

Chapter 8

**CHILD
PROTECTION**

I. CONDITION INDICATORS

A. California Child Abuse Reports and Disposition

Child abuse reports in California increased steadily from 175,200 in 1980 to 554,000 in 1990, to 706,918 in 1996, and then decreased slightly over for the next few years. However, in calendar year 2002, the number of child abuse reports peaked at a record high of 707,707.¹ The proportion of substantiated cases is currently 23%.² The initial reports come mostly from “mandated reporters”—teachers, medical professionals, and others who have professional credentials and interact on a regular basis with children. The number of reports after 1990 may understate totals *vis-a-vis* previous numbers because of a statute effective that year which halted the automatic count of a drug/alcohol-exposed child as an abuse report.³

Of the 707,707 child abuse reports received during 2002, 39.2% involved general neglect, 19% involved physical abuse, 9.2% involved sexual abuse, 8.8% involved emotional abuse, 8.1% involved substantial risk, 8% involved a child at-risk due to the abuse of a sibling, 5.3% involved an absent or incapacitated caretaker, and 2.1% involved severe neglect.⁴ In general, the number of mandated reports have declined by about 5% over the last five years. However, the cases have increased somewhat in severity and in meritorious findings. By inference, actual abuse remains close to its historical high.⁵

The children reported for emergency response (ER) are subject to a panoply of possible outcomes. ER services include case management, counseling, emergency shelter care, emergency in-home caretakers, temporary in-home caretakers, out-of-home respite care, therapeutic day services, teaching and demonstrating homemakers, parenting training, and transportation.⁶ Included in this category is the growing and controversial pattern of “family preservation,” under which children who have been abused short of grave physical jeopardy are left in their homes, and services are provided without the formal filing of a juvenile court dependency petition. This “diversion” alternative has grown in use since 1990. Only a small and declining percentage of reports results in the removal of a child, or the filing of a juvenile dependency court petition (between 2% and 4% of total incoming reports).

B. California Clinical Indicators of Child Abuse

The rate of drug-exposed babies continues at high levels. Serious drug or alcohol abuse by parents correlates closely with child abuse and neglect incidence. A U.S. General Accounting Office report states that in three representative counties nationwide, including Los Angeles County, an estimated 62% of the preschool-aged children removed from their parents and placed in foster care had been prior victims of prenatal drug/alcohol exposure—more than double the 29% at risk of such problems in 1986.⁷

As discussed in Chapter 5, a 1993 study indicates that one of every nine babies born in California in 1992 was exposed to alcohol or drugs shortly before birth. The authors of this *New England Journal of Medicine* study concluded: “[W]e estimate that 11.35% of maternity patients at California hospitals in 1992 (approximately 67,000 women) had used a licit or illicit drug, or alcohol within hours or days of delivery.”⁸ The study also found that an additional one in eleven mothers admitted that she continued to smoke during pregnancy.⁹ The results of this study were characterized by its authors as “conservative” given the limited detection permitted by the testing performed (which could only detect use within hours or days of birth). A 2003 report concluded that the rate of drug- and alcohol-exposed births in California did not decline from 1991–98. The drugs most commonly identified are cocaine, opiates and polydrug use.¹⁰ Increasingly, methamphetamine and related drugs are of special concern, particularly in California where indigenous laboratories proliferate to produce it. Attorneys representing abused children in dependency court report an upsurge in “speed” incidence, and particularly harmful effects on children involved—with the drug leading to adult hyperactivity, complete focus on personal gratification, aggressiveness, and the reduction or elimination of maternal/paternal instinct.

A 1992 national study which included California used another conservative method, seeking admissions of alcohol/drugs/tobacco use during pregnancy. The National Institute of Drug Abuse found that of four million women who gave birth, 5.5% used illicit drugs while they were pregnant, close to the California results.¹¹ However, the self-reporting of alcohol or cigarette use involves less stigma (and only recent use would be detected by the California survey). Alarming, 18.8% of pregnant women admitted to exposing their fetuses to alcohol, and 20.4% to their cigarette smoking.¹²

The Centers for Disease Control found that the rate of American babies born with health problems caused by diagnosed fetal alcohol syndrome (FAS) rose almost sixfold from 1979 through 1993.¹³ Babies born with FAS suffer central nervous system dysfunction, including delayed motor development, mild to profound mental retardation, and learning disabilities.¹⁴ FAS also causes problems that affect speech, language, swallowing, and hearing development.¹⁵ In July 1995, 4,878 California children were in foster care due to their severe drug or alcohol exposure *in utero*; they cost California an estimated \$1.7 million each month in direct expenses.¹⁶

Another indicator of potential abuse/neglect has been low birthweights. Although not indicative of direct abuse *in utero*, they statistically correlate closely with later child neglect risk. Delicate health and enhanced family stress are associated with neglect and/or abuse problems. California ranks 8th in all states in the rate of low birthweight babies.¹⁷ The rate differs greatly for African American babies; 11.7 of every 100 African American births are underweight, compared to 5.5 of every 100 white births.¹⁸

On March 26, 2001, the Journal of the American Medical Association released an analysis of studies to date on cocaine use. The results suggest that the “crack baby epidemic” of severe lifelong disability of thousands was exaggerated. Some news reports then highlighted the study as debunking the danger of cocaine use. However, the analysis is not original research, but an opinion based on existing literature. Most of that literature finds substantial, measurable harm to infants from *in utero* cocaine use. As the Analysis concludes, that harm does not take the form of cognitive dysfunction or visible, disabling handicap as some had feared. However, many who deal with such children believe that it has clear effects on behavior. One leading researcher in the field concluded in 1998: “Recent long term studies have revealed that prenatal drug exposure has a direct impact on the child’s behavior at 4 to 6 years of age, with prenatally-exposed children showing significantly higher rates of depression and anxiety, aggressive behavior, thought problems, impulsivity, and distractibility. In addition, the mother’s continuing drug use during the early childhood years is a major factor that predicts the child’s level of cognitive functioning at school age.”¹⁹ Longitudinal studies extending beyond age 6 have yet to be completed.

Whatever the final judgment about child abuse through *in utero* contamination as a form of child abuse, the literature to date—as well as the experience of child advocates, social workers, educators, judges and others—universally confirm the extremely high correlation between parental alcohol/drug

abuse and child suffering. Most who deal with the dependency court system are aware that well over three-fourths of the children removed from their homes have one or more parents with serious substance abuse problems.²⁰

Neither side to the debate over harm from cocaine use argues that it is not a danger to the child. Lower birth weights correlate with cocaine use. But the exaggerated tidal wave of dysfunctional, severe ADHD impaired, institution bound and beyond mitigation, is clearly not supported by the tests thus far conducted. As to many important variables (including IQ, physical problems) samples of cocaine babies and control groups show no measurable difference. In fact, the evidence does suggest that some contaminants do have more serious endangerment risks, possibly amphetamine use, and particularly alcohol, as Chapter 5 suggests.²¹

C. National Study Findings and Correlations

The most recent national statistical compilation uses 2001 data and finds the following profile of victims and services:²²

Reports, Victims, Perpetrators

- 2,672,000 million referrals were received, 32.5% screened out, and the remainder transferred for investigation or assessment.
- 56.6% of the referrals (“reports”) were received from professionals; the remaining 43.5% of reports were submitted by nonprofessionals, including family and community members.
- Most states have established time standards for initiating the investigation of reports. The average response time to initiate investigating reports was 50 hours.
- 27.5% of investigations found substantiated or indicated maltreatment, 59.2% found the report unsubstantiated, the remaining 13.3% received some other disposition.
- An estimated 903,000 children were abused nationwide in 2001. The 2001 victimization rate of 12.4 per 1,000 children was a slight increase over the 2000 rate of 12.2, but a decrease from the 1998 rate of 12.6.
- 57.2% of all victims suffered neglect, 18.6% suffered physical abuse, and 9.6% suffered sexual abuse. More than one-quarter (26.6%) of all victims were reported to be victims of other or additional types of maltreatment.
- Children in the age group of birth to three years accounted for 27.7% of victims. Victimization percentages declined as age increased.
- More than half of all victims were white (50.2%); one-quarter (25.0%) were African American; and one-sixth (14.5%) were Hispanic. American Indians and Alaska Natives accounted for 2.0% of victims, and Asian-Pacific Islanders accounted for 1.3% of victims.
- 59.3% of perpetrators are female. A child was most likely to be victimized by his/her mother (40.5%). One “parent,” acting alone, accounted for 80.9% of all perpetrators.
- Almost one-third (31.5%) of perpetrators with a relationship code of “other relative” were associated with sexual abuse. Almost 5% of perpetrators coded as “parent” were associated with sexual abuse.

Fatalities

- 1,300 children died of abuse or neglect (1.81 per 100,000 child population). Children younger than one year old accounted for 40.9% of fatalities, and 84.5% of fatalities were younger than six years of age.
- 1.5% of the fatalities occurred while the victim was in foster care.

Services

- 2 million children received preventive services, with the average time from the start of investigation to provision of service being 48 days.
- 528,000 child victims received post-investigative services, and an estimated 629,000 children who were the subjects of unsubstantiated reports also received services.
- About a fifth of victims (19.0%) were removed from their homes as a result of investigations or assessments; an additional 4.7% of nonvictims were placed in foster care. Nationally, more than 275,000 children were placed in foster care as a result of child abuse investigations or assessments (up from 144,000 in 1998).
- Court actions were initiated for 17.5% of victims. Nearly one-fifth of victims (18.3%) were reported as having court-appointed representatives.

In September 1996, the U.S. Department of Health and Human Services released a national incidence study of child abuse and neglect which tested important correlations.²³ The Department's second study used data from 1986; its 1996 study was based on 1993 surveys of 5,600 professionals working in 842 agencies serving 42 counties—including California samples. The study compared 1986 and 1993 results, using two standards: "harm"—meaning experienced abuse or neglect, and "endangerment"—meaning at risk of harm. The researchers arrived at the following conclusions:

- The total number of abused and neglected children in 1993 was 67% higher than in 1986; the number of children endangered roughly doubled. The total number of children seriously injured quadrupled in this seven-year span.
- Girls were sexually abused three times more often than boys.
- Approximately one-fourth of seriously-injured children are investigated by local child protective service workers.

The study found the following correlations between families and child abuse:

- Children of single parents had a 77% greater risk of physical abuse, an 87% greater risk of neglect, and an 80% greater risk of serious injury than children living with two parents.
- Children in the largest families were physically neglected at three times the rate of one-child families.
- Children from families with annual incomes below \$15,000, compared to those with incomes above \$30,000, were 22 times more likely to be harmed, 25 times more likely to be endangered, and 56 times more likely to be educationally neglected.

Most studies find that for between one-third and two-thirds of children involved with the child welfare system, parental substance abuse is a contributing factor; data from the 1996 National Household Survey on Drug Abuse reveal that an estimated 8.3 million children in the U.S., 11% of all children in the country, live in households in which at least one parent is either alcoholic or in need of substance abuse treatment.²⁴

D. California Family Violence

California law requires parents who cannot settle a child custody dispute to engage in mediation. Approximately 85,550 families per year use child custody mediation court services.²⁵ In approximately 65% of court-based mediation cases, one parent has alleged domestic violence, and 55% have at one time involved a restraining order.²⁶ According to the Judicial Council of California, there were 41,890 filings in 1998–99 concerning children who have been abused or neglected; this figure rose 129% over the past two decades.²⁷

II. The Child Protection System

A. Detection of Abuse or Neglect

As with many states, California has statutorily mandated that certain professionals report suspected child abuse or neglect. Thirty-five enumerated professional or occupational positions—mostly involving school officials (such as teachers, school nurses, administrators), licensed child care employees, physicians, police officers, and psychologists—are required to report child abuse where it is “reasonably suspected” to have occurred.²⁸ They are afforded immunity from libel or other consequence from their reports and normally effective privileges (*e.g.*, between a treating psychologist and his/her patient) are superseded by the reporting requirement.²⁹ The major counties have “hotline operators” to receive such reports, and a system of “Emergency Response” to investigate them on short notice. Such reports are entered into a statewide “Child Abuse Central Index” and may be deemed substantiated, unsubstantiated, or unfounded. Most mandated reporters tend to come into contact with children who are over the age of five—particularly where reaching the school system where officials have some expertise. Children are not as visible to state detection of abuse up until kindergarten entry, a detection weakness exacerbated by their particular inability to run away, and their vulnerability to injury or other harm (such as malnutrition deficits during the first two years).

