 2009, p. 5).

Nebraska statute sets the stage for the involvement of community-based services by establishing principles that—at least in writing—support these services.<sup>22</sup> However, Thomas Pristow, Director of DHHS' Division of Children and Families, noted in January 2013 testimony to the Nebraska Legislature's Health and Human Services Committee, that "Nebraska lacks a comprehensive system which provides preventative services for at-risk youth across the state," and added: "To directly address this issue, DHHS should increase the number of available services that prevent at-risk children and juveniles from becoming state wards" (Pristow, 2013, p. 3).

It is up to DHHS to work collaboratively with existing members of the state's child welfare system, as well as to recruit new providers and resources, in order to put the principles of community-based services into action. And, it is up to those of us who advocate for children and families to hold the executive and judicial branches responsible for enforcing existing statute that supports those principles.

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<sup>22</sup> "When families or children request assistance, state and local government resources shall be utilized to complement community efforts to help meet the needs of such families or the needs and the safety and best interests of such children. The state shall encourage community involvement in the provision of services to families and children, including as an integral part, local government and public and private group participation, in order to encourage and provide innovative strategies in the development of services for families and children" (Nebraska Legislature, n.d.a)

## ACCOUNTABILITY: Open, Responsible and Trustworthy

Nebraska's child welfare system is the opposite of open, responsible and trustworthy—and this is particularly true for the children and families caught up in the system. State law as well as system rules and regulations are frequently vague and ambiguous, and therefore open to wide and varying interpretation. Furthermore, the system makes only limited data available through its website, and access to additional data and other information is frequently blocked or outright denied,<sup>23</sup> in direct violation of Nebraska's Public Records Law.<sup>24</sup> And, when information can be accessed, record keeping is far from adequate (Foley, 2011a; anecdotal reports to PRI from multiple individuals affected by the system<sup>25</sup>). Increasing the system's accountability to the public is key to improving outcomes for children and families.

You may well ask, "Why isn't our child welfare system accountable?" It is probably because accountability requires mutual responsibility—all the actors within the child welfare system must take responsibility for transparency in their actions, and then the legislative and judicial branches of government, plus all of us who make up the public, must take responsibility to hold the system accountable. Mancur Olson, a distinguished American economist and social scientist, was not the first to point out that, when everyone is responsible for something, nobody is (Olson, 1965). His argument was that if a common good could only be achieved if just about everyone worked to accomplish it, then it was in most people's self interest to avoid putting in the effort. After all, if everyone else puts in the effort and one individual doesn't, that person will still reap the rewards. And if the common good never happens, then at least that individual won't have wasted his/her energy.

And so we have governments and public agencies that cater more to bureaucratic empire-building and/or selling their services to the highest bidder than to promoting the general welfare. This is not to characterize public servants as evil people; most are dedicated citizens faithfully doing difficult jobs. But there are a few whose motives are less pure and they can contribute to an organizational culture of self-interest and poor service. By turning our scrutiny on Nebraska's child welfare system, we hope to help

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<sup>23</sup> In 2011, Nebraska's State Auditor of Public Accounts, Mike Foley, wrote a financial analysis of the Nebraska DHHS child welfare reform (Foley, 2011a). In the Executive Summary to that report, Foley wrote scathingly of the lack of cooperation his office received from DHHS throughout the audit process, saying it was "among the worst ever encountered by my office" (Foley, 2011b).

<sup>24</sup> See the Nebraska Public Records Law (Nebraska Legislature, 2012d).

<sup>25</sup> In 2012, PRI held a series of three forums aimed at identifying issues and developing long-term solutions to the troubles facing the state's child welfare system. Attendees included individuals affected by the system as well as those who advocate on their behalf, as well as other stakeholders.

catalyze the transformation of this particular arrangement of agencies, organizations and individuals so that it is properly accountable to Nebraska’s children and families.

### **Four Categories of Accountability**

Accountability is a principle of good governance (Graham, 2003) because it provides a means for the public to scrutinize the decisions and actions of our child welfare system, and a method for holding it responsible if and/or when those decisions and actions go awry. When we say Nebraska’s child welfare system must be accountable, we mean that it has a responsibility and an obligation to the public to achieve four types of accountability: financial, performance, democratic, and ethical (Brinkerhoff, 2003; Metzenbaum, 2006).

1. *Fiscal Accountability: Government spends its money as authorized, with as little waste as possible.*
2. *Ethical Accountability: Government agencies operate honestly, without conflict of interest, self-dealing, other forms of fraud, or abuse of the power of governmental authority.*
3. *Democratic Accountability: Government agencies do what their citizens want and need, engaging citizens and their elected representatives in understanding trade-offs and making well-informed choices among competing priorities. Government agencies treat people civilly and courteously, unless there are strong justifications not to, so people do not resent or resist government because it has acted in a rude, slow, or inappropriate manner.*
4. *Performance accountability: government agencies and their employees work intelligently and diligently to deliver effective and cost-efficient government programs” (Metzenbaum, 2006, p. 6).*

Nebraska’s child welfare system can achieve the four types of accountability described above only if it:

- Makes relevant information openly and freely available;
- Accurately and reliably documents its activities;
- Actively informs the public about its actions and decisions;
- Forthrightly justifies its policies, practices and actions; and
- Honorably accepts the consequences if the public’s expectations are not met.

### **Openness**

Openness and transparency are very important components of accountability, in that these qualities are defined by the free flow of information such that “Processes, institutions and information are directly accessible to those concerned with them, and

enough information is provided to understand and monitor them” (Graham, 2003, p. 3). But the situation has gotten so bad in Nebraska that even DHHS’ own service provider contractors have trouble getting the information they need from DHHS (Center for the Support of Families, 2012). According to an assessment of the state’s child welfare system authorized by the Nebraska Legislature,<sup>26</sup> “service providers would like to be able to get more information on the children and families they are serving....While the Department reports that confidentiality is a barrier to sharing...data with the providers, other states have been able to solve the technical and confidentiality issues involved” (Center for the Support of Families, 2012, p. 45).

### Reliable Documentation

Nebraska’s child welfare system does a poor job of accurately and reliably documenting its activities (Foster Care Review Office, 2010). In its systematic review of information provided to it by both DHHS and the courts, Nebraska’s Foster Care Review Office (FCRO) examined two indicators related to sufficient data collection and maintenance and found the situation had gotten worse between 2008 and 2011 (FCRO, 2011, p. 8):

Foster Care Review Office Finding	% Cases Reviewed 2008	% Cases Reviewed 2010	% Cases Reviewed 2011
No documentation of placement safety or appropriateness	19% (831 of 4,457)	32% (1,496 of 4,730)	37% (871 of 2,383)
Lack of complete case plan	26% (1,162 of 4,457)	38% (1,816 of 4,730)	43% (1,028 of 2,383)

The FCRO (2012) found that missing documentation continues to be a pervasive problem. Specific types of documentation were routinely found *completely missing* from a large percentage<sup>27</sup> of the case files it reviewed for children in child welfare,<sup>28</sup> including:

- Child’s therapy records: 59% missing;
- Mother’s therapy records: 53% missing;

<sup>26</sup> See LB1160 (Nebraska Legislature, 2012c).

<sup>27</sup> “Since not every case involves current therapy, or parental visitation, etc., the percentages listed...are based on the number of applicable cases” (FCRO, 2012, p. 13).

<sup>28</sup> The FCRO further notes that “Some children’s files lacked more than one type of Documentation” (FCRO, 2012, p. 13).



- Father’s therapy records: 51% missing;
- Child’s assessments or evaluations: 39% missing;
- Assessments/evaluations regarding the mother: 31% missing;
- Assessments/evaluations regarding the father: 30% missing;
- Visitation reports regarding the father: 26% missing;
- Visitation reports regarding the mother: 21% missing (FCRO, 2012, p. 13).

## Performance

*“Organizational reforms that develop accurate and meaningful measures of performance while ensuring that staff members receive the support and training they need to optimize their working environment and achieve their long-term goals are critical to success” (Stukes Chipungu, 2004, p. 90).*

It is a stunningly sad reality that DHHS currently has no “way to verify” that the services billed to the department by its contractors “were actually provided” (Center for the Support of Families, 2012, p. 46). Therefore, it should come as no great surprise that it is frequently difficult, if not impossible, to determine whether or not the specific strategies implemented by Nebraska’s child welfare system are having a positive impact on children and families. That is because the Division of Children & Family Services (DCFS) “does not actively track if families improve after receiving services and if the service need was fully addressed (such as self sufficiency and minimizing risk factors)” (PCG, 2012, p. 52). For example, many DCFS contracts “lack the requirement for providers to demonstrate their services actually achieve a desired outcome (showing a cause/effect link between the services provided and an outcome that [DCFS] wants to accomplish with the client)” (PCG, 2012, p. 52).