During 2002 and 2003, the Central Index was the subject of vigorous debate, triggered by the advocacy of San Diego journalist Mark Arner de France—who was caught in a divorce dispute and suffered a false abuse report. He expended substantial expense to move the status of his report from “unsubstantiated” to “unfounded” (or affirmatively false). As a result of his advocacy and that of others, Senator Steve Peace carried SB 1312 in 2002 to impose due process predicates to inclusion of a name on the list. Child advocates succeeded in persuading the author to delete the Central Index-related portions of SB 1312; in its stead, a Child Abuse Neglect Reporting Act (CANRA) Task Force was created to formulate appropriate remedies.

Child advocates argued that the remedy sought by Arner de France—mandatory due process hearings before names could even be added to the list—would substantially weaken the detection system in two ways: increasing the expense and difficulty of maintaining information and limiting the ability to detect patterns that may arise not from a single well-substantiated incident, but from many disparate reports—each one lacking probable cause, but together warranting protective action. Moreover, child advocates argued that the Index is not a public document intended to impose a legal judgment, but instead is a tool to assist law enforcement in pattern detection. It does not purport to be an adjudicated judgment. Each year, 44,000 child abuse investigations are added to the list, which now contains 2 million possible victims and 817,481 suspects. The Central Index was established in 1965 and its reports to the State Department of Justice come from police, sheriffs, county welfare departments, and probation departments. The list is checked by law enforcement to detect possible patterns, and by licensing agencies, persons who apply to adopt children, or serve as foster care children, or seek to become child care workers. Child advocates and the Office of Attorney General argue that being on the list is not a bar to such a status, but simply triggers inquiry to assure the safety of involved children. Some advocates argued that the measure was analogous to prohibiting the Justice Department from adding any name to a terrorist watch list unless there is first a due process hearing, or prohibiting the California Medical Board from maintaining complaint records against physicians in its

investigative files unless each one is first offered a due process hearing—with its accompanying public cost.

Child advocates also argued that parents who have been accused of wrongdoing currently have a phalanx of due process protections—even on the civil (non-criminal side). Those protections include review of the case by social workers prior to issuance, review by attorney public officials for the county, pleadings setting forth the specific acts of abuse, a detention hearing within 48 hours of a child's removal, the appointment of counsel for a parent (at public expense if necessary), the burden on the state to show parental unfitness by "clear and convincing evidence," a hearing before a neutral superior court judge in sequential hearings, and including a statutory obligation to seek reunification. In contrast, none of these safeguards apply to protect children who are subject to repeated molestation, beatings, or malnutrition and who are not reported or are not investigated. Rather, few checks in the system operate to mitigate state failure to protect.

Children may benefit from the removal of names erroneously placed on the Index list. The more accurate the list, the more beneficial it may prove to protect children, and the fewer unnecessary inquiries it may trigger, and many would support remedies that do not impede child protection.³⁰ Currently, an unsubstantiated report automatically leaves the index after ten years. And a report that is either substantiated or unsubstantiated is reported to the alleged abuser under the terms of 1997 legislation. However, requiring a hearing not on a probable cause basis, but imposing a burden on the state to prove actual abuse by a preponderance of the evidence prior to inclusion on a confidential investigative listing portends serious impediment to child protection.³¹

Although SB 1312 (Peace) was gutted and used for unrelated purposes, its success to that point—in winning passage through three legislative committees and on the Senate floor—is testimony to the strength of anecdotal and articulate grievances without balanced consideration of their larger implications.

B. "Family Preservation" Services in the Home

As a precondition to receiving federal child welfare services and adoption assistance funding, federal law requires states to use reasonable efforts to preserve families by not removing children, and to use reasonable efforts to reunify children with their parents once they have been removed.³²

The increase in the number of child abuse reports depicted above, combined with cutbacks in public funding, have led to a larger percentage of children left in potentially abusive homes under the "family preservation" option. In California, the Legislature authorized allegedly intensive services to purportedly abusive families—while leaving children at home—in 1989–90 as a pilot project. This program is invoked where local child protective service workers find a meritorious report of abuse or neglect but conclude that the child is not in jeopardy of injury and the family would benefit from services. Beginning in 1994–95, federal funds were made more available for this program;³³ the 1995–96 budget included \$61.3 million for these "in-home" preservation services, \$19.2 million of which was federal.³⁴

About 25%–30% of children receiving some child welfare services from county agencies are served in the home as part of the family preservation approach; this percentage is down slightly from 1987, reflecting the more serious nature of cases now passing through the screening process. In 1994, just over 50,000 children received this in-home services option, while 28,000 children were removed from homes and put into foster care over the same period.³⁵

The state Department of Social Services (DSS) conducted a study using January 1993 data. The primary sources of reports of abuse were schools (21%), relatives (18%), health care professionals (17%), or concerned citizens (17%). Reports were verified with findings of actual abuse in 48% of the cases. Using state law definitions, the percentage rates of each category of child abuse and neglect are as follows: physical abuse (31.8%); emotional abuse (30.7%); sexual abuse (16.7%); caretaker absence or inability (9.2%); general neglect (7.2%); and exploitation (0.3%).³⁶ Law enforcement was involved

in 37.5% of the referrals.³⁷

The average age of the mother was 31 years old, the average family size was 4.2, and the ethnic breakdown paralleled the general population—except with a disproportionately low Asian incidence (45% white, 35% Hispanic, 15% African-American, 2% Asian). The primary languages spoken were English (81%) and Spanish (15%). The father (adoptive or natural) resided in the household in 37.9% of the cases. About 53% of the families received public assistance, which for 90% meant AFDC (now TANF). “Health problems” were identified in 49% of the households, often signaling alcohol and drug abuse. In 45% of the homes, unemployment or poverty were cited as stress contributors. “Family interaction problems” were identified in 70% of the families.

The most common services provided were counseling (65%) and crisis intervention (54%). Parenting training was provided in 14% of the cases. Prior reports and interventions had occurred in 47% of the cases, with the number of such interventions averaging 2.7 among this 47%.

The efficacy of these “preservation” services is increasingly questioned. One source reviewing the literature concludes that there is “considerable indication that in-home services are helpful to the families served but that they do not have a substantial impact on the prevention of foster care placements.”³⁸ The same source cites a massive evaluation of Illinois’ intensive in-home alternative program (“Family First”) which found that 39% of the children involved were the victims of a subsequent *substantiated* child abuse report. A conventional control group had a similar recidivist rate.³⁹ While some scholars believe that longer and more intensive services in the home will have a positive impact, their cost is considerable.

California has joined the “preservation” movement strongly, with some child advocates objecting that this priority is driven by its substantially lower cost over removal and foster care. In 1990, as noted above, California changed its policy regarding babies impaired by drugs at birth and no longer requires the automatic filing of a mandated abuse report or removes affected children without additional evidence. Illinois has implemented a similar policy. In 1992, over one-half of the Illinois children who entered foster care because of drug exposure were more than one year old. All of them had been screened at birth as substance-exposed but had been sent home. They were later removed from the home after independent reports of subsequent abuse or neglect were received.⁴⁰

The failure to remove substantial numbers of children exacts a price as measured by the additional abuse suffered by children until later protective removal, as well as an unknown price paid by additional children who are similarly abused, but whose circumstances do not trigger a report and later protection. At the same time, child advocates moderate their skepticism over family preservation due to three countervailing factors: (1) for some populations, such preservation services may prove effective; (2) monies spent on preservation are not substantial and tend to finance counseling, drug treatment, classes, and other group interventions, rather than the more intensive and costly interventions some advocates recommend; (3) the removal into foster care option, especially where adoption does not occur, leaves the state as the child’s effective parent, with a regrettable record in that role, as discussed below.

C. California Children Removed for Their Protection

1. Applicable Law

The adjudication of cases involving removal of children and possible termination of parental rights is complex and cumbersome. Where removal occurs, within 48 hours the state must file a “petition to detain” (remove the child or children temporarily) with the juvenile court—a part of the superior or trial court system of the state. Usually, the petition is filed by a deputy county counsel representing the county child protective service agency. At this initial hearing, counsel is appointed for the parents where they cannot afford an attorney, as well as a “guardian ad litem” (GAL) for the children. In California, the GAL now takes the form of an attorney under contract with the county to provide that child

representation. The detention proceeding is quickly followed by the “jurisdictional petition” to give the juvenile dependency court jurisdiction, supplanting parental authority. However, parents retain a federal and state statutory right to “reunification,” or the chance to obtain the return of children removed into temporary foster care. And, under federal and state law, the state must make “reasonable efforts” to accomplish reunification, and parents (generally) are now given twelve months to create a safe environment for their children, with a possible additional six-month extension, and periodic review hearings to monitor progress. Children may be placed in the care and control of others, but a permanent placement that involves adoption must have parental consent, and can only be accomplished over objection where parental rights have been terminated. Those rights have constitutional weight and cannot be so removed without “clear and convincing evidence,” and a judicial finding of parental “unfitness.”⁴¹

Relative to national averages, California county social workers are more likely to remove a child into foster care rather than rely on preservation services in the home, with a rate of 29% removed where intake reports are substantiated, versus a national average of 20%.⁴² The number of petitions filed for juvenile court jurisdiction over allegedly abused children increased from 12,000–15,000 in the 1970s to a high of 46,950 in 1996–97, and dropped to 38,120 in 2001–02.⁴³ Currently, judges and commissioners decide issues of child removal, reunification, and placement (where parental rights are terminated) at the rate of more than 30 cases per day⁴⁴—making difficult decisions on the basis of social worker reports and several minutes of oral argument. They rely heavily on social workers from child protective services within county departments of social services, attorneys for the child and the parents involved, and Court Appointed Special Advocates (CASA) volunteers—citizens appointed by the court to monitor children under court jurisdiction and who report to the court.

2. Foster Care Demographic Profile

Cases Open	92,094
Federal AFDC–FC	49,375
State AFDC–FC	15,179
Non AFDC–FC	27,540
Ages	
Under 1	4%
1–5	22%
6–10	23%
11–14	25%
15–18	25%

TABLE 8-A. California Foster Care Population Data—November 2003⁴⁵

Table 8-A presents basic foster care population data in November 2003. The federal AFDC-FC category stands for “Aid to Families with Dependent Children-Foster Care,” (AFDC) the name generally given child safety net payments for parents below the poverty line in general prior to the passage of the Congressional enactment of welfare reform (the “PRA” in 1996). While the new federal law changed AFDC entitlement money to a capped block grant under the new Temporary Aid to Needy Families (TANF) system, it did not change the previous system as applicable to foster care children. They remained “entitled” to a federal match for cash grants to their care givers where placed outside the home (see payment levels discussed below). They must have been removed for a reason listed in Title IV-E of the federal Social Security Act. The parents remain liable for recompense of these expenses in the same way an absent parent is responsible for welfare payments made to support his/her child. That liability stops when a child is reunited with a parent and expenses for out-of-home placement cease, or when parental rights are terminated.

The “State AFDC-FC” category includes children made dependents of the court but not fitting within the federal Title IV-E list justifying AFDC-FC payment. These providers are paid from a state-only account which is included in Table 8-E below. The number of cases with AFDC-FC, either federal or

state, is approximately 65,000.

Separate and apart from the AFDC-FC account is a state Kin-GAP program. As explained below, if an abused child is removed from his/her home and placed with a relative “guardian,” the federal jurisdiction will not provide AFDC-FC. The Kin-Gap program allows relative placement, guardianship status for parental authority and stability, and recompense so that commitment is not punished through loss of expense payments—albeit from state sources. The program has increased from 6,285 children in 2000–01 to 10,595 in 2001–02 to 16,139 in 2003–04.⁴⁶ The non-AFDC category will often involve families who are eligible for the TANF program, depending upon income. If foster parents earn too much income to be eligible for TANF assistance, the children may still receive such aid under the “child only” category—which has grown substantially in the state over the last three years. However, the amount of recompense will vary substantially between these alternatives. AFDC-FC will pay substantial sums per child to group homes (commonly over \$5,000 per child per month), and approximately \$600 per child per month to family foster care providers. The Kin-Gap recipient will receive the latter amount, since placement is in the family setting. However, TANF aid for a single child in 2003–04 will be only \$332 in Region 1 (urban) counties and \$314 in Region 2 counties. Moreover, two children will yield a doubling of the AFDC-FC levels since provider pay is multiplied by number of children; however, in Region 1 counties, two child-only TANF recipients will get \$540 together, and three will get \$669. Three or more children together will cost in public funds at least three times as much per child in AFDC-FC as for TANF welfare. Involved incentives in these measures are important to consider—incentives that affect care givers in one direction, and public officials who seek to minimize public costs, on the other.

Apart from AFDC-FC or Kin-GAP help, an increasing number of children receive services; currently, almost 28,000 non-AFDC-FC or Kin-Gap cases receive such foster care services. This includes persons during their immediate placement in direct County-operated receiving homes or centers—designedly a temporary residence while temporary placement is decided.

As Figure 8-A represents, the number of California children in foster care has grown steadily since the 1980s, more than tripling from the 1983 level. The number of children receiving AFDC-FC increased from 25,573 in 1980, to 31,365 in 1985, to 56,658 in 1990, to 69,215 in 1995.⁴⁷ A proper trend analysis including the Kin-GAP count and federal and state AFDC-FC totals 93,147 as projected for 2004–05.⁴⁸ As discussed above, not all foster care children receive AFDC, particularly the many children placed with relatives—such relative placement has been stimulated by the much lower costs to counties—particularly if TANF is not claimed (or known to be available) by the relative care giver or for the children—which is often the case. The leveling in the foster care population that has occurred over the last six years is partly the result of substantial increases in family preservation response and foregoing child removal (see above) and in an increase in “family reunification,” as discussed below. Both trends have lowered numbers of children in foster care, but such a reduction does not necessarily imply reduced child abuse and neglect, and may instead reflect reduced intervention and protection; notwithstanding this recent leveling, underlying trends are ominous, and a substantial increase in the foster care population is extremely possible over the next five years.

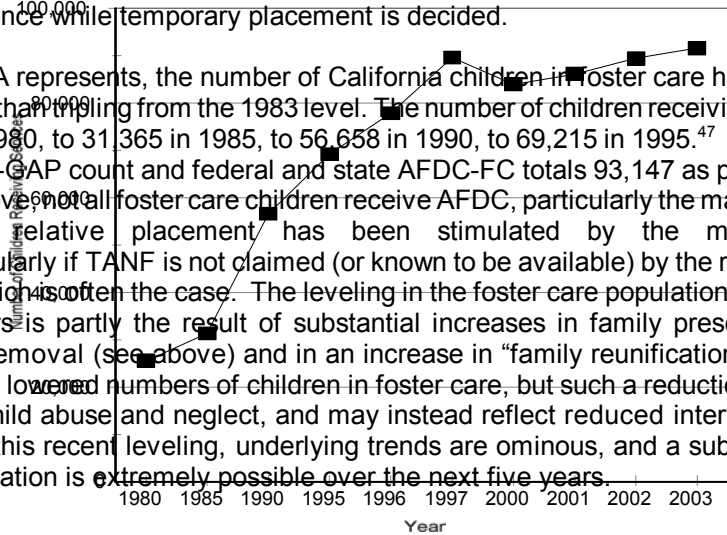


FIGURE 8-A. Number of California Children Receiving Foster Care/Kin-GAP Payments

Recent state foster care profile data are presented in Table 8-B, which covers the vast majority of foster care children. This group includes those children who have been removed from their homes for their protection and are subject to the protection and jurisdiction of the juvenile dependency court.

The children placed into foster care by action of dependency courts are 48% female and 52% male. As a group, nearly 50% suffer from chronic conditions such as asthma, cognitive abnormalities, visual and auditory problems, dental decay, and malnutrition, birth defects, developmental delays, or emotional/behavioral problems. From 40%–72% require ongoing medical treatment, and studies indicate that 50%–60% have moderate to severe mental health problems. According to studies, some of these conditions are caused by exposure to drugs and alcohol, lack of medical care, poor parenting, domestic violence, trauma of family separation, and unstable living arrangements and relationships, including foster care drift instability.⁴⁹

	August 1996	February 2002	November 2003
Average age at case opening	7.0	na	na
Average Age	8.9	9.7	9.9
Average Months in Placement	26.0	24.5	23.1
Sex			
Female	50.6	48.5	48.0%
Male	49.4	51.5	52.0%
Ethnicity			
African American	35.8%	33.7%	31.7%
White	35.5%	30.1%	29.8%
Hispanic	26.2%	31.9%	34.0%
Other	2.5%	4.3%	4.5%
Location			
w/relative (or guardian) in foster care	45.5%	44.4%	42.6%
in foster home (non-relative)	35.0%	39.0%	39.6%
in group home	16.6%	13.2%	15.2%
Unspecified or other home	2.9%	3.3%	2.6%

Source: California Department of Social Services

TABLE 8-B. Statistical Profile of California Foster Care Children

Children in the dependency court system who are victims of abuse and neglect—92% of all foster children in California—stay an average of 23.1 months within the foster care authority jurisdiction.⁵⁰ In a small percentage of the cases, the child is placed with a relative who assumes the relatively permanent status of guardian (within the 42.6% grouping of Table 8-B). Making up the 39.6% listed as placed in a non-relative foster home, 24.5% are in a home certified by a foster family agency, and 15.1% are in a foster family home. Of the 42.6% placed with relatives, about half of these are licensed as family foster care providers; over 16,000 children are with relatives who have established Kin-GAP guardianships.

Table 8-B excludes a separate population of foster children with its own separate profile. As of April 2003, 6,855 youth were placed in foster care through the delinquency side of juvenile court.⁵¹ These children are commonly arrested for offenses for which punishment is inappropriate, but where there has been parental abandonment. They include children coming before the court due to non-criminal “status offenses” (e.g., truancy, curfew violations, or running away). Here, the average age of foster children is 16.7 years, 78% are males, and 80% are placed in group home foster care.⁵² This population, which remains under Probation Department jurisdiction, stays in foster care placements an average of 10.3

months.

3. Delay and Drift in Reunification Adjudication

Child advocates are concerned about (a) the consistent delay that accompanies foster care status for children, and (b) the drift from placement to placement that adds psychological costs for already abused children. The consequences for children flowing from the statutory twelve months (which sometimes becomes two to four years in practice) for family “reunification” are not always considered in the context of current statutory focus, to give parents a chance to reunify with removed children they have been found to have abused or neglected. During this interim, children remain in temporary foster care, and are often transferred from one foster home to another in what experts call “foster care drift.” Recent data indicates that, after three and a half years in foster care, 46% of children in kinship care and 73% of children in non-kin care had experienced three or more placements.⁵³ And the state’s 2002 self-assessment found the average term in foster care was 26 months, compared to a national average of 20 months. One of the reasons for delay in disposition of children—particularly those caught in foster care drift between placements while the courts adjudicate their fate, is the issuance of routine “continuances” by the court. The DSS self-study conceded that social work report delays were the single major factor driving them.⁵⁴

The profile data reflect delays substantially beyond the twelve-month presumed statutory maximum timeline for reunification, tolerance of delay by courts and social workers, and consistent solicitude for parental rights over timely resolution for involved children. Only one-half of children who entered child welfare supervised foster care between 1998 and 2000 left care within 19 months.⁵⁵ The average length of stay for children in foster care as of December 2003 was 23.2 months.⁵⁶ On average, a two-year-old toddler removed from a home will be five years and four months old when leaving foster care.⁵⁷

“Termination data” lists where children removed from their homes and placed into foster care for their protection end up if they exit the system. According to a July 2001 DSS report, 58% of kids exiting in 2000 were reunified, 15% were adopted, 12% had legal guardianships, 8% emancipated, and 7% had other/unknown exits. Reviewing termination data for a recent typical month illuminates these cited percentages. In November 2003, 1,884 cases were terminated during the month: 1,204 were reunited with parents, 125 were adopted, 556 were terminated for other reasons (usually dismissal), and 2 were “unknown/missing.”⁵⁸ A review of other months in 2003 indicates these figures are typical.

The data indicate that few children are being adopted into a permanent, loving family where they will attach to acceptable and protective parents. Rather, almost all fall into two categories: reunification with parents and permanent foster care placement (with relatives or strangers).

4. Reunification Failures

The success of parental reunification has been limited. Social service programs do not always or even reliably change the lifestyles, values, and habits of adults. Drug addiction, violent tendencies, molestation, and other proclivities are not easily altered through counseling, occasional drug testing, meetings, classes and therapy—the typical services required of parents to achieve reunification. The current statutory regime focuses on reunification through “reasonable services.” In practice, this means a series of “hoops” parents are required to jump to avoid a finding of “unfitness” as parents and to secure the return of their children. These hoops tend to consist of “parenting classes,” anger management therapy and other counseling or psychological sessions, agreement to undergo drug testing and to seek rehabilitation from serious drug abuse. One dilemma presented by the reunification process is the implicit commitment of the state to approve return of the children where those hoops have been traversed. How can the state, obligated to provide “reasonable services” to accomplish reunification, then deny the return of children where the parent has participated in all of those services. In general, such successful participation consists of attendance. The system then presumes a nexus between that participation and the protection of children warranting their return. The evidence supporting that nexus is absent or uncertain. State and federal budgets do not give high priority to outcome measurement research of the services typically provided to parents for reunification.

A study by the University of California School of Social Research examined recidivism, the “re-entry” into foster care after court-approved “reunification.” Those who have “reunified” with families (and those who are subject to family preservation and are not removed) make up the “success stories” which are the focus of most child welfare account spending. Parents’ rights advocates argue that saving families is a benefit justifying the foster care drift of many children. Examining the immediate three-year period after reunification, 20% of those children reunified (placed back into their homes) were removed again—generally after independent reports of further abuse.⁵⁹ Child advocates argue that a much larger percentage of children reunited with parents are subject to abuse unabated by the drug rehabilitation, violence management counseling, and similar services which are routinely a part of “reunification.” Some concede that the retention of TANF grants—which are cut off when children are not in the home—can be a motivation for some parents to seek reunification.