The commitment to performance measurement, an essential component of accountability, is absent in Nebraska:

*“One of the explicit goals of the current child welfare administration at DHHS is to reduce the number of children in foster care, yet there is no measure of the placement rate...which would track progress on that goal on an ongoing basis....DHHS has set goals for...reducing the number of children in care by eight percent and the number of children served overall by five percent, but these are not client outcomes and they do not provide a longer term vision of where Nebraska should be in three to five years. Without a benchmark, such as the median placement rate among all states, for measuring every year whether too many of Nebraska’s children are living apart from their families, any gains made on this issue are likely to be temporary” (Center for the Support of Families, 2012, p. 27).*

## Recommended Solutions to Increase Accountability

The inverse of an accountable child welfare system is one that does a poor job of keeping and maintaining records, that suppresses information, actively conceals what it does and why, and refuses to take responsibility for its failures. Unfortunately for Nebraska children and families, our state's child welfare system exhibits too many of the symptoms of poor accountability. We look forward to a time when our child welfare system exhibits good fiscal, ethical democratic and performance accountability. We are enormously encouraged that Nebraska took the step in April 2012 to create the position of Inspector General of Nebraska' Child Welfare, charged with implementing a "full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska child welfare system" and who will be the designated individual responsible for grievances (Nebraska Legislature. 2012b).

### Develop, Enhance, Monitor and Enforce Standards

*"What is needed is a permanent standard which reflects an ongoing commitment to preserve families whenever that can be done safely" (Center for the Support of Families, 2012, p. 27).*

Performance review is absolutely critical, but the performance of our child welfare system won't improve without solid standards and laws written in clear language, the development of effective processes for data collection and maintenance, followed up by successful training of the child welfare workforce. Standards are the specific procedures put in place to regulate the child welfare system. However, standards are only effective if they are actually being followed. Therefore, well-developed standards must be based on regulation that also specifies how the system will be monitored (i.e., how its activities will be recorded and tracked), as well as rules for both oversight and enforcement (Brinkerhoff, 2003).

Where no standards exist, Nebraska must adopt them.<sup>29</sup> Where poor or less than stellar standards exist, Nebraska must revise and improve them. And, once standards are adopted, Nebraska must enforce them.<sup>30</sup> This deceptively simple approach will help tremendously in "reducing abuse, assuring compliance with procedures and standards, and improving performance" (Brinkerhoff, 2003 p. i).

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<sup>29</sup> For example, Foley (2011a) implies that DHHS could usefully adopt government auditing standards such as are found in the federal publication titled *Government Auditing Standards*, also known as *The Yellow Book* (Comptroller General, 2011).

<sup>30</sup> For instance, the Nebraska Public Records Law 84-712 (Nebraska Revised Statutes, 2012a) provides for free examination of public records and inexpensive copying. However, it is not enforced. PRI has collected much anecdotal evidence that public attempts to access records are frequently met with denials.

Monitoring and enforcement are key components of accountability. Monitoring involves “a commitment of resources to checking up on whether those covered by the law and regulations are doing (or not doing) what is required of (or forbidden to) them” (Russell, 1990, p. 243). Enforcement involves “taking actions that force violators to mend their ways and that provide visible examples to encourage others in the regulated population to maintain desired behavior to avoid a similar fate” (Russell, 1990, p. 243).

As described above, monitoring and enforcement of child welfare standards involves actions designed to ensure that the system is in compliance with legislation. However, weak and ineffective legislation can result in ineffective monitoring and inadequate enforcement. Strong legislation must be explicit and clear, requiring that specific standards be met, laying out the details of how procedures will be monitored and enforced, and by whom.

In addition, strong legislation provides for effective worker training of those responsible for monitoring and enforcement. In turn, effective worker training must impart the importance of accountability to all the professionals who serve children and families throughout the system. Ultimately, the effectiveness of worker training will be determined by the actual work completed, and the results obtained.

## **Performance Measurement**

In order to ensure that Nebraska’s child welfare workforce conducts itself in a professional, ethical and culturally appropriate manner, and that it is achieving desired outcomes, we recommend that a plan for regular performance measurement be developed and implemented at every level. In its DHHS-authorized analysis of Nebraska’s child welfare system, the Public Consulting Group provides a succinct list of the steps that should be followed in monitoring performance outcomes—and although PCG recommended these steps as a measure to increase contractor performance, they are just as suited to performance monitoring and evaluation across the system:

- 1) *Determine specific outcomes to be achieved by providers*
  - 2) *Develop tools to measure these outcomes in a reliable manner (ensure tool also accounts for the impact of unintended outcomes)*
  - 3) *Utilize tools to measure progress in clients during contract periods*
  - 4) *Show the direct impact of service provision and the outcomes*
- (PCG, 2012, p. 52).

## **Clear Language**

Another facet of accountability has to do with the precision of terminology. Poorly written legislation uses vague and ambiguous language that leaves room for vast differences in interpretation, and—as we describe above—is difficult if not impossible to effectively enforce. Sadly, too many of Nebraska’s laws related to child welfare are imprecise. We recommend revising those laws so that the language is absolutely explicit and clear.

Candra Bullock maintains that “broad and ambiguous statutory definitions of the terms ‘child neglect’ and ‘child abuse’ results in increased instances of bias” (Bullock, 2003, p. 1042). And, we have made a strong case in this report that the definition that DHHS uses for physical neglect (NDHHS-DCFS, 2012a) is largely indistinguishable from poverty.<sup>31</sup> We maintain that this is a serious problem because a fair and unbiased system would not remove children from their homes due to poverty (see p. 10 of this report for more on the topic of fairness).

Furthermore, the nearly universal and ubiquitous use of the conjoined term, “child abuse and neglect” throughout Nebraska’s child welfare system, effectively equates terms that should be distinct. The constant pairing of these terms facilitates the removal of children from their families due to poverty. To fix this problem, we have proposed (see the section of this report on Equity) that Nebraska develop a definition of financial inability to provide for a child, and then exclude that definition from the state’s definition of neglect. Furthermore, we propose that the state cease in its omnipresent use of the conjoined term, “child abuse and neglect,” and instead, refer to each set of circumstances independently.

## **Data Collection and Maintenance**

Nebraska houses child welfare within DHHS’ Division of Children & Family Services (DCFS). The Division does provide annual reports as well as other information on the Data & Reports Page (NDHHS-DCFS, 2012b) on its website. And, additional quarterly reports are available on DCFS’ Comprehensive Quality Improvement: Reports and Statistics page (NDHHS-DCFS, 2012c). These statistics seem to have been compiled partly to meet Federal reporting requirements and partly for internal administration use.

However, as a matter of course, DCFS should provide additional data to the public via its website, such as the numbers of children in substantiated vs. unsubstantiated cases who were either removed from their home, successfully kept at home, or later returned home; whether a child was removed and for how long; the specific original allegation that is the focus of the investigation; and the socio-economic conditions describing the

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<sup>31</sup> See Equity section of this report (p. 10) for more on this the intersection of poverty and neglect.

family—especially in cases of child removals. In addition, the data listed below should be provided by DCFS via its website on children entering the system, and in substantiated v. unsubstantiated cases:

- Poverty data;
- Intersection of poverty and neglect;
- Number of transitions once in foster care;
- Types of services provided, and percent that are community-based;
- Repeat entries into the system by age, race, gender, and poverty level.

We are happy to report that Nebraska does participate in Fostering Court Improvement (FCI, n.d.b), a national child welfare database.<sup>32</sup> In the case of Nebraska, the data includes detailed information from both DHHS-DCFS and the juvenile courts. The data is available at the levels of judicial district, DHHS Service Area,<sup>33</sup> County, as well as “NCI team,” an undefined grouping. However, despite this wealth of useful information, the Nebraska DHHS-DCFS webpage for Comprehensive Quality Improvement (DHHS-DCFS, 2012c)—though it provides a link to the Fostering Court Improvement website—fails to indicate that this is an important link to critical accountability data.