In August 2001 a study published by the Journal of Pediatrics examined reunified children versus a control group of children who were not reunified over a six-year period. It found the reunified foster youth to be more self-destructive, engage in more substance abuse and in high-risk behavior than do non-reunified youth. Although the study was somewhat limited (149 ethnically diverse youth from 7–12 years of age) the findings were significant enough to warrant close attention.⁶⁰

5. Post-Reunification Monitoring

Regrettably, legal formalism leads juvenile courts to “terminate jurisdiction” over a child who is reunified. The categories of federal funding also may distort child protection options since accounts for “services facilitating reunification” may not be available for family “preservation,” especially post-reunification and the termination of court jurisdiction. The number of children who would be removed again following reunification were the state to retain some monitoring role, and pro-actively check future status, is unknown. However, it would be significantly higher than the 20% who are so removed on the basis of *de novo* reports, half of them within the first 12 months of reunification.⁶¹

6. Foster Care Endangerment

Despite the uncertain results of reunification discussed above, most child advocates commonly express some sympathy for it *vis-a-vis* a foster care system that has its own problems as a substitute. One of those problems has been the tragedy of double abuse, as children removed for their protection are subject to the custody and care of group homes or family placements that too often visit additional abuse on already injured children. Recent problems have ranged from child molestation to murder perpetrated by other group home assigned youth to the alleged routine drugging of children to assure easy management.⁶² One recent report indicated that the four most frequent allegations against certified family homes involved personal rights (35%), physical abuse/corporal punishment violations (26%), neglect/lack of supervision (19%) and sexual abuse (6%).⁶³ Los Angeles County has in particular become a difficult venue to administer and to assure quality, with substantial numbers of tort actions against the foster care system for the abuse of children—including a disproportionate number of child deaths, discussed below.

California established a Child Death Review Council within the state Department of Justice in 1992. Its purpose is to investigate and hopefully reduce child deaths from abuse and neglect. Most of the state’s counties have local “death review teams” who evaluate child fatalities, including those of foster children. However, this agency operates confidentially, lacks authority to implement protective policies or other remedies, and is not focused on foster children. Notwithstanding its functioning for more than a decade, the state’s death rate of foster care children is substantially above the national average, and is triple the national norm in Los Angeles County, as discussed below. New legislation will at least allow public disclosure of foster care child deaths, with the name, date of birth, and date of death of such children subject to the California Public Records Act. The Schwarzenegger Administration has proposed the repeal of this statute in a 2004–05 budget trailer bill (see discussion of AB 1151, enacted in 2003, below).

7. Foster Care Drift / Impersonality

Over 46% of the children removed from their homes are not reunified (and relatively few are adopted). Further, of the 54% who are reunified, 9.3% re-enter foster care within 12 months, and another 10.6% subsequently re-enter foster care following independent reports of abuse or neglected.⁶⁴ The annual adoption of 2,000–3,000 foster children a year represents 3–5% of those who would benefit from adoption and the long-term parental commitment it implies. Some foster care children are with relatives in long term relationships that afford many of the advantages of a permanent parent—especially where given guardianship status. But current policy is to use relatives regardless of parental capacity because of their lower cost. Some such placements are problematical.

Recent placement data covering 117,000 children in foster care as of 2000–01 finds 3,617 in pre-adoption homes, 42,293 with relatives (kin foster care), 39,357 in family foster care, 15,635 in group homes, 2,227 in institutions, 5,256 in trial home visits, and an alarming 3,362 “runaways” whose whereabouts are unknown.⁶⁵

Of the vast majority who remain in foster care (are not reunified), both delay and movement between caregivers is common—depriving children of basic “attachment”—a requirement of all children. As indicated above, those who are placed with relatives obviously have less movement between caregivers.⁶⁶ But much of the total foster care population—even including those placed with relatives—has been in three or more separate placements within six years.⁶⁷ A study by the Office of Legislative Analyst confirms these levels of instability, finding that overall, one-third of current foster care children have been subject to three or more separate placements (with different families or institutions).⁶⁸

In 2002, the Legislative Analyst’s Office (LAO) reported that those children for whom a foster family agency (FFA) home was their primary placement stayed in care for almost two years, or twice as long as youth in nonrelative foster family homes (FFH). According to LAO, increased time spent in foster care is generally considered undesirable, as children are less likely to be reunified with their family of origin or adopted.⁶⁹ While noting that longer stays in FFA homes might be justified if research indicated that the children in FFA need more services prior to reunification or adoption than do children in FFHs, LAO stated that available research does not demonstrate such differences.⁷⁰ LAO also noted that from 1988 to 2000, the number of children placed in FFAs increased twenty times, from 2% to approximately 36% of the total foster care population. Because the FFA rate is more than three times the rate paid to FFHs, the higher rate potentially creates an incentive imbalance in favor of FFA entry and maintenance, as opposed to the more intimate parental relationship more common with adoption, kin care or family foster care.

The Center for Social Services Research at the University of California, Berkeley, released information in July 2002 summarizing recent foster care exit trends. According to the Center, of children who entered foster care in 2001, 87% of the children placed with kin were still in that placement six months after entry, compared to 69% for children placed in non-kin care.⁷¹

A 1998 inquiry into Orange County’s system by Tracy Weber of the *Los Angeles Times* produced compelling evidence of the human dimension to foster care drift. Confirming the experience of the Children’s Advocacy Institute’s clinic representing abused children in San Diego County, Weber’s two-part series outlined children with character and promise subjected to parental abandonment, drug- and alcohol-induced neglect and beatings, and unconscionable molestation. Although a large number of foster care families sacrifice resources and personal health to provide a loving home for these children, the result of removal is quite often relegation to a kind of foster care limbo—with transfers between institutional settings (sometimes in company with delinquents), impersonal hand-offs of frightened and confused children, and interminable delays as the needs of parents, courts, and other adults are all given higher priority.⁷²

8. The Problem of Child Hand-Offs: The Horizontal vs. Vertical Model

The problems with the current foster care system extend beyond extreme cases of further abuse and drift in placement. Problems are reflected in and exacerbated by lack of investment in foster children, the secrecy of the juvenile court process, high caseloads, family foster care supply/compensation

shortfall, and lack of emancipation assistance as these children turn 18 years of age. The basic foster care organizational structure exacerbates these shortfalls because it is arranged for the convenience of “the system”—agency officials, courts, counsel and the adults who participate. Hence, it is essentially a “horizontal” structure, where children come into contact with a constantly shifting group of social workers, attorneys, courts—all organized to facilitate their own efficiency. In such a structure, children tend to become names on reports—paperwork moving across the desks of many adults in the social service establishment. Except for brief visits or interviews, children are deprived of the intrinsically “vertical” relationship—a single person or persons who “belong to them,” who will not leave or change identity. A parent provides such stability that research repeatedly affirms is central to a child's psychological health. Although the appointment of Court Appointed Special Advocates (CASAs), or older adults in some jurisdictions, to relate to foster children and report to the court on their status may provide some anchor, it is an ephemeral one compared to the commitment of a parent or of a person with broader powers and greater permanence in the life of the child.

The foster care system could be structured “vertically,” involving the considered appointment of at least one person to be the surrogate parent for the court—no matter what. Such a paradigm shift in the bureaucracy requires a reorganization from the current “caseload,” report writing, file copying and transfer, form-oriented structure of current child protective services.

The closest a foster care child may come to such a vertical arrangement is an early and successful placement with a relative or family foster care provider. Indeed, 80% of the adoptions of children in foster care come from the population of family foster care providers—families who are trained and licensed and agree to accept into their homes a limited number of children. These attachments can provide the steady anchor of one or two competent adults clearly and irretrievably committed to a child. This is the ultimate goal of every child advocate operating in dependency court. However, as discussed below, such family foster care providers lack the political organization of group homes and agency providers. Such foster care families receive compensation for their care of these children at a rate commonly one-seventh the amount per child received by the more institutional settings. And the state has not given priority to the generation of that adequate supply, rejecting important legislation that would provide such a mission and incentives (see discussion of legislation below). One result has been a diminution in supply that leads to more placements in group homes lacking the kind of contact discussed above, and with a deeply troublesome record of educational efficacy and post-emancipation success. Or, in the alternative, it may lead to placements with relatives who have uncertain interest in the child and suspect parenting skills.

D. Supply of Foster Care Providers

As of March 2004, there were 12,369 licensed foster family homes (FFH) in California with space for approximately 30,451,⁷³ down from 31,249 children in December 2003.⁷⁴ Approximately 1,730 licensed group homes have space for just under 17,000 children.⁷⁵ The growing foster care population increasingly requires intensive care; estimates place 30% as seriously disabled, and 58% with serious health problems.⁷⁶ In San Diego County, there were approximately 1,500 foster homes in 1999; the former director of the county's foster home licensing wanted to see 500 more.⁷⁷

The 30,451 capacity numbers for FFH placement can be misleading. DSS' 2002 Statewide Assessment, drawing on 2001 data, found 19,353 children in dependency court FFH placement. However, the Assessment commentary notes that the theoretical 11,000 capacity beyond current placements (available slots) is illusory since many providers are not interested in accepting children up to the allowable maximum number of six—especially given low compensation and care challenges presented. And those relatives of foster children who obtain licensure typically care only for their own kin, and do not actually have “spaces” available for other children.

FFH placements are the source of most foster adoptions where available. There are substantially fewer family foster homes available in relation to children eligible for adoption. The FFH placement options were richer in 1985, and the ratio of spots within family foster homes to foster children continues to decline. The consequences of this undersupply, beyond lost adoption opportunities, is clear to those

who operate in dependency court settings. Children are routinely placed with marginal relatives or in expensive group homes due to the lack of available foster family home options. Siblings are often split-up due to the lack of alternatives. Children are commonly moved from place to place because of overcrowding or group home instability.

Beyond supply shortfall is the matter of quality of care within the available supply. DSS candidly admits that “the standards for licensure do not evaluate the suitability or ability of applicants to effectively parent children or to provide an emotionally healthy environment.” That decision may be made at point of placement—not licensure, which is substantially *pro forma*. The Assessment explains: “... homes are licensed but (are) not suitable for placement.”⁷⁸ In fact, the 29,800 capacity number is illusory and the actual state of quality and adoption-potential FFH supply is negative. That is, spaces are affirmatively lacking for high quality family foster care providers where adoption is a reasonable possibility. The failure to increase FFH capacity over the last decade commensurate with the increase in foster children has exacerbated the shortfall.

In 1995, there were 9,900 children in FFA homes and 7,348 children in group homes.⁷⁹ Those figures rose by 2004 to over 22,000 and 16,950, respectively. These increases have occurred notwithstanding the higher cost of such placements, particularly for group homes.

In 1991, family foster home rates nationwide were 20% below the direct costs of a child as measured by the Department of Agriculture—with the California disparity somewhat greater. From 1991–98, no COLA increase was granted, placing compensation almost 40% below costs and constricting supply, as discussed above. In 1998, a modest 9% increase was approved, with small COLAs of 2.36% keeping compensation even in 1999, 2000 and 2001. The rates remain approximately 30% below out of pocket costs. Notwithstanding the stark disparity in rates and the trends indicated by Table 8-C, group homes received a cost of living increase of approximately 2%—well illustrating the advantages of lobbying and political organization. Compensation to families for foster care is estimated at less than half of the costs of raising a typical child.

Payment levels per child for foster care vary with the age of a child, with the lowest rates paid for children 0–4 years of age, and increasing for each four-year age group to those from 15–20 years of age—set approximately 30% higher. The rates paid vary much more dramatically between family foster care and group home alternative placements. Adjusting for inflation to current levels, Table 8-C presents average payment levels per child in 1990 and current 2003–04. Not only are group home compensation levels at seven times those extant for family foster care, but adjusting for inflation, they have declined in real spending terms, while group homes have increased markedly, reflecting the more extensive and sophisticated political organization of the group homes.

	1989–90	2003–04
Family Foster Care	\$536	\$707
Family Foster Care Adjusted	\$735	\$707
Family Foster Agency	n/a	\$1,755
Family Foster Agency Adjusted	n/a	\$1,755
Group Homes	\$2,682	\$5,174
Group Homes Adjusted	\$3,678	\$5,174

Adjusted to deflator (2003–04=1.00).

TABLE 8-C. Average Monthly Foster Care Payments Per Child⁸⁰

Part of the supply problem stems from difficulty in retaining foster care providers. One study of the

reasons for abandonment cites several major reasons: (1) lack of agency support; (2) poor communication with assigned social workers; (3) lack of say as to the child's future; (4) lack of other services needed; and (5) lack of day care. The authors note that a "foster buddy" system where parents have a parent "buddy" working with them to help share the load, assist with problems with the bureaucracy, could help retention rates.⁸¹ Interestingly, problems with the child are rarely cited; most difficulties derive from needed services denied, which the low compensation rates make critical, problems dealing with the local bureaucracy, and an underlying fear of losing a child to whom they have bonded.