Once data is collected by DCFS,<sup>34</sup> the division can do a better job of analyzing and interpreting that information. Research demonstrates that “careful analysis and utilization of administrative data can also be a powerful tool for diagnosing problems, identifying emerging issues, and monitoring agency efforts” (Stukes Chipungu, 2004, p. 88). If the system is to improve, it must not only reliably collect and disseminate information, but also accurately interpret that information.

*“More detailed and accurate data would allow states to better plan programs for children in their jurisdictions and would illuminate the root causes of entry into foster care....Better data collection and ongoing analyses will allow policymakers, planners, administrators, and workers to do a better job serving children and families” (Stukes Chipungu, 2004, p. 89).*

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<sup>32</sup> “The website converts existing data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) and National Child Abuse and Neglect Data System (NCANDS) into reports that inform the core work of both dependency courts and child welfare agencies” (FCI, n.d.a).

<sup>33</sup> We hope that the availability of this data by service area will provide an incentive for service areas to learn from each other and improve the rates at which families are maintained intact.

<sup>34</sup> We hope that the “web-based, statewide automated child welfare information system” planned as a result of the passage of LB1160 in January 2012 (Center for the Support of Families, 2012, p. 4), will have a positive impact on the accuracy and availability of Nebraska’s child welfare data.

## Training

It is rare—possibly unheard of—that training for those working in child welfare (case workers, social workers, attorneys, judges, probation officers, etc.) involves the voices of those who have been on the receiving end of the system.<sup>35</sup> The absence of their voices in the training of the child welfare workforce makes it less likely that their voices will be taken seriously later. We recommend that part of training for all child welfare workers include the voices of a random selection of representatives of the clients served, who should be reimbursed for expenses and by stipend, as would any other experts, for participating:

*“Parents who are invited to participate in various meetings or committees need to be engaged at a more meaningful level, not just to meet a quota for a token parent representative. In addition, parents may need concrete supports in order to participate fully in various activities. Support in the form of transportation, child care, or other stipends are necessary components that must be included in the budget. Comprehensive training for family members serving as peer mentors and advocates for system-involved families and as leaders on decision-making bodies is needed to support and retain parents in this work. In addition, agencies should develop clear standards and guidelines related to requirements and supervision of, and compensation for, parent peer mentor/advocate positions that may be established”* (Brodowski, 2012, p. 21).

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<sup>35</sup> Anecdotal reports from participants and PRI child welfare forums, 2012.

## CIVIL LIBERTIES: Liberty And Justice For All

Nebraska's child welfare system routinely violates fundamental principles of American liberty and justice in its treatment of children and families. Specifically, the right to a fair trial and the presumption of innocence, have largely been abandoned by a system that begins with a child being removed from the home and continues with a court appearance where the parents must demonstrate that they were not abusive or neglectful.<sup>36</sup> The significant erosion of civil liberties within our juvenile courts is, quite literally, a travesty of justice.

Attempting to understand child welfare law, legal procedure, and one's civil rights—all with the threat of family break-up hanging over one's head—would be an incredibly daunting process for even the most sophisticated and invincible among us. But, for the often vulnerable children and families attempting to negotiate this process, it is complicated, intimidating, overwhelming, and frequently downright scary.<sup>37</sup> Without knowledgeable, experienced, professional and caring individuals to metaphorically “hold the hands” of the families caught up in the system, they are effectively disenfranchised—that is, they have zero power. In order for children and families to properly understand their rights, they need a legal system that helps them to understand those rights at every turn, and that vigilantly supports and defends those rights.

*“Parents and children must not only be informed of their rights, but they also must understand the protections those rights accord them. Court representatives and [child protective services] caseworkers can educate families about their rights and help them feel empowered in an otherwise intimidating process”*  
(Jones, 2006, p. 13).

Nebraska courts have tremendous authority, power and influence over decisions that will permanently affect the lives of children and families. Nebraska's child welfare system is duty-bound to uphold the elemental expectations of democratic liberty and justice, as prescribed by the Constitution and Bill of Rights. Our juvenile courts must be fair and unbiased and equitably uphold the principles of law and justice. And, if they are not, we must hold them accountable.

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<sup>36</sup> Anecdotal reports to PRI from multiple participants at PRI's child welfare forums during 2012.

<sup>37</sup> Anecdotal reports to PRI from multiple participants at PRI's child welfare forums during 2012.

## Right to a Fair Trial

### Due Process:

The constitutionally guaranteed right of an individual to a fair trial is called due process. According to our Constitution, due process protects an individual from the biased, arbitrary, capricious or oppressive actions of government at every level. In fact, the concept of due process is so important that it is the only directive that is repeated twice in the Constitution—once in the Fifth Amendment, and then again in the Fourteenth Amendment (Strauss, n.d.). In this report, we are specifically addressing due process within Nebraska’s juvenile and county courts, where child welfare cases are heard.

When due process measures are effectively in place in the courts, and working as intended by the Constitution, the court should operate as follows:

*“The defining feature of a court is to decide cases impartially and thoroughly on the basis of evidence brought before them. Due process involves giving each family the individual attention necessary to make effective decisions for the child and assuring that families receive the protections required; this includes providing effective legal representation at all stages of the court process and making sure all parties have the opportunity to participate in court proceedings by notifying them of court dates and giving them an opportunity to testify. Courts must ensure that parents receive notice of the proceedings and a fair opportunity to present testimony and express their point of view” (Flango, 2008, p. 2).*

### The Presumption of Innocence and Burden of Proof:

Another fundamental legal principle—and one that is inherent to a fair trial—is the presumption of innocence, which maintains that a person is innocent until proven guilty. The presumption of innocence lays the burden of proof for wrongdoing with the accuser (i.e., the prosecution), who must provide clear and convincing proof based on legitimate evidence. According to this principle, it is absolutely not the responsibility of the accused to prove him- or herself innocent. The intent of this principle is to prevent people from being punished as a result of false accusations. In addition, this principle helps to prevent accusers from biasing court proceedings with hearsay<sup>38</sup> and other irrelevant and/or prejudicial information that might otherwise pass for “evidence.”

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<sup>38</sup> “Hearsay is a statement made outside the courtroom that is presented in the court by someone other than the original speaker to prove the truth of the original speaker’s statement. So, the hearsay rule sometimes prevents a witness from testifying about what another person said. In other situations, because the purpose of reporting the statement in court is not to prove the truth of the statement, hearsay may be admissible” (Child Welfare Information Gateway, n.d.)



A very important component of the “burden of proof” is the standard of evidence that is required to find an accused person guilty under the law. In child welfare, the lower the standard of proof that is required, the easier it is to mistakenly break up a safe and healthy family. Conversely, the higher the standard, the more difficult it is to wrongfully find a parent guilty of abuse or neglect. In Nebraska’s juvenile and county courts, the standard for proving wrongdoing required to remove a child from his or her home due to allegations of child abuse is the lowest possible: “a preponderance of the evidence.”

By the extremely low standard of “a preponderance of the evidence,” a judge can remove a child from his or her home if the judge determines that more than 50% of the evidence points to the allegations being true (Cornell University Law School, 2010). This very weak standard makes it far too easy for the courts to erroneously tear families apart. And, in effect, the low standard of proof required for the prosecution puts the onus of responsibility on parents to prove they are innocent.

Furthermore, although a substantially higher standard of proof, called “clear and convincing evidence,” is required in order to terminate parental rights (Nebraska Legislature, n.d.d), the very low standard required during earlier hearings can have a deleterious effect on court outcomes. That is because all of the evidence from those earlier hearings is now part of the case, and is considered proof. In this way, hearsay, opinion, and rumor can become proof of parental wrongdoing.<sup>39</sup>

Worse, there are hearings—including those to determine whether or not a child will continue in foster care placement—at which “Strict rules of evidence shall not apply” (Nebraska Legislature, n.d. e). In these hearings, no standard of proof is required, and the hearing is, in effect, informal. Yet, the impact on children and families can be just as severe as any formal hearing requiring the application of rules of evidence.

#### Clear Language:

“Laws governing parent-child relationships require that state intervention rest on a showing that the parent’s conduct has fallen below minimum parenting standards” (Appell, 1995, p. 67). It is incumbent upon the state to be very specific about what those minimum parenting standards are. However, as described earlier in this report (see the section on Accountability starting on p. 21), Nebraska child welfare statutes are not specific, but rather are habitually vague and ambiguous.

For example, according to the Nebraska statute related to the grounds required for termination of parental rights, the court can terminate all parental rights if it determines

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<sup>39</sup> This issue was raised repeatedly by individuals affected by the system, at PRI’s child welfare forums in 2012.

such termination “to be in the best interests” of the child, and if the parents have “substantially and continuously or repeatedly neglected” the child (Nebraska Legislature, n.d.b). As we discuss at length in the section of this report on Equity (starting on p. 10), the term “neglect” is ambiguous, and that ambiguity creates an opportunity for cultural or economic bias. And, as we discuss below, the standard of “best interests of the child” is also woefully vague, and itself open to abuse by biased individuals.

### Best Interests of the Child:

The legal standard of the “best interests of the child” is used by the courts in child welfare cases to determine what actions will maximize a child’s well being. In child welfare cases, there is a need for the court to balance the sometimes competing interests of the parents, the child, and the state<sup>40</sup> (Appell, 1995; Kohm, 2008). Every state in the Union asks courts to use the standard of “the best interest of the child” as a primary tool in determining how those interests will, ultimately, be weighed (Child Welfare Information Gateway, 2010a).

In her 2008 article in the Journal of Law & Family Studies, Lynne Marie Kohm demonstrates that the history of the “best interests” standard reveals that throughout the last two hundred years, courts have understood that “children are best protected by parents who have the inalienable right to do so, and that parents are the truest protectors of their child’s best interests” (Kohm, 2008, p. 372). However, Kohm continues that, “Unless the state legislature or previous case law has afforded the judge some guidance in terms of key factors and elements to consider, his or her decision making process is relatively unbridled, and therefore thoroughly subjective” (Kohm, 2008, p. 373).

*“Although it is important for courts to consider children's interests, this standard is exceptionally vulnerable to arbitrary decisionmaking. The lack of a uniform understanding of the term ‘best interests,’ coupled with the uncertainty inherent in its use, raises significant concerns about ‘social engineering.’ Furthermore, such ambiguity will have the greatest impact on the least visible and respected population of families whose racial and economic status already place them at great risk of destructive state intervention” (Appell, 1995, p. 66).*

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<sup>40</sup> The state has a paternalistic interest, a right called *parens patriae*, “in ensuring the safety and well-being of children unable to care for themselves” (Appell, 1995, p. 64).

This is particularly true of child welfare systems like Nebraska's, in which judges are given free rein, where there is little or no statutory guidance for how to determine best interests, and where there are no processes in place to hold courts accountable.

*“The conflict of rights between parents and children, the state’s sometimes hazy role as *parens patriae*, the spectrum of judicial discretion, and the lack of definition and guidelines have all leant to the difficulty of applying the [best interests of the child] standard” (Kohm, 2008, p. 370).*

## Lawyers and Judiciary

It is nearly impossible for the civil liberties of families and children to be upheld when attorneys and judges are incompetent and unethical. Therefore, it is vital to hold the attorneys and judges who work in child welfare to the highest standards of professionalism, fairness and competence in the application of the law.<sup>41</sup>

Nebraska's juvenile courts, where child welfare cases are heard, should be held to the ideal promulgated by the National Council of Juvenile and Family Court Judges, “that children in similar circumstances should achieve similar results regardless of the jurisdiction in which the case is heard” (National Council of Juvenile and Family Court Judges [NCJFCJ], 2004, p. 16). Unfortunately, this ideal is rarely achieved in Nebraska (Pitchal, 2009). This is the result of a combination of factors, including a paucity of professional standards, an over-emphasis on judicial discretion, nonexistent performance audits of the juvenile courts or performance reviews of lawyers and judges, high caseloads for court-appointed attorneys of impoverished families, and inadequate training of lawyers and judges.

### Lawyers for Children:

Based on federal law, children involved in child welfare cases must be assigned a guardian ad litem (GAL). In Nebraska, the GALs—who by state statute must be a licensed lawyer (Nebraska Supreme Court, 2007)—are required to fill the dual roles of (1) independent advocate for the child's best interests, and (2) legal counsel (i.e., lawyer) for the child (Nebraska Supreme Court, 2007). Alas for the children caught up in Nebraska's child welfare system, GALs in this state have a dismal track record, according to an extremely unflattering evaluation of Nebraska's GAL system, completed by the independent National Association of Counsel for Children (NAAC) in 2008 at the behest of the Nebraska Legislature (Pitchal, 2009). The evaluation finds that “significant

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<sup>41</sup> When we talk about standards, there is an overlap with the section of this report that deals with Accountability, starting on p. 21.

reform” will be required “to bring Nebraska’s child representation system into line with national standards” (Pitchal, 2009, p. xi).

The facts revealed by the NAAC evaluation support the contention that the civil liberties of children mired in Nebraska’s child welfare system are routinely undermined. The result is a situation in which there is no guarantee that “legal services will be strong enough to be a powerful voice for children, let alone meet the ethical obligations of the attorneys pursuant to the Nebraska Rules of Professional Conduct”<sup>42</sup> (Pitchal, 2009, p. 175):

*“GALs in Nebraska are simply unable to perform in compliance with national practice standards. They are not visiting their clients; they are not zealously advocating for appropriate permanency for their clients; they are not making their clients’ position known to the court; they are not using independent experts to assist them in understanding their clients and in presenting alternative service plans to the court; they are waiving their clients’ constitutional right to counsel in law violation cases; they are not actively investigating their clients’ education needs; and they are not receiving sufficient training or supervision” (Pitchal, 2009, p. 175).*

## **Court Performance**

Courts that engage in performance assessment can “build their internal capacity for self-examination and self-improvement” (NCJFCJ, 2004, p. iii). Yet, in Nebraska, there is no formal process in place to assess how the juvenile courts are doing when it comes to child welfare. Given the court’s “key role in determining whether children will be removed from their homes, how long they will remain in foster care, and where they will permanently reside,” it is “absolutely essential that we improve court performance in child abuse and neglect proceedings—perhaps more so than in any other area of government” (NCJFCJ, 2004, p. 1). That means assessing the court system as well as the individuals (judges and attorneys) who work within that system.

## **Recommended Solutions to Protect Civil Liberties**

### **Make Court More Fair**

It should not be a rare accident of fate for a family to end up in a court in which their case is treated fairly and impartially, in which they are provided with adequate legal

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<sup>42</sup> The Nebraska Rules of Professional Conduct can be found on the Nebraska Supreme Court’s website at: <http://www.supremecourt.ne.gov/supreme-court-rules/ch3/art5>

counsel, in which procedures are reasonable and predictable. But, that is exactly the case for families who end up in Nebraska's juvenile courts. To make courts more fair, the Nebraska legislature should create statute(s) requiring that all "processes related to reports of child abuse or neglect are to be carried out within a judicial framework that recognizes and enforces the constitutional and other rights of the parties involved," including "a fair hearing" and "recognition of their constitutional and legal rights" (Child Welfare Information Gateway, 2010a, p. 4). Those constitutional and legal rights must include special attention to due process and the presumption of innocence.

Nebraska must raise the standard of proof required to remove a child from his or her home from the flimsy "preponderance of the evidence" to the stronger "clear and convincing." The concern that too high a burden of proof will result in children being allowed to remain in dangerous circumstances can be dealt with through adequate investigation procedures and follow-through. And, the standard of proof required to terminate parental rights must be raised from "clear and convincing" to "beyond a reasonable doubt"—the highest standard of proof, and the same standard required in criminal cases.

### **Statutory Guidance for "Best Interests" Standard**

Nebraska is one of thirty-four states that provide only "general guidance," giving "more discretion to the courts to make best interests determinations" (Child Welfare Information Gateway, 2010a, p. 4). But as Kohm (2008) demonstrates, general guidance is insufficient. Nebraska must use statute to provide detailed guidance to judges in the application of the "best interests of the child" standard, to include a better definition of best interests that prescribes specific issues that must be considered by the court in making best interest determinations.

#### Family Preservation:

Among the specific factors Nebraska's juvenile courts must consider in making determinations of best interest are requirements is to prioritize the core value of preserving families. Otherwise the state is providing each juvenile court judge with an open invitation "to rely on his or her own values and biases to decide the case in whatever way the judge thinks best" (Kohm, 2008, p. 337). Nebraska courts must consider the "importance of maintaining sibling and other close family bonds," because of the critical importance that "the love, affection, and other emotional ties between the child and his or her parents, siblings, and other relatives" (Child Welfare Information Gateway, 2010a, p. 5) has on long term child well being. The mandated inclusion of this perspective in the courts' determination of "best interests of the child" would be a step forward for Nebraska in redirecting the system's core value towards family preservation.