The group home cost per child is more than seven times costlier than family foster care and has increased markedly in adjusted compensation, while family foster care compensation is lower as adjusted. Some of the disparity accruing to group homes is attributed to the high number of special needs children they receive because of their more extensive facilities, staffing, and experience. However, the compensation difference substantially exceeds that justification and ignores both the increasing special needs children in family foster care and the regrettable failure of many group homes to achieve educational mainstreaming, quality services, or adequate individual personal attention—for which child advocates contend there is no substitute.

E. California Adoptions

Parental rights are terminated only in extreme cases of abuse and neglect, usually involving criminal convictions for molestation or repeated drug offenses and related abuse, with little indication of rehabilitation interest. The reunification mandate of federal and state law has meant that the vast majority of parents interested in reunification are able to receive a full twelve-month opportunity to achieve it—usually by attending programs, counseling, and sometimes drug testing. Where those rights are finally terminated, the court is obligated to seek "permanent placement" for a child. Some are placed with relatives. Many find no takers. Where adoption does occur, it is most often with a family foster care provider who has bonded with a child. As noted above, decreased compensation has lowered the supply of family foster care placements markedly. That hurdle, exacerbated by juvenile court confidentiality rules, leads to more children in long term foster care, in group homes, or with relatives of abusive parents—often until emancipation at 18 years of age. This is now the fate of most children entering the foster care system.

1. Adoption Demographics/Incidence

Over 45,000 California children need homes, but prospective adoptive parents often seek healthy infants, not abused or disabled toddlers or older children. The characteristics of public and private adoptions in California are different. The typical child placed through a private adoption agency was a newborn when removed from the home, one month old when placed, had spent 50 days in foster care before placement, and became a member of a family with a median gross annual income of \$70,000.

The typical child placed for adoption was three months old when removed from the home, 51 months old when placed, had spent 1,440 days in foster care before placement, and became a member of a family with \$40,000 in gross annual income.⁸² The average fee for an adoption through a public agency was \$500, while the average private agency adoption fee was \$5,000,⁸³ excluding additional large payments often required for counsel, other facilitators, and the expenses of the birth mother.

The modest increases that did occur in 1998 are partially attributed to a 1996 "California Adoptions Initiative" within DSS. The initiative is credited with some increase in completed adoptions. It funneled an additional \$138 million into county adoption bureaus, providing positions for an additional 250 social workers. It won \$17.7 million in federal awards for adoption improvement under the federal Adoption and Safe Families Act discussed below.⁸⁴ The federal money was partly used for post-adoption services for the new families. This effort involved the education of local social workers on the complex paperwork required for adoption. One innovative approach to the paperwork obstacle was developed by Gibson, Dunn & Crutcher attorney Steven Meiers, "Adoption Saturdays" tap volunteer attorneys and others to fill out prodigious paperwork for large groups of children and adoptive parents in a single day, with the important help of county social workers who similarly work intensively, followed by the superior court

opening its offices on a Saturday for a full day of hearings and approvals. The red tape cutting impact of the new procedure is considerable, and some adoptions which take two or more years in the normal course are accomplished in weeks. A recent Los Angeles adoptions day accomplished 300 adoptions in a single day. The adoptions day concept has been replicated in several other counties, including Sacramento.⁸⁵ And the total number of finalized adoptions from the foster care population (*i.e.*, those from counties or DSS district offices) have gradually increased from just under 4,000 in 1997–98 to 8,164 in the most recent reported period of fiscal 2001–02.⁸⁶

Although a substantial percentage improvement, the actual numbers of adoptions accomplished by the “Initiative” remain modest in relation to the need. Some California foster care children are in relatively stable settings (*e.g.*, in foster care with close relatives). But discounting all relative placements and those awaiting possible reunification, the total winning successful adoption still amounts to less than 20% of the children who warrant adoption.⁸⁷ Only healthy infants are assured of an adoption opportunity. One study of children leaving foster care described those freed for adoption as follows: “Children entering care as infants were clearly more likely to be adopted within four years than older children, and very few children who entered care when they were older than five were adopted.”⁸⁸ Older children exit from the system three ways: 20% run away, 17% achieve legal emancipation by the court (usually after having run away as well), and the remainder reach the age of 18 still in the foster care system, exiting by virtue of achieving majority.

The barriers to adoption remain substantial: Excessive paperwork, delay, and lack of an adequate supply of quality “family foster care” providers (the primary source of adoption for foster care children).

2. Secrecy (Juvenile Court/Foster Care Confidentiality)

Adoptions are also clearly hampered by the secrecy of the foster care system. Child advocates have argued that humane societies seeking to place dogs have more visibility. Perhaps partly from lack of awareness, Californians commonly spend ten to twenty thousand dollars to arrange private adoptions. They seek increasingly expensive *in vitro* fertilization—sometimes not involving genetic contribution from either parent. They seek children from the Balkans, Brazil, Russia, and Asia. Some child advocates argue that increasing awareness by lifting the veil of secrecy, may lead to more adoptions of foster children.

3. Adoption Assistance Restrictions

Prior to two years ago, adoption assistance payments have been denied in California for families with income above the state’s median, reflecting the longstanding policy of the previous Wilson administration. The Youth Law Center filed suit in federal district court on behalf of adoptive parents of an 8-year-old child with serious problems from the drug use of his mother while pregnant. In November 1999, in the case of *In Re Nathan H.*, U.S. District Judge Lawrence Karlton signed a stipulated order applicable to the case in Sacramento County, and also applicable to DSS for statewide impact. The court order (agreed to by the Davis administration) requires eligibility for adoption assistance money for adoptive parents to be based on customized factors in a formula which factors in ability to pay and the particular expenses required for a child. One problem with the rejected policy was that any child with substantial expenses for care would not be easily cared for by the important supply of prospective parents earning just above median income. Indeed, the incentive is then to leave the child in foster care, where compensation and services are more substantial given the foster care status as a child of the court and state. Hence, the payment of more substantial adoption assistance can save some public money while giving the child the permanence and commitment of a family of his or her own. However, the order does not assure a child-friendly or adoption-stimulating decision and maintains the right of counties to use a means test to deny adoption assistance. The decision simply prohibits the mechanical denial of adoption assistance. Child advocates hope for a more generous policy which allows adoption assistance payments at the full equivalence of foster care payments (which are not means tested) (see discussion of the Adoptions Assistance account and trends below).

The order ends California’s pattern under a 1992 statute of capping “special” adoption assistance

payments. Although former Governor Wilson vetoed 1998 legislation which would have allowed more flexibility, that legislation altering previous law was enacted in 1999 and was effective as of 2000, paving the way for the order entered by Karlton without the need to strike California law.

Stimulating the adoption of children in foster care was a priority goal of former President Clinton and some in the Congress. The Small Business Job Protection Act of 1996 included a new adoption tax credit for that purpose.⁸⁹ The law allows married couples filing a joint return to claim a credit for “adoption expenses” for an eligible child (a person under 18 years of age unable to care for himself or herself) through 2002. After 2001, the credit was limited to children “with special needs,” defined as a citizen or resident of the United States for whom the state has determined assistance is needed to effectuate an adoption—that is, someone the state cannot place. The credit is limited to necessary adoption fees, court costs, legal fees, and similar costs. The maximum credit claimable is \$5,000 per child, and it is not refundable; it may only be used to offset tax liability, and is of no value to those who pay little in taxes. A similar credit is available to an employer who pays such costs for an employee seeking to adopt.

4. Racial Preference Obstacles

The problem of racial bias in child adoption is longstanding. The placement of a child with an adoptive parent of his or her own ethnic make-up has advantages—including those which flow from appearance similarity between parent and child. But those advantages apply when other factors are near equal. Over 70% of foster care children are minorities. The supply of non-white adoptive parents is limited. But social workers continue to balk at white adoption of minority children—even where the alternative is continued foster care drift, and even when foster care placements are commonly with white foster care providers. Many social workers bend toward family foster care placement, using the kinship statutes as a justification. Often those choices are much inferior to an attentive couple seeking a child who have a strong and clear commitment to him or her—whatever the race of either.

The Congress has enacted two successive statutes to address the continuing problems of racially based adoptive rejection. First was the Multiethnic Placement Act of 1994. California responded administratively to the terms of this statute, but failed to implement the Interethnic Adoption Provisions of 1996, which further amended the law to accomplish interracial adoptions over foster care drift. In 1998, the General Accounting Office issued a report on that compliance, documenting California's failure to respond.⁹⁰ In a particularly incisive remark following extensive interviews of California social workers handling adoptions, Associate Director Nadel notes: “The belief that race or cultural heritage is central to a child's best interest when making a placement is so inherent in social work theory and practice that a policy statement of the National Association of Social Workers still reflects this tenet, despite changes in the federal law.” Nadel then understates: “The personal acceptance of the value of the act and the 1996 amendment varies among the officials and caseworkers....” Numerous California caseworkers admitted to a strong bias precluding white adoptions of minority children, speaking of the need for children, particularly minority children, to be placed in homes that will support a child's racial identity. For those individuals, that meant a home with same-race parents.”⁹¹

Some counties still have special pools of prospective parents divided by race: Hispanic, African American, and White. They direct children of a race to their respective group. The end result has been and remains the condemnation of over 50,000 minority children into foster care drift without parents, commitment, or stability. While social workers pursue personal and illegal notions of racial purity, many thousands of children fail year after year to win adoption. When they are emancipated at 18 years of age, their statistical fate is bleak.

F. Emancipation From Foster Care [Independent Living Transition]

Those foster care children not returned to their parents or adopted (as discussed above) remain in the foster care system until they emancipate at the age of 18. These children are commonly sent into the world without the family structure that supports most children during their early years of adulthood. Until the 1970s, children were subject to juvenile court protection until they reached 21 years of age.

Hence, their foster parents or group homes would continue to receive compensation to assure their room and board while they attended college, vocational school or other higher education. With the lowering of the age of majority for most purposes to 18 years of age, that cut-off of support was moved younger—at a time when higher education has become more important to employment and future advancement.

Surveys of emancipated foster youth two to four years after emancipation find that fewer than half had completed high school or were employed, 30% did not have access to health care, 60% of the women had already given birth (the vast majority unmarried), and less than 20% were self supporting. Males made up a highly disproportionate share of incarcerated populations, at least five times the incidence of the general population.⁹² One national expert summarized the evidence of the fate of emancipating foster children as follows: “Within two years of exiting the foster care system, 60% of former foster youth are homeless. 20% never finish high school. 35% have accessed public assistance. 40% of persons living in federally funded homeless shelters were former foster youth.”⁹³

A recent study of California emancipated youth found:

- Almost one-half had at least five placements and had been in care for more than five years.
- Of the young women emancipating in 1997, 20% became pregnant while in foster care, or shortly thereafter. Over two-thirds had at least one birth within five years of emancipation.
- About 50% of emancipating females receive TANF and Medi-Cal within six years of emancipation (compared to 6% of the general population of females aged 19–29 who receive TANF help).
- 5% of White, 9% of Black, and 6% of Hispanic emancipating youth enter the state prison system within seven years of emancipation from foster care.⁹⁴

During federal fiscal year 2001–02, of the 33,253 youths in California who were offered independent living program (ILP) services, 23,361 received such services, and 19,795 youths completed ILP services or a component of services. Of the youth participating in ILP services, 4,940 completed high school/GED or adult education; 12,565 were continuing and/or currently enrolled in high school/GED or adult education; 1,430 completed vocational education or on-the-job training; 1,251 were continuing or currently enrolled in vocational education or on-the-job training; 3,291 were enrolled in college; 5,691 obtained employment; 5,837 were actively seeking employment; 974 received subsidized housing; 1,430 received transitional housing placement services; 538 were appropriate for and were denied transitional housing placement services, and 5,769 were living independently of agency maintenance programs.⁹⁵

Until recently, little help was available for these state-parented emancipating youth. The federal Independent Living Initiative of 1986 included no housing help and only applied to foster youth between 16 and 18 years of age—with nothing offered post-emancipation. The 1997 Adoption and Safe Families Act primarily addressed foster children who had been adopted. In 1998, \$12 million in federal dollars was made available for each year through 2002 to help foster youth who “term out” of the system at the age of 18. In 1999, Congress enacted legislation to provide limited federal funding for foster care youth turning 18, some of it requiring only a 20% state match (see Foster Care Independence Act discussed below). In addition, the Bush administration supported limited education funding for these youth. The 1999 Act doubled the appropriation for older foster youth to \$140 million nationally, and allowed the extra funds to be used for housing assistance past the age of 18. These monies, named after author Senator John Chafee, may allow up to \$27 million to be used in California for foster youth past the age of 16 and up to 21—both to help them adjust to independent living (training and help) and to help pay some initial rent. And the federal 2003 budget adds \$60 million nationally for higher education costs of emancipating youth in the federal budget, of which the state’s share would be \$8 million.