## Racial and Economic Bias:

We have demonstrated earlier in this report (see the section on Equity, starting on p. 10) that Nebraska's child welfare system has serious barriers to overcome in terms of systematic bias against children and families of color as well as impoverished children and families. It is incumbent on the state to do everything in its power to overcome these biases. One very important route to reducing bias and increasing cultural competence is through legislation that spells out the issues judges should consider in determining the best interests of the child. Otherwise, judges are allowed too much discretion to apply their own opinions to cases.

Specifically, in defining the phrase, "in the best interests of the child," Nebraska must follow the lead of other states that exclude from consideration the race and socioeconomic status of the birth parent or caregiver (Child Welfare Information Gateway, 2010a). Excluding race and poverty from the definition of best interests will help to reduce bias within the system. Without this exclusion, the best interest standard can have a:

*"...potentially adverse impact on poor people and people of color. It is widely recognized that poor people and minorities fare worse in our society. The integrity of middle class families is protected but 'intervention and intrusion in low-income families [is accepted], and we have discounted the cultural backgrounds and solid parenting skills of low-income parents.' The U.S. Supreme Court has recognized that decisionmakers often reflect a 'bias that treats the natural parents' poverty and lifestyle as prejudicial to the best interests of the child'" (Appell, 1995, p. 79).*

## **Hold the Courts, Judges and Attorneys Accountable**

According to the Nebraska Legislature:

*"Performance audit means an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action. Performance audits may have a variety of objectives, including the assessment of a program's effectiveness and results, economy and efficiency, internal control, and compliance with legal or other requirements" (Nebraska Legislature, n.d.c).*

The only way to guarantee improved performance is to assess that performance and then to publicly report the results. In view of the fact that, among other issues, “Excessive delays, rushed court hearings, lack of adequate or timely notice, brief or inaccurate judicial findings, and persistent lack of court and agency collaboration continue to be systemic problems” (NCJFCJ, 2004, p. 2), the Supreme Court of Nebraska must require performance audits of juvenile and county courts. Furthermore, individual judges and attorneys should undergo regularly scheduled and publicly reported performance assessments.<sup>43</sup> “By improving their own performance, courts will ultimately improve outcomes” for children and families caught up in the child welfare system (NCJFCJ, 2004, p. iii).

*“... without the ability to measure performance, establish benchmarks, and track progress, courts will never be able to fully achieve needed systems’ reform and improved outcomes for children” (NCJFCJ, 2004, p. 2).*

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<sup>43</sup> Performance measures for juvenile courts and cases have been developed by a number of different organizations – the National Center for State Courts, the American Bar Association’s Center on Children and the Law, the National Council of Juvenile and Family Court Judges.

## ECONOMICS: Focus on Families

A profound and all-encompassing problem of Nebraska's child welfare system is associated with economics. The fact is that child welfare is a growth industry on which our state depends for federal funding, and on which an interconnected web of government officials, private companies, agencies and organizations, as well as individuals, depend for jobs, direct and indirect financing, as well as other resources (Foley, 2011a). And, even though the Nebraska state government doesn't profit from foster care, the uncomfortable truth for the industry is that "foster care can cost...less than programs to keep children out of foster care" (Kaplan, 2012; National Coalition for Child Protection and Reform [NCCPR], 2011b).

At the state level, spending on child welfare is on a growth curve. According to a 2011 report on Nebraska's child welfare system completed by the Nebraska State Auditor, the costs of child welfare services "skyrocketed" between July, 2009 and March, 2011, increasing "by some 27%" over those two years (Foley, 2011b, p.1). And, the services provided by Nebraska's child welfare system have been increasingly turned over to private companies (Foley, 2011b; O'Hanlon, 2012). These facts raise an unsettling probability: That the vast array of private agencies, organization and individuals whose rising incomes depend on the child welfare industry are profiting from their work at the expense of the families they are supposed to be serving. In our view, this scenario is a classic conflict of interest.

*"The excessive use of foster care will continue as long as the child welfare system retains its dysfunctional structure, pursuing the conflicting tasks of both providing services to help families and investigating families for the purpose of removing children from their homes" (Roberts, 2004, p. 274).*

And, it would be illogical to expect the child welfare industry to act in opposition to its own best interest. Rather, it is the responsibility of state legislators and other child welfare policy makers and advocates to hold the industry accountable to the families it serves. In order for this to happen, preserving families must come to supersede preserving the system as a state priority.

Right now, Nebraska receives some \$32 million a year from the federal government in dollars earmarked specifically for child welfare (U.S. Department of Health & Human Services, Administration for Children and Families [USDHHS-ACF], n.d.). Of those funds, Nebraska targets only about \$1 million specifically for family preservation, support and reunification—a mere 3% of the dedicated federal child welfare dollars coming into the state (NDHHS-DCFS, 2011a). Even with the spending constraints



currently placed on dedicated child welfare funding by the federal government, that is substantially less than the approximately 10% that Nebraska is allowed to spend on supports other than foster care or adoption (The Pew Charitable Trusts, 2007).

## **Recommended Solutions to Redirect System Resources**

Nebraska must take resources that are currently concentrated on foster care and adoption and redirect them to prevention strategies and interventions that sustain families, with a pronounced focus on poverty amelioration. Below you will find concrete examples of what Nebraska can do to complete the necessary turnaround in how it utilizes child welfare resources.

### **Differential Response**

Research demonstrates that an approach called differential response is effective in supporting and reunifying families (Duva, 2010). The purpose of differential response is to create “both traditional investigations and assessment alternatives to families, depending on the degree of the allegations” (PCG, 2012, p. 23). Differential response provides:

*“...flexibility to tailor the child protection response to the needs and circumstances of the family, to collaborate with families early rather than waiting for serious harm to occur, and to remove faultfinding in order to increase the possibility of parent engagement and, ultimately, child safety”*  
(Kaplan, 2008, p. 6).

Adopting differential response would allow Nebraska’s child welfare system to broaden its array of possible responses to reports of alleged abuse or neglect to include at least two pathways (the state can design its own approach, and choose the number of responses it will make available based on the initial assessment of family need). That is a big difference from where Nebraska stands right now—using only one approach in which every family in the system is investigated for wrongdoing. In contrast, “Differential response offers families a continuum of concrete and therapeutic services that allows a child to remain safely at home and avoids the trauma of child removal experienced by child and parent alike” (Duva, 2010, p. 67).

A study analyzing the economic costs versus benefits of differential response in Minnesota found positive outcomes: “Combined costs for case management and other services were less for alternative cases than for control cases on the traditional track” (Duva, 2010, p. 68). While differential response can be cost-intensive up-front, it will

likely save money over the long term (Duva, 2010; Kaplan, 2012). In her invited testimony before the Nebraska Legislature, child welfare expert, Caren Kaplan,<sup>44</sup> said: However, while saving money would certainly be a huge bonus to the state, it is not the primary reason Nebraska should evolve towards differential response. Rather, differential response, with its emphasis on “meeting the protective services needs of a child and the support and engagement of the family” (Kaplan, 2008, p. 7) through “immediate, targeted, and customized interventions capable of meeting a family’s basic needs” (Duva, 2010, p. 68), is quite simply the most ethical approach to child welfare.

*“You’re retooling your system. You need to make investments, investments in training, investments in system restructure. However, over time, the savings that are gained from the lowered placement in foster care increases the cost savings; and there are cost savings over time because what you are doing is front-loading your system. So you’re putting more resources at the front end instead of the back end” (Kaplan, 2012, p. 11).*

As a result, it is good to hear from Thomas Pristow, Director of DHHS’ Division of Children and Families, that the department has already committed to exploring differential response. In his January 2013 testimony before the Nebraska Legislature’s Health and Human Services Committee, Pristow (who refers to differential response by the synonym, “alternative response”) said, “Our plan is to continue to fact find and implement this alternative response system after January 1, 2014.” During his testimony, Pristow added, “A team of providers, state staff, county attorneys, and others have worked over the past six months to design an effective alternative response model, and we are getting close” (Pristow, 2013, pp. 4-5).

We encourage DHHS-DCFS to heed the cautionary words of the Public Consulting Group, authorized by DHHS to conduct an analysis of Nebraska’s child welfare system, in effective implementation of differential response.

*“It will be important however, that there are community based interventions statewide to support the model. In order for differential response to be successful there need to be alternatives to foster care, thus working with community partners to identify and secure services for struggling children and families. Additionally, it will be important for stakeholders across the state to fully commit to ensuring that appropriate funding shifts are made to support these types of preventative services for at-risk children and families” (PCG, 2012, p. 34).*

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<sup>44</sup> Kaplan is the founder of Innovations in Child Welfare, and has 30 years experience in child welfare policy and practice, including training and technical assistance to states.

## **“A+” Child Welfare Waiver Demonstration Project**

One way for the state to try out differential response is through the federal government’s Child Welfare Waiver Demonstration Projects, which allow states to waive the strict spending rules that govern how child welfare dollars can be spent. Using a Child Welfare Demonstration Project, the state could experiment with aspects of differential response in order to test out the approach. Research demonstrates that “more flexible funding that allows agencies to provide better community-based services to families can also lead to greater rates of reunification” (Child Welfare Information Gateway, 2011b), so a successful Child Welfare Demonstration Project would also help Nebraska to reorient itself towards family preservation and support.

The vast majority of federal funding allocated specifically for child welfare is funneled through two programs called Title IV-E (the bigger of the two) and Title IV-B of the Social Security Act. All of a state’s Title IV-E and most of its Title IV-B dollars now have to be spent on foster care and adoption. But states that are selected for Child Welfare Waiver Demonstration Projects have the opportunity to use Title IV-E and IV-B funds for a much broader array of approaches, including a much greater emphasis on prevention, family reunification and preservation. The stated purpose of these waivers is *not* to “provide additional funding to carry out new services; rather they allow more flexible use of Federal funds in order to test new approaches to service delivery and financing structures, in an effort to improve outcomes for children and families involved in the child welfare system” (USDHHS-ACF, 2012, p. 2).

If Nebraska is approved for a Child Welfare Demonstration Project,<sup>45</sup> the state will be eligible to receive up to \$19 million (Wexler, 2012b) in federal child welfare dollars that it can use on a combination of prevention, family preservation, reunification, foster care and adoption. In 2012, Nebraska spent only \$1 million in federal funds on prevention, family preservation and reunification<sup>46</sup> (NDHHS-DCFS, 2011a), so this waiver opens the door to a substantial expansion of support for these critical areas of child welfare. An important contingency of the waivers is that states that place additional children in foster care or adoption after receiving a waiver will lose their federal aid for those placements and will be left to foot the bill through state and/or local funds (Wexler, 2012a).

While a goal of these waivers, which usually last for about five years (Wexler, 2012a), is for states to develop and implement innovative child welfare strategies (USDHHS-ACF, 2012), the truth is that the plans developed by states for using the child welfare dollars approved for their projects run the gamut from “good” to “bad” in terms of how well they

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<sup>45</sup> Nebraska’s Department of Health and Human Services is statutorily required by the state legislature to apply for the waiver in 2013 (Nebraska Legislature, 2012a).

<sup>46</sup> Not counting administrative costs, which were less than \$150,000 (NDHHS-DCFS, 2011a)

redistribute funding for prevention, reunification, and family preservation (National Coalition for Child Protection and Reform, 2012). The National Coalition for Child Protection and Reform (NCCPR) rated the plans from nine of the states that applied for the first round of waivers, with NCCPR's highest grade—a B+—going to three states. Two states received a grade of F from NCCPR on their waiver proposals, because of the determination these plans “will do more harm than good” to families (NCCPR, 2012, p. 2).

What NCCPR's “Report Card” makes clear is that applying for the waiver is insufficient in and of itself. Nebraska must use its waiver application to design a truly stellar, “A+” demonstration project that will put its about-face into action. Nebraska's demonstration project plan must propose a statewide approach that includes:

1. Ambitious reductions in all forms of foster care placement;
2. Specific plans for poverty amelioration;
3. A specific timetable for speedy implementation in all counties;
4. A plan for increasing cultural competence at every level of the system
5. An array of evidence-based approaches to achieve desired outcomes.

### **Temporary Assistance for Needy Families (TANF)**

Nebraska must stop diverting federal funding aimed at ameliorating poverty to foster care and adoption. In our estimation, it is grossly unfair that dollars that could be spent to assist impoverished families in need (i.e., families that are at risk for allegations of physical neglect<sup>47</sup>), dollars that might prevent allegations of child maltreatment, are instead rerouted to support adoption and foster care.

The goal of Temporary Assistance for Needy Families (TANF)<sup>48</sup> is “to improve the economic independence of low-income families” (USDHHS-ACF, n.d., p. 6). But, in 2010, it was reported in the Lincoln Journal Star that of \$9.8 million the state received in federal TANF dollars, it diverted \$6 million to foster care contractors hired by the state (Young, 2010). As the National Coalition for Child Protection Reform correctly states, this diversion literally takes “dollars out of the pockets of impoverished families in order to pay for keeping their children in foster care” (NCCPR, 2011b, p. 1).

Nebraska absolutely must use all TANF dollars for the purpose for which these funds are intended: helping the most impoverished, economically vulnerable families in the state. Even though there are nearly 40,000 children in Nebraska who live in extreme

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<sup>47</sup> For a detailed explanation of the nexus of physical neglect and poverty in Nebraska, see the section of this report on Equity, beginning on p. 10.

<sup>48</sup> TANF funds are disbursed through Nebraska's Aid to Dependent Children (ADC) program, part of the Nebraska Department of Health and Human Services.

poverty, some 15,000 of those children didn't receive ADC funds in 2011 (Breazile, 2013).<sup>49</sup> That gap is undoubtedly made worse by the unethical diversion of the state's TANF dollars.

*"In other words, the money that could help an impoverished single parent keep her job and avoid a 'lack of supervision' charge instead has been diverted to investigating that parent, taking away her children, and paying middle-class foster parents to take care of them. While this is perfectly legal, it is an unconscionable transfer of funds from America's poor to subsidize child welfare agencies and pay middle-class strangers caring for foster children" (NCCPR, 2011b, p. 1).*

### **Remove Profit Motive**

Where possible, Nebraska should move from for-profit to nonprofit contractors. For example, Nebraska's court should be forbidden from appointing child attorneys (guardians ad litem or GAL) from for-profit entities. An outside evaluation of Nebraska's GAL<sup>50</sup> system found that children who "are unlucky enough to be appointed an attorney from a for-profit law firm with a flat-fee county contract...are unable to provide them with minimally acceptable services because their caseloads are crushing" (Pitchal, 2009, p. 175).

### **Performance Based Contract**

Nebraska must change how private agencies are paid so that the state is not providing financial incentives to support foster care at the expense of family preservation. One way to do that is through performance based (also called results based) contracts that focus "on the outputs, quality, and outcomes of the service provision" (Martin, 2002, pp. 57-58) rather than on what the contractor does. Performance based contracts may also "tie at least a portion of a contractor's payment as well as any contract extension or renewal to their achievement" (Martin, 2002, pp. 57-58).<sup>51</sup> Moving to performance based contracts that base payment on the achievement of measurable performance indicators could lead to several important results including:

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<sup>49</sup> See p. 54 of Voices for Children in Nebraska's 2012 Kids Count in Nebraska Report for an excellent discussion of the under-enrollment of Nebraska's poor in ADC (Breazile, 2013).

<sup>50</sup> GALs are to serve as both advocates and legal counsel for children in child welfare cases (Nebraska Supreme Court, 2007).

<sup>51</sup> According to a recent report on Nebraska's child welfare system, DCFS "recently began to add language to their contracts which addresses moving toward results based accountability. This added language is aimed at shifting provider contracts to include outcome measurements for services, such as family preservation and home removals" (PCG, 2012, p. 52). It remains unclear whether or not these changes include a requirement that specific outcomes be achieved in order for contractors to get paid.

1. Improved outcomes for families;
  2. Funds that would otherwise be spent on foster care could be reallocated to prevention, family preservation and reunification; and
  3. Increased contractor accountability<sup>52</sup>
- (Martin, 2002; Myslewicz, 2008; State of Illinois, n.d.).