In August 2001, Governor Davis signed AB 1119 (Hertzberg) to give \$10 million to housing programs, \$6.5 million for educational help, and \$1.5 million for health coverage. As discussed below, this \$18

million was the sum result of a pledge to fund foster care more broadly with \$330 million in needed support. Child advocates expected \$90 million to cover emancipation assistance with available federal addition (room and board, higher education expenses to age 23 if in school, with some small assistance for two years for those not in school while obtaining employment or beginning work).

The total sum of \$18 million from the state noted above, and the \$35 million available from the federal jurisdiction (\$27 million from the Chafee Act and \$8 million from the 2003 budget act) could yield up to \$53 million for these purposes and would enable some important assistance for these children. However, the total sum from these major available sources (federal and state rent, education, and other help) would amount to about \$300 per month for these youth in need, excluding medical coverage. Further, the President's initiative provides only education vouchers of up to \$5,000, which cannot be used for living costs. California already provides low tuition and fee levels and those attending public higher education will not be able to use more than 10% to 35% of these voucher amounts.

This sum would pay below half of the current median rent costs in urban California. Assuming housing is shared, these youth have substantial additional living expenses, including high utilities, food, transportation if they are to work (see state costs and budget data presented in Chapter 2). For many emancipating youth, the sums proposed to be offered may be equivalent to no help at all given current economics. If one must earn \$400 to \$700 per month for rent, another \$180 per month for food, \$150 per month for utilities and other essentials, assistance of \$250 per month alone may still not allow higher education opportunity. TANF assistance for these youth before the age of 18 is \$520 for a mother with one child, plus \$150 in food stamps. These now emancipated youth are not eligible for such aid unless they have children themselves.

DSS' June 2002 report on emancipating youth housing took a one year 2000–01 "snapshot" of need. It found 4,355 youth emancipating from foster care during that fiscal year, with 65% (2,843) needing housing at point of emancipation. Counties found housing for 1,084 of these youth. The Report concludes that counties report that roughly 3,762 additional suitable living arrangements need to be developed⁹⁶ (given the carryover of need from prior emancipated youth—including those who are homeless). The monies added in 2003 have not met this need for availability, nor do they apply sufficient resources to allow these abandoned youth to afford market rents, as indicated above.

Complicating the fate of these emancipated youth further is the baffling restriction currently applicable to many Independent Living Program funds. For many of the programs, counties refuse assistance to youth who were emancipated in the court of another county. Such youth who then apply for assistance from their emancipating county are told they are ineligible due to their lack of local residency. These systemic denials appear to be pervasive, particularly for non-Chafee assistance programs, throughout California.⁹⁷ Child advocates contend that such restrictions are unlawful and that legislative intent requires that such funds "follow the child." Ironically, many children move between counties at point of emancipation due to the court orders of the same county refusing to pay based on such a move. Other youth move to attend school, obtain jobs, care for sick siblings, or a host of other reasons reasonably warranting a move. To use that happenstance as the basis for the denial of funds intended to benefit foster children raises serious policy and ethical issues.

It is difficult for most adults who come from homes and families to be fully aware of the reality facing someone who is about to turn 18 years of age and has been told to leave a group home or other caregiver's home. There is no home or family to fall back upon. No room and board continuation. There is little safety net, and none that would allow deferral of full-time immediate work—on the disadvantageous terms available to an 18 year old lacking higher education. Given modern costs of rent, utilities, transportation, clothing, and tuition—even in a low tuition state such as California, the assistance given these children must be sufficient to give them choices and a chance. The help that a responsible parent would provide for a child of 18 remains missing from the state (and federal) budget for these "children of the state."

G. Special Cross-Cutting Problems

The major sequences of the child welfare system presented above raise problems applicable to each, but also implicate six seminal problems relevant to all of the stages discussed above (preservation, removal, reunification, permanent placement or adoption, and emancipation). These cross-cutting problems include: (1) the special problems presented by Los Angeles County; (2) excessive caseloads; (3) inability to arrange for complete medical, educational and other records to “follow the child”; (4) education failure; (5) secrecy and other barriers to adoption and to broader legal/political remedies; and (6) the mix of economic incentives.

1. Los Angeles County

Los Angeles County has a disproportionate share of mandated child abuse reports, child deaths, children in foster care, and youth in the juvenile justice system. The county has special problems arising from its heterogeneity, size, impersonality, transportation barriers, and large impoverished population. In October 1996, the Bureau of State Audits released its report on the Los Angeles County Department of Children and Family Services. The study concluded:

- The Department does not assess relative risk consistently to enable the highest risk cases to receive immediate attention.
- The Department does not always visit children following reports which warrant in-person attention.
- The Department did not always perform criminal background checks on relatives with whom children were placed.⁹⁸

Beyond explicit findings, the underlying data gathered by the State Auditor indicates another serious problem. In 1992, 50,000 cases were referred for investigation from the hotlines, with caseloads of 33 per social worker. In 1996, the number of cases had grown to 70,000 and caseloads had increased to 42 per worker. If a social worker travels to a school, home, or hospital to evaluate a child, spends two hours, returns and completes necessary paperwork, only one child can realistically be evaluated each day. To the above list must be added review of the file, phone calls to sources, interviews of the physician or other mandated reporter, assistance to the deputy county counsel for cases going forward, and appearances in court. At a caseload of 42, the next visit to a given child cannot occur for at least two months, given the obligations presented by other cases.⁹⁹

On January 11, 1998, the *Los Angeles Times* conducted an inquiry into the “up front” performance of Los Angeles’ hotline system.¹⁰⁰ The *Times* found pre-investigation hotline calls increasing from 110,000 in 1990 to 200,000 in 1997—while the number of people assigned to answer phones and initially screen calls remained at just over 350. As a result, many callers were put on hold for up to an hour. Computer records indicate that up to 200 callers per day hang up before any person answers. For those callers who get through (usually mandated reporters with professional competence), an increasing number are not referred for further or in-person investigation due to similar caseloads at the next level. The *Times* contended that the rate of declining further investigations increased from 4% in 1989 to 24% in the first half of 1997. When in-person investigations are ordered, the caseloads are too high to allow anything but cursory checks of allegations. The *Times*’ report contended that a lack of resources *vis-a-vis* burgeoning caseloads¹⁰¹ has led to demoralization within the Department, and the loss of confidence in the local agency by mandated reporters who are relied upon as the critical early warning system to protect children.¹⁰² Although some additional resources have been committed to the system over the past several years, the cited problems remain a legitimate concern.

Adding to the chorus was a Los Angeles County Grand Jury report released publicly in July 2000. The Grand Jury found that poor training, mismanagement, and large caseloads created a “broken” system within the county. The Report noted that typical New York City Child Protection social workers have caseloads of twelve cases each, while Los Angeles has 45–50 cases.¹⁰³

Presiding Juvenile Court judges Terry Friedman and Michael Nash have implemented a number of

reforms since 2000, including a policy of openness about court operations and support for state legislation to reduce juvenile court confidentiality. They expanded county-wide family-group decisionmaking to help families in crisis avoid dependency court, and worked hard to increase adoptions. However, underlying problems beyond the powers of these skilled jurists remain to perplex the state's largest jurisdiction, which includes 37% of the state's foster children. Judge Friedman has identified some of the underlying problems in public statements—consistent with the critique of many child advocates, including: (1) a shortage of qualified family foster care providers; (2) excessive caseloads for social workers; and (3) reduced discretion to place some children with relatives because of new federal law requiring them to meet formal licensing standards (see discussion below of each of these problem areas).¹⁰⁴

In 2001, seven children died in Los Angeles County foster care placement, a record level. The limited number of foster care providers reduces both quality and choice for the child welfare system. Tort cases brought against foster care providers must be submitted to the County for possible payment without the need for litigation. However, it has been the County's de facto policy to deny every claim as a matter of course.¹⁰⁵

On July 27, 2001, State Controller Kathleen Connell announced fiscal audits were to be ordered of the Los Angeles Department of Children and Family Services. The audit was to determine what percentage of money committed for children reached their intended beneficiaries. She noted a particular concern with the multiple placements of children. She also noted in her announcement of the audit a tremendous number of former foster children who are seeking state assistance (such as mental health needs) that was denied to them while in foster care. "In some cases," she is quoted as saying, "the youth are seeking help for injuries they received while in foster care."¹⁰⁶

In December 2003, the Los Angeles Daily News conducted a study of foster care mistreatment and deaths in Los Angeles County. The study notes that in 2001 in the U.S., 1.5% of the children who died of abuse and neglect were in foster care, but in Los Angeles 14% of the children so dying were in foster care, with the percentage from 1991 to 2001 averaging 4.2%. The authors write: "Since 1991, the county Coroner's Office has refereed more than 2,300 child deaths to the county's 'child death review team'—and more than 660 of those dead children were involved in the child protective system, including nearly 160 who were homicide victims." The report noted that "despite spending more than \$36 million on foster care lawsuit settlements, judgements, and legal expenses since 1990, DCF has disciplined less than a third of the social workers responsible for the lawsuits...(some of which involved allegations of social worker negligence)." The study found: "in the various facilities that make up the county's foster care system, between 6% and 28% of the children are abused and neglected... In the general population, only 1 percent of children suffer such mistreatment."¹⁰⁷ The paper's allegations stimulated legislative hearings in March 2004 chaired by Assemblyman Mervyn Dymally. Although child advocates concede that the paper has emphasized the most shocking statistics, and perhaps leaves an exaggerated impression, its conclusion of unacceptable system failure has substantial evidentiary support. Even more convincing than the Daily News series was the cumulative force of ten years of individual profiles of foster care deaths researched by respected journalist Cheryl Romo for the *Los Angeles Daily Journal*.

2. Excessive Caseloads

Journalistic reports of child welfare problems, particularly in Los Angeles County, led to an examination of the caseloads extant for hot line operators, child protective service social workers, and related personnel handling child abuse cases. Some cases of death and serious injury from the system's failure fueled a \$68.4 million addition to the 1998–99 budget (\$40 million from the general fund) to lower caseloads; this funding was continued in 1999–2000. Further, 1998 legislation (SB 2030) required the Department of Social Services to contract with an independent entity to study and report on caseload levels, and determine optimum or maximum caseload standards.¹⁰⁸

In April 2000, DSS released the report mandated by this statute. Among other things, the report compared the current workload standard for child welfare service (CWS) workers with the actual current measured workload time, and with the composite minimum recommended standard time and the

composite optimum recommended standard time. In Table 8-D below, the first number in each cell is the average number of hours per month per case; the number below that (in parenthesis) is the number of cases of that type that one worker can carry. “Current workload standards” are the values that have been used since 1984 for budget allocations. “Measured workload time” is derived from a two-week workload study. “Composite minimum” and “composite optimum” recommended standard time reflect the results from the review of the laws, policies, standard-setting focus groups, and outcome expectations.