The State of Illinois has already adopted performance based contracts. Originally, Illinois reimbursed child welfare contractors “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” (NCCPR, 2011a, p. 2). Under Illinois’ new system, “agencies are rewarded financially for achieving permanence for children and penalized for prolonged foster care” (Wexler, 2001, pp. 150-151), and as a result “Illinois is returning more children to birth parents, and it has dramatically reduced the number of children it takes from their families” (Wexler, 2001, p. 151).

*“Contracts based upon a fee-for-child payment can undermine permanency because once the child welfare issues have been resolved and the child is ready for permanency, an agency faces losing revenue unless the child is replaced with a new referral. This dynamic leads to the predictable practice of focusing on the work on maintaining kids in care rather than aggressively pursuing permanency” (State of Illinois, n.d.).*

Illinois reports that the ability to reinvest funds to “support better service delivery” has been the “single most important accomplishment of Performance Contracting” (State of Illinois, n.d.). As Nebraska’s system moves towards increased family preservation, reunification and other permanency options (including relative care and subsidized guardianship), it can reinvest the dollars that would have been spent on foster care in prevention and family support initiatives.

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<sup>52</sup> For more on the importance of accountability, see that section of this report, starting on p. 21.

## CONCLUSION

Here in Nebraska, we need to completely reevaluate what is truly in the best interest of children and families, what is fair, what is just, and what is feasible. We need to reach out to families that are struggling, and offer compassion, support and opportunities to help parents make positive changes, with the ultimate goal of improving their lives and the lives of their children.

Nebraska must do a complete turnaround in its approach to child welfare. This transformation will require the state to:

1. Re-orient its philosophy: Children must not be removed from their families if it is possible for them to remain safely at home, or with relatives or close family friends.
2. Re-analyze the facts: The data are clear that poverty is the overriding problem faced by families embroiled in the system. Furthermore, the disproportionate representation of black and Native American children and families in child welfare, combined with the much worse outcomes they experience, exposes the racial bias permeating the system at every level.
3. Re-prioritize funding streams: Nebraska must take resources that are currently concentrated on foster care and adoption and redirect them to prevention strategies and interventions that sustain families, with a pronounced focus on poverty amelioration. In addition, resources must be directed at ending racial and economic bias within the system.

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# APPENDIX A

## Complete List of PRI's Strategic Recommendations to Overhaul Nebraska's Child Welfare System

### CORE VALUES

*Problem: The core values of Nebraska's child welfare system are not apparent.*

Solution:

1. Develop and implement statute that puts the values and practices of family preservation and reunification, family support, and family engagement front and center, so that every alternative is exhausted before removing a child from his/her home is ever considered an option:
  - a. Define these values and practices
  - b. Monitor and evaluate the system and workforce to assess compliance with policy and resulting outcomes

### EQUITY

- **Fairness**

*Problem: Regardless of the relative urgency of the allegation, the system has only one way to respond to potential cases of abuse and/or neglect—an adversarial response that involves an investigation, and in which a perpetrator and a victim are identified.*

Solutions:

1. Develop statute requiring DHHS to implement differential response
2. The courts should use discretion in the application of) the “15 of 22 month rule” that holds that if a child is in out-of-home placement 15 of the last 22 months, the state must file for termination of parental rights<sup>53</sup>

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<sup>53</sup> “The 15/22-month rule is troublesome for some because the process of rehabilitation can take longer than 22 months, especially when substance abuse is involved. Relapse is part of the recovery process. If a child is placed with a relative, the issue is not so acute, as placement with a relative serves as an exception to the rule. Otherwise, a mother midway through the recovery process might be faced with having her parental rights terminated, a setback that could have deleterious consequences for her” (Wulczyn, 2004, p. 111).

- **Bias**

*Problem: A culture of bias permeates the system, such that people are treated differently based on race, socioeconomic status, gender, sexual orientation, marital status, age, etc.*

Solutions:

1. Develop a practical definition of what it means for a family to be financially unable to provide for a child:
  - a. Exclude that definition from the state's definition of neglect
2. Increase the cultural competence of the child welfare workforce:
  - a. Establish standards for cultural competence
  - b. Develop policies and procedures so that workers at every level demographically reflect the populations they serve
  - c. Incorporate meaningful performance evaluation processes focused on cultural competence, that are tailored to specific jobs within the system, and that include ongoing training with observation and measurement
  - d. Ensure adequate training for workers at all levels (including court-appointed attorneys) to include course work on race and poverty (if courses are not available, work with existing post-secondary educational institutions to design such courses)
    - i. Provide multiple levels of cultural sensitivity training to child welfare workforce
    - ii. Training must include coursework on diversity and cultural competence (to address issues of class, race, age, sexuality, etc.)
    - iii. Ensure caseworkers are adequately trained in both social work and in the identification and delivery of strategies most likely to address the needs of families in poverty
  - e. Require more home visits to encourage cross-cultural education:
    - i. Home visits should include an opportunity for the family to teach the caseworker about their community and culture
3. Require that all child welfare materials are available in the language of the affected family
4. Develop grievance policies and procedures to report discrimination:
  - a. Help families identify and report discrimination:
    - i. Require that families be asked—as a matter of course—whether or not they feel they have been discriminated against (e.g., on the basis of race, economics, sexual orientation, etc.; a checklist should be followed)
    - ii. Provide a list of contacts for use in responding to grievances
    - iii. Use community residents (close to affected family) to act as advocates / ombudsmen
5. Develop policies and procedures to monitor charges of discrimination:



- a. Develop a group of child welfare advocates to monitor the system for bias; this group must be representative of the clients of child welfare services
6. Enhance community-based services to overcome structural inequities related to access and availability, as well as increasing the likelihood services will be culturally appropriate
7. Enhance opportunities for kinship care:
  - a. Develop new statutes affirming the importance of kinship care in maintaining family and cultural ties
  - b. Provide financial assistance to kinship caregivers in order to assist them to achieve the requirements of foster care licensure
8. Apply for and receive Title IV-E Waiver: Allows creativity in approach to child welfare by opening door to increased prevention services and individualized approaches to child safety
9. Stop diverting TANF<sup>54</sup> money to foster care and instead return to directing those funds for their intended use, which is to ameliorate poverty

## ACCOUNTABILITY

- **Openness**

Problem: *Information is frequently difficult if not impossible to obtain.*

Solutions:

1. Enforce the laws around open information and open courts:
  - a. Write strong statute laying out details of how procedures will be monitored and enforced, and by whom
2. Without violating privacy, make more data easily and freely and/or very inexpensively available
3. Complete (or with notifications of redactions) court transcripts must be made freely available, in particular to families involved in the system
4. Expand the types of data required to be collected, in particular during initial investigation, to include specific, original allegations for any report
5. Clerks of district courts must be required to enter *all* data into justice system database
6. Institute policies and procedures to improve record-keeping and management of records
7. Institutions responsible for providing training to DHHS staff (including DHHS) must make their program materials, course structure and training manuals available
  - a. Training must be consistent across state

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<sup>54</sup> TANF is Temporary Assistance for Needy Families; it is the program that replaced welfare.

- **Vague Language**

*Problem: The Nebraska Statute includes vague language that is open to interpretation.*

Solutions:

1. Re-write statute to exclude all vague language
2. Define “neglect” into sub-categories
3. Separate the term “neglect” from the term “abuse” for the purposes of reporting to the public

- **Performance Measurement**

*Problem: The department and individuals working within it can cause irreparable harm to families without being held accountable.*

Solutions:

1. Adequately train the child welfare workforce about its responsibility to protect the intact family unit
2. Require training for all system professionals (e.g., service providers, case workers, guardians ad litem, attorneys, judges, law enforcement, CASA workers, educators):
  - a. Include the voices of the children and families affected by the system at every step of training and continuing education process
3. Institute annual performance audits of DHHS and judiciary.<sup>55</sup>
  - a. Determine specific outcomes to be achieved by providers
  - b. Develop tools to measure these outcomes in a reliable manner (ensure tool also accounts for the impact of unintended outcomes)
  - c. Utilize tools to measure progress in clients during contract periods
  - d. Show the direct impact of service provision and the outcomes
4. Institute competence evaluations with minimum standards for all system professionals
5. Require DHHS and judiciary to submit quarterly and annual reports
  - a. Quarterly and annual reports must be clear, understandable and transparent
  - b. Reports must compare counties to one another and service areas to one another
6. Require actual contracts be developed with every contractor:
  - a. Contracts must include performance requirements and audits
2. Forbid contracts with out-of-state contractors (have much less control over outcomes for business run in other states)

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<sup>55</sup> The following four steps are from Public Consulting Group (2012, p. 52).

## CIVIL LIBERTIES

- **Due Process**

*Problem: Juvenile and county courts, where child welfare cases are heard, violate due process as a matter of course.*

Solutions:

1. Create a policy that ensures that parents may not be excluded from out-of-court communication with a judge unless a complete (un-redacted) transcript is made available
2. Every bit of documentation on a case (e.g., medical, therapeutic and court records) must be made available to the family
3. Develop policies and procedures such that all affected families have the necessary assistance to successfully navigate the system:
  - a. Provide training and education to parents (and children, by age/developmental relevance) so that they are better equipped to navigate the complex child welfare system (a handbook, alone, is not sufficient)
  - b. Provide training, education and sufficient information and explanation to ensure that parents and children understand their rights at every instance (e.g., families frequently misunderstand the legal consequences of plea deals):
    - i. Children should know what their guardian's ad litem responsibilities are, and should have the opportunity to file grievances or make complaint
    - ii. Provide hotline number for children to call to report out-of-home abuse
3. Change the name of the "no fault" plea which inaccurately implies that parents will not be held at fault for allegations determined to be unfounded
4. Adequately train all workers within the child welfare system, from caseworkers to attorneys and judges, regarding proper legal procedure:
  - a. Training for all workers who come into contact with families must include interactive role-playing
5. Incorporate meaningful performance evaluation processes:
  - a. Tailor evaluation to specific jobs within the system
  - b. Evaluation must include ongoing training and observation and measurement
  - c. All workers must be evaluated on their understanding of civil liberties, civil rights and the law
  - d. All workers must be evaluated on their competence in successfully upholding the law
  - e. Families affected by the system must be actively involved in the evaluation process of the workers with whom they come into contact

6. Develop policies and procedures that acknowledge the potentially competing interests of parents, their children, the state, and other child welfare stakeholders, and assist parents to navigate through the complex legalities that result when these interests collide
7. Develop policies and procedures that err on the side of protecting the interests of the intact family unit:
  - a. Add-on allegations must not be allowed into a case file once an investigation has started; every new allegation should be treated as a separate petition
  - b. Include explanations about how to differentially interpret “safety and well-being” of the child as a function of a child’s developmental stage
  - c. Clearly define “imminent harm”
  - d. Raise the standards in court so that the burden of proof for “imminent harm” is raised to “clear and convincing evidence”

- **Legal Representation**

*Problem: All too frequently, lawyers for children and parents (especially court-appointed attorneys) represent their own interests and/or those of other system stakeholders rather than those of their clients.*

Solutions:

1. Ensure adequate (and consistent) training for court-appointed attorneys to include course work on cultural competence (to address issues of class, race, age, sexuality, etc.)
2. Incorporate meaningful performance evaluation processes that are tailored to specific jobs within the system, and that includes ongoing training and observation and measurement
3. Lower the caseloads of court-appointed attorneys
4. Court-appointed attorneys must be required to meet with a family at least once prior to the first court date:
  - a. Court-appointed attorneys must be required to make contact with the families they represent within a specific time-frame (e.g., 24 hours) after being assigned to a case
5. Develop policies and procedures that require court-appointed attorneys to rigorously defend their clients including being held to the Nebraska Supreme Court’s code of ethics and professionalism
6. Develop policies and procedures that regulate the appointment of court-appointed attorneys so that appointments are made randomly (i.e., judges cannot be linked to particular appointments; this will rid the system of the current conflict of interest that arises for attorneys who want to stay on a judge’s good side in order to get future appointments)
7. Develop policies and procedures that require court-appointed attorneys to ensure that parents understand their rights at every instance (e.g., families frequently misunderstand the legal consequences of plea deals):

- a. Court-appointed attorneys must immediately provide families with the information they need about all of their rights, then walk them through the process and who they can go to with their questions:
  - i. Packet of information must include their right to file complaints and grievances
- b. Packet must be in the language of the family; NOTE: part of cultural competence means being aware that some people don't or can't read well, and workers must be sensitive that information may need to be in an oral format

- **Parent Input**

*Problem: Judges make legally binding decisions related to child welfare based on reports and other (e.g., ex parte) information that excludes substantive input<sup>56</sup> from parents.*

Solutions:

2. Require that parents be allowed to provide their own report/documentation to the court.
3. Create a policy that ensures that parents may not be excluded from out-of-court communication with a judge unless a complete (un-redacted) transcript is made available

- **Hearsay<sup>57</sup>**

*Problem: Hearsay and opinion are allowed into the court record as a matter of course.*

Solution:

1. Only facts should be admissible in court. Fact finding and decision making should be done exclusively by government employees, and not by volunteers who may have little to no training, are not held to any standard of evidence, and are accountable to nobody.

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<sup>56</sup>We define substantive input from parents as being in the parents' own voices.

<sup>57</sup> "Hearsay is a statement made outside the courtroom that is presented in the court by someone other than the original speaker to prove the truth of the original speaker's statement. So, the hearsay rule sometimes prevents a witness from testifying about what another person said. In other situations, because the purpose of reporting the statement in court is not to prove the truth of the statement, hearsay may be admissible" (Child Welfare Information Gateway, n.d.)

- **Central Register**

*Problem: The existing statutes governing how the names of individuals are entered<sup>58</sup> into and expunged<sup>59</sup> from the Central Register of Child Protection Cases, are unconstitutional.*

Solutions:

2. The standard of proof should be “clear and convincing” proof
3. Until the above change is made, an individual’s name should be removed upon the closing of any unsubstantiated case

- **Presumption of Innocence**

*Problem: The presumption of innocence has been abandoned by the system.*

Solutions:

1. Affirm the approach that holds parents innocent until proven guilty
2. “Clear and convincing evidence” should be the standard used to justify removing a child from his/her home because s/he is in imminent danger of coming to harm (currently the lowest judicial standard is used, requiring only a “preponderance of evidence”). For termination of parental rights, the standard should be the highest: “beyond a reasonable doubt”
3. Fact finding and decision making should be done exclusively by government employees, and not by contractors and/or volunteers who may have little to no training, are not held to any standard of evidence, and are accountable to nobody
4. Develop policies and practices that recognize the “non-offending parent” as separate and unique from the offending parent
5. End the practice that assumes that once a parent has had a child removed by the state, that the state then has a right to remove any and all additional children born to that parent.

## **ECONOMICS**

- **Resources**

*Problem: System resources are concentrated on foster care and adoption.*

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<sup>58</sup> “There shall be a central register of child protection cases maintained in the department containing records of all reports of child abuse or neglect opened for investigation as provided in section 28-713 and classified as either court substantiated or agency substantiated as provided in section 28-720.” Nebraska Revised Statutes: Selected Provisions Pertaining to Child Welfare and Juvenile Justice, 2011 Edition, p. 10.

<sup>59</sup> “At any time, the department may amend, expunge, or remove from the central register of child protection cases maintained pursuant to section 28-718 any record upon good cause shown and upon notice to the subject of the report of child abuse or neglect.” Nebraska Revised Statutes, p. 10.

Solutions:

1. Move from traditional investigation to differential response.
2. Redirect funding and other resources from foster care and adoption to preservation and/or reunification.
  - a. Re-direct the work of caseworkers so that their focus is on family preservation.
  - b. Change the incentives for private agencies so that permanency is rewarded rather than maintaining children in foster care
3. Apply for and receive Title IV-E Waiver that could allow creativity in approaches to child welfare by opening the door to fund individualized prevention services for child safety.
4. Stop diverting TANF money to foster care and instead return to directing those funds for their intended use, which is to ameliorate poverty.
5. Develop policies and procedures that err on the side of protecting the interests of family preservation.
6. Ensure caseworkers are adequately trained in both social work and in the identification and delivery of strategies most likely to ensure family preservation.
  - a. Incorporate meaningful performance evaluation processes that are tailored to specific jobs within the system, and that includes ongoing training and observation and measurement
7. Ensure that caseworkers are adequately compensated and institutionally supported.
8. In order to provide positive social reinforcement to regions to keep families together, establish a ranking system between districts (to include judiciary, county, law enforcement, behavioral health) to compare (1) their strategies to work towards preservation, and (2) their outcomes data on the number of families that actually are preserved (children kept in the home).