CWS Basic Program Area	Current Workload Standard	Measured Workload Time	Composite Minimum Recommended Standard Time	Composite Optimum Recommended Standard Time
Screening/Hotline/Intake Caseload per worker	0.36 (322.50)	0.78 (148.85)	1.00 (116.10)	1.69 (68.70)
Emergency Response Caseload per worker	7.35 (15.80)	7.19 (16.15)	8.91 (13.03)	11.75 (9.88)
Family Maintenance Caseload per worker	3.32 (34.97)	3.97 (29.24)	8.19 (14.18)	11.44 (10.15)
Family Reunification Caseload per worker	4.30 (27.00)	4.97 (23.36)	7.45 (15.58)	9.72 (11.94)
Permanent Placement Caseload per worker	2.15 (54.00)	2.37 (48.99)	4.90 (23.69)	7.07 (16.42)

Source: Department of Social Services, *SB 2030 Child Welfare Services Caseload Study, Final Report* (Sacramento, CA: April 2000) at iii.

TABLE 8-D. Comparison of CWS Time Per Case Standards, Hours Per Case Per Month, and Cases Per Worker

The 2002–03 budget responded to this problem with an allocation of an additional \$30.4 million in funds beyond then current year levels to “maintain higher social worker staffing levels.” The increase adds to the first increment for such caseload reduction provided in the 2001–02 budget of \$100 million. However, the financial circumstances now facing county governments (see Chapter 1) compel cuts rather than additions to child welfare staffs. If the 2003–04 budget recommendation of a 20% reduction in all county administrative funding relevant to social services had been implemented, it would require lay-off of 221 foster care workers, 126 local staff working on adoptions, and 420 child welfare service social workers.¹⁰⁹ Caseloads will not decrease. These projected cuts would save \$91.9 million in general fund obligation and with pay increases over two years, will effectively cancel the caseload reductions that the study found was necessary for adequate child protection. The reductions occurring locally in 2003–04 did not reach this level of staff lay-offs. However, hiring is frozen in many jurisdictions and staffs are declining from attrition. Meanwhile, the budgets facing counties in 2004–05 and at least to 2007–08 promise deeper reductions and the likely re-inflation of caseloads.

3. Foster Children and Records

Recent studies underline the continuing problems of abused children moved into foster care. As a part of the “foster care drift” pattern, they often move between foster families or group homes. With every move comes uncertainty about their prior medical history. The advent of managed care may exacerbate the problem given the need to change managed care organizations as a result of some of the moves, and the difficulty in securing timely disenrollment from health plans which make monthly income based on enrollments. A new Medi-Cal card cannot be issued until disenrollment occurs, and the red tape and difficulty can be a major impediment to needed preventive care (see discussion in Chapter 4). “Medical passports” (updated medical information about foster children under care) are used in some jurisdictions, but are still not the rule in foster care transfers.

Related to this problem are common reports by social workers, teachers, schools, and foster care providers concerning the lack of necessary information about foster care children in general. The confidentiality of the dependency court system and other obstacles commonly deprive those who care for or teach foster care children of information about their histories or special needs. That information is often important in the sensitive and effective education and care of these children.

4. Non-Public School (NPS) Education Failure

Serious questions have arisen since 2001 concerning the educational efficacy of children removed from the public school system and relegated to a “non-public school” (NPS) option. For example, group foster care homes may collect over \$20,000 per child per year to provide on-site education—in addition to the monies allocated for foster care supervision. Their success in providing such education is questioned by many child advocates, including those who work with foster children in group home settings.

The foster care population includes a disproportionate population of special needs and educationally deprived children. Yet, a national survey revealed that 70% of foster children plan on attending college and 19% plan to go on to post-graduate higher education.¹¹⁰ Although half try to enter a community college, few complete even these abbreviated studies or earn a certificate or degree or transfer to a four-year college.¹¹¹ Only 3% of emancipating foster youth in California go on to earn a four-year college degree.¹¹²

Exacerbating the higher education failure for the foster care population in California and nationally is the failure to complete high school. Nationally, 50% of foster care youth are held back in school, and one survey found that 46% of post-emancipation youth from 20–22 years of age had not completed high school.¹¹³ The lack of higher education, or even a high school diploma and reasonable language and math skills will condemn many in this population to permanent economic dependency given the declining factory and other domestic jobs involving manual labor.

The problem is exacerbated by the mix of relevant financial incentives. For example, the \$20,000 or more payable to group homes for education does not transfer to a school district that may offer mainstream and superior opportunity. Such a block discourages school districts from seeking their attendance, since the district receives one-third of that amount per pupil and may not be anxious to admit those who may incur higher than average educational cost. That mainstream education by professional, certified teachers, including the varied science and language programs available in the public school system, may be critical for educational success. Similarly, college placement AP and other courses necessary for UC or other college admission may similarly require an educational institution with enough economy of scale size to offer such diversity. Finally, the socialization skills needed for success are less likely to be learned in a group home setting.

In addition, there is the related difficulty of identifying a “surrogate parent” for foster children placed in group homes. Where a family foster care placement exists, the foster parent will be designated as a “surrogate parent,” allowing authorization of public benefits and other applications for the child. Of special importance is the fact that many foster care children qualify for special education services under the federal IDEA statute (see Chapters 5 and 7 discussion). In order to seek such status, someone must assure screening, and then must negotiate the Individual Education Plan (IEP) required for the child. Under current arrangement, these group home children often have no designated “surrogate parent.” Of special concern, the school district may name the “surrogate parent” for special education purposes under current law. The conflict of interest between the district, which may wish to avoid special education expense, and the surrogate parent obligated to represent the interests of the child, is self-evident. SB 1677 (Alpert) (Chapter 785, Statutes of 2002) sets out the surrogate parent designation and allows the court to appoint an independent person (or allow counsel for the child to serve this role on a default basis).

There is little check on the efficacy of foster care NPS education since it is unclear whether these vulnerable children will be subject to the phalanx of “accountability” measures applicable to public schools (see Chapter 7 discussion). Some of the known problems from non-public school education (particularly group home arranged) were addressed in important 2003 legislation discussed below (AB 490, Steinberg). Further, legislation proposed in 2004 may settle the confusion over what standards apply to NPS education.

5. Invisible Children in Trouble

Several populations are in trouble and may not be detected through the mandated reporter system relied upon. The four of greatest concern are (1) those children of TANF families no longer receiving assistance or subject to penalties; (2) the children of the working poor lacking child care help; (3) the children of incarcerated parents, and (4) recent immigrant children. The first group is discussed below and in Chapter 2, and the second is discussed in Chapter 6. Of particular concern are children under the age of five in both of these groups. Such children are not normally as visible to mandated reporters as are school-age children. The data suggest that an increasing number of children are lacking basic sustenance, even as TANF rolls decline. But many families have left TANF rolls for lower or no income, some out of immigration-based fears notwithstanding the qualification of their children for safety net help. A larger number of children are now below 50% of the poverty line, a level associated with homelessness and serious nutritional shortfall. Although shelters are at overcapacity, the child neglect authorities are not picking up a substantial proportion of these children.

The second group listed above, the working poor unable to afford licensed child care, lack nearby child care spaces, and often leave their children in questionable settings, with friends, marginal relatives, or young siblings. As discussed in Chapter 6, California has one of the highest rates in the nation of latchkey and other deficient placements for these children. They also are not being reliably picked up by child protective service authorities, are not monitored, and CalWORKs liberally allows placements in unscreened, unqualified settings to facilitate the compelled employment of parents.

The third group may be the most ignored. There is no systematic review of the fate of children whose parents are incarcerated. According to one calculation, 856,000 California children have one or both parents in the criminal justice system. They include 20,000 children of incarcerated women, 80% of whom are parents, and 75% of whom retain custody of their children, and few of whom can rely on the biological father.¹¹⁴ Where are these children? What we know about them is that they are statistically five times more likely than other children to end up incarcerated themselves.¹¹⁵ No agency takes responsibility to track, review, and provide for their well-being. One source noted acerbically that “California tracks vital statistics of prisoners, such as the individual’s height, weight, gender, distinguishing marks...laws protect us from felons voting. Yet no law or protocol exists to track whether an individual who is arrested leaves a minor child alone, in an unsafe setting. The California Research Bureau finds that ‘California does not request or keep family information about arrested or convicted persons.’”¹¹⁶

The final group—immigrant children—is of special concern to California, the arrival state for almost one-half of new immigrants in the nation. Nearly 5,000 unaccompanied children are detained by INS nationally each year. As many as 80% of these children appear in federal court without an attorney or other relevant adult protection (e.g., guardian ad litem). Federal law does not allow for counsel for these children at public expense. In other words, a person accused of a crime, or a parent whose parental rights are at issue has a constitutional right to counsel, but a child alone in this country who has violated no law may be detained (and many are so detained) for many months, without appointed counsel.¹¹⁷

6. The Mix of Economic Incentives: Preservation vs. Foster Care vs. Adoption

The mix of child protection incentives operating on local governments is complex. As noted above, foster care placement involves unavoidable expense that may lead the state to prefer “family preservation” as an alternative, even where high recidivism indicates failure and child harm. On the other hand, substantial federal monies are triggered by removal into dependency court jurisdiction—and may not be available for in-home preservation (e.g., AFDC-FC money). California currently has a waiver allowing some federal funds for family preservation (usually referred to as “wraparound services”), but these tend to be episodic or focus on special needs children. Federal authority to grant or continue this waiver will expire in April 2004 unless affirmatively extended.¹¹⁸

Where children are removed from their parent(s) and placed in foster care, the federal monies forthcoming must be matched by the state. Certainly in the long-term, the economic consequences of foster care failure (e.g., lack of employment, dependency, criminal activity) favor prevention and intervention that work to create

successful adults. But regrettably, the state's calculation of economic incentive may often be focused on the extreme short term, the current and next several fiscal years. Looking at incentives as they impact this calculation yields the following priority ordering for the budget-oriented state official:

(1) Do nothing, with impliedly lower costs, except for extreme cases of civil suit assessment where extraordinary injury occurs that must involve the breach of a statutorily imposed "affirmative duty." And even this assessment is borne by the county, not the state (see discussion of the *Terrell R.* case and of AB 1151 below).

(2) Foster care removal and assignment to a relative at no cost (e.g., should the Bush Administration's pending proposal to eliminate grandparent foster care payment eligibility win enactment during 2004).

(3) Provide family preservation services in the home to the extent federal funds are available for funding or for substantial match.

(4) Provide in-home preventive services to families where a profile indicates strongly possible abuse/neglect incidence.

(5) Remove into foster care for quick adoption and limited further financial obligation for the state.

(6) Remove into family foster care or to a kin-care provider entitled to foster care payments.

(7) Remove into foster care and place with a family foster care agency.

(8) Remove into foster care and place with a group home.

(9) Number 8, except also pay the group home to provide non-public school education.

The evidence of success and failure, and existing incentives, lead many child advocates to favor greater priority and resources for a different mix of responses, including: (1) reproductive responsibility to lessen the large number of unwed and unintended births that are disproportionately represented among abused children; (2) parenting education in school, where it may be provided economically, reaching males as well as females; (3) strong and individualized family preservation intervention where abuse has occurred; (4) where the type of abuse is a high predictor of parental unfitness (e.g., as meth amphetamine addiction indicates)—a quick removal and intensive effort to place such children in adoptive homes with continuing substantial financial support—especially where such children have continuing medical needs; and (5) reversal of the current strong "secrecy" presumption for foster care children and dependency court proceedings—a secrecy that has disserved them politically and inhibited political support for the four options listed above.

Human circumstances vary widely, and an overly "bright line" relegation of children removes the refinement needed to prevent injustice and pre-ordained failure. The state must respond in more ways than the five priorities commended above, each of which properly has its own exceptions and limitations. But child advocates argue that the current system of child protection clearly lacks a real prevention element, particularly at the reproductive and basic parenting education levels, lacks investment in family preservation, lacks an adequate supply of high-quality family foster care providers that are critical to adoptions, and lacks adoption success. Instead, the state pretends it has no role to play until after children appear and are abused, ignores many of those so reported to it, and takes a large number of those it removes and victimizes them in a system of impersonal foster care drift, undereducation, and abandonment after emancipation. All of the above is facilitated by system secrecy.

H. Recent Federal Legislation

As discussed above, most of the federal funding for child welfare/foster care comes through Title IV-E of the Social Security Act, including the IV-E foster care program paying providers to care for kids,

administrative costs, and training for staff and foster parents. Title IV-E also includes “adoption assistance” funds under a separate account to provide on-going financial and medical assistance for adopted children (where the homes they were taken from were eligible for AFDC—now TANF—assistance or where the children are SSI eligible). These restrictions arbitrarily confine that important adoption assistance funds to the adoptive parents of children with special needs under SSI criteria (see Chapter 5 discussion of the constriction of child eligibility), or where their former parents were impoverished—a criterion irrelevant to the needs of involved children.

Reauthorization of existing legislation and appropriations enacted from 2000 through proposed 2005 are discussed under Section III below. However, four substantial new statutes have been enacted over the past seven years of particular relevance to child welfare accounts:

1. The Federal Adoption and Safe Families Act of 1997 (Promoting Safe and Stable Families)

The Small Business Job Protection Act of 1996 provided a \$5,000 tax credit to families adopting a child, and \$6,000 where the child has special needs—a credit still in force. However, the amount of the benefit and lack of aggressive marketing to prospective adoptive parents in general limited its effect. Recognizing the continuing need for financial support for adoption of foster care children, the Congress enacted H.R. 327 in 1997 which supplanted prior House and Senate initiatives to stimulate adoptions and further protect children.¹¹⁹ The new statute reauthorized the pre-existing Family Preservation and Support Services Act at \$275 million for fiscal year 1999, \$295 million for 2000, and \$305 million for 2001. It has since been renamed “Promoting Safe and Stable Families,” and was budgeted for 2002 at \$305 million mandatory and \$70 million discretionary for 2002, and was increased slightly to \$405 million in total for fiscal 2003 and 2004, with an administration increase for its families and faith-based initiative, as discussed in Section III below. The reauthorization amended the prior Act by expanding the already required “state plan” to include “community-based” support services, *time-limited* family reunification services, and adoption promotion and support services. The Act was amended to require assurances that “safety of children” is the paramount concern in state administration.

These changes were driven by a number of concerns, including the following:

- publicized cases of children reunified with parents who subsequently murder those children;
- the growing evidence of harm to children subject to the then 18-month period of waiting while “reunification” efforts proceed;
- a large percentage of children waiting the full 18 months even where parents showed little interest in reunification;
- use of procedural artifices to commonly extend the then 18-month period to two years and beyond; and
- a “permanency plan” after conclusion of the 18-month period where children were not reunified, and which did not involve adoption and stability but continued foster care drift—often with little further court monitoring.

The new statute made the following changes to address those concerns:

- “Reasonable efforts” to reunify are guided by “the child’s health and safety” as the paramount concern, and 12 months instead of 18 months is allowed in the normal course to make the disposition decision, with even shorter time spans allowed under some circumstances.
- “Reasonable efforts” may not be required where there is abandonment, chronic abuse,

- torture, sexual abuse, the parent has seriously injured a child or sibling, or parental rights to a sibling have been terminated. The first two elements on this list are both new and potentially applicable to large numbers of children in the juvenile court dependency system.
- Where the court has determined that no reasonable efforts are required, a permanency hearing is to be held within 30 days.
 - Permanency planning and reasonable efforts to reunify with parents can proceed *concurrently*, to enable preparation for a permanent alternative (such as adoption) if reunification is denied.
 - The “disposition hearing” is replaced by a “permanency hearing.” The previous terminology appeared to sanction a continued “holding pattern” status for affected children. Permanency options include return to the parent(s), termination of parental rights and placement for adoption, referral for legal guardianship, or placement in another planned living arrangement.
 - A petition for termination of parental rights must be filed for foster children who have been in state custody for 15 out of the most recent 22 months, and for all children for whom reasonable efforts to reunify are not required. However, exceptions are allowed where children are placed with a relative of a parent, where services have not been completed to allow safe return of a child (and that is the permanency plan), or where there is a compelling reason why it would not be in the best interests of the child to terminate parental rights.
 - Foster parents, pre-adoptive parents, or relatives providing care have a right to notice and opportunity to be heard in any review or hearing about a child, but do not have “party” status.
 - States may receive an “adoption incentive payment” of \$4,000 times the number of increased foster child adoptions (above a base period average from 1995 through 1997); the money must be used for child welfare services. An amount of up to \$20 million each year from 1999 through 2003 is authorized (not appropriated) for this purpose.
 - To receive incentive payments, a state must provide health insurance coverage to any child with special needs who is subject to an adoption assistance agreement.

2. The Federal Foster Care Independence Act of 1999¹²⁰

In 1999, the Congress enacted the Foster Care Independence Act, a statute focusing on youths ages 18–21 who age out of the foster care program, but are often not given the kind of support youths receive from their families, and are often left without resources, prospects, or income for basic living expenses. Federal funding for “independent living” programs doubled with the legislation, from \$70 million to \$140 million and requires only a 20% state match. The funds can be used to help youths transition to independence by financing education, training in daily living skills, substance abuse and pregnancy prevention, and health services. Those in foster care as of their 16th birthday can use these funds even if adopted before their 18th birthday. States can use up to 30% of the funds for supervised room and board for youths ages 18–21 years of age. The measure gives states some latitude to provide funds for children prior to emancipation, in order to prepare for it.

The law increases from \$1,000 to \$10,000 the amount of assets allowable for children in foster care while still receiving foster care assistance. Hence, where a youth has managed to save \$3,000 for further education, his/her foster care parents are not precluded from receiving payments and continuing to provide room and board.

The law allows states to provide Medicaid (Medi-Cal in California) to emancipated foster youth up to age 21, and increases funding for adoption assistance payments to states. The statute also provides

that youth may participate in planning their transition to independence.

3. Three Narrow Federal Measures

■ On February 1, 2000, the House of Representatives passed H.R. 764, the Child Abuse Prevention and Enforcement Act. The law (1) allows state grants under the Crime Identification Technology Act of 1998 to be used to deliver timely and complete criminal history information to child welfare agencies (*e.g.*, to guide foster care placements); (2) allows state law enforcement (“Byrne”) grants to enforce child abuse laws and to prevent child abuse, including cooperation between law enforcement and the media to apprehend serious criminal abusing children; and (3) provides additional money (doubling from \$10 million to \$20 million) for child abuse victims under the Victims of Crime Act of 1984.

Beyond Social Security Act Title IV-E money mentioned above, Title IV-B (subpart 1), provides federal funds to help state agencies improve their child welfare services with the goal of keeping families together. State services include preventive intervention, so that, if possible, children will not have to be removed from their homes; services to develop alternative placements like foster care or adoption if children cannot remain at home; and reunification so that children can return home if at all possible.

Following Title IV-B subpart 1, is subpart 2 (“Promoting Safe and Stable Families”), enacted in 1997 and discussed above. This program provides funds to states to provide family support, family preservation, time-limited family reunification services, and services to promote and support adoptions. The 2000 Act above augments this family preservation/adoption effort through a Court Improvement Program. That program provides grants to help state courts improve foster care and adoption handling. After an initial assessment of court practices and policies, states use these funds for system improvements (*e.g.*, mediation, joint agency-court training, automated docketing and case tracking, linked agency-court data systems, one judge / one family models, time-specific docketing, formalized relationships with the child welfare agency, and legislative change).

■ The Strengthening Abuse and Neglect Courts Act (SANCA), S. 2272 (P.L. 106-314) authorizes \$10 million over five years for grants to state and local courts to automate data collection and tracking of child abuse proceedings. It also authorizes another \$10 million over the next two years to reduce backlogs in those cases. And it authorizes \$5 million over the next two years to expand the Court Appointed Special Advocates (CASA) program in underserved areas; CASA volunteers help the court monitor the children subject to dependency court jurisdiction. However, note that a federal statute which “authorizes” an appropriation does not assure that funds will be part of the budget and expended. And the amounts here at issue are extremely marginal in relation to the problems they respectively address on the national scale.

■ The Intercountry Adoption Act, H.R. 2909 (P.L. 106-279) implements the International Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The international treaty was a part of the Hague Convention from 1993, only now being implemented in the United States. The statute designates the State Department as our “central authority,” provides for accreditation of those providing international adoption services, provides for recognition of adoptions pursuant to the Convention, and provides for penalties for adoption related fraud.

4. Bush Administration Marriage/Unwed Birth Prevention/Faith Based Initiatives

In 2000, the Bush administration at least nominally sponsored a Younger Americans Act (S. 3085, Jeffords, H.R. 5250, Miller) to create a “comprehensive national policy for youth.” The purpose was to ensure that all youth have access to ongoing healthy relationships with adults, access to services to improve health, opportunities to acquire marketable skills, and for civic participation. The Act includes a \$500 million authorization and would increase each year to reach \$2 billion by Fiscal 2005. Approximately 90% of the funds would go to communities for comprehensive youth development activities. Resources would be targeted to high risk youth and would start with high federal percentage of 80% for the first two years, declining to 50% after the fifth year, with local or state sources providing the match. The interesting concept behind the Act is not to respond to a “problem,” but to affirmatively

seek to develop positive preconditions. Existing programs in education do not reach youth outside of school, existing employment programs prepare for a specific job, but not the broader competency needed for employment, and community service programs have limitations. This program is intended as stated to provide a broader range of preventive programs. The measure died in committee and was re-proposed by Congressman Miller through H.R.17 in 2001, only to similarly die due to Republican Congressional opposition.

A series of Bush Administration initiatives regarding marriage and paternal responsibility—including substantial grants to “faith based” organizations—also seek to prevent child abuse. Some of these efforts involve adding elements to existing programs and increasing funding for purposes of encouraging marriage, teaching sexual abstinence to youth, stimulating paternal responsibility and other measures relating to the birth of unwanted children, unwed births and paternal abandonment, societal conditions closely related to child abuse/neglect incidence. Hence, the administration has sponsored “Responsible Choices” to teach abstinence education and has proposed doubling this funding to \$273 million by 2005. Much of this funding is in the form of grants for community-based abstinence education, with \$186 million proposed for 2005 to provide 440 grants to reach children from ages 12–18. A “Responsible Fatherhood and Healthy Marriage Initiative” is now funded at \$25 million and would be doubled for 2005 to \$50 million, financing 75 grants to encourage paternal support.

Child advocates give these initiatives mixed support, with some traditional liberal groups viewing marriage as either an anachronistic lynchpin for such reliance, or expressing concern about interference with adult prerogatives based on religious or overly limited definitions of “family.” Other child advocates acknowledge the strong correlation between unwed births, unintended children, divorce, paternal abandonment, and child abuse and neglect, but are uncertain about the efficacy of grants for abstinence education to accomplish fewer unintended children. Such efforts fund a “social service establishment”—whether public agencies or private groups under contract—without assured outcome measurement discipline. Some of these efforts run counter to overwhelming peer pressures, media, entertainment and cultural messages encouraging early sex and ignoring pregnancy and other consequences. Or, if unwed and unintended pregnancy does occur, it is presented approvingly and without comment on public cost or child disadvantage. The Bush Administration approach is in contrast to the massive “reproductive responsibility” public media campaign, sex education, birth control availability and parenting education options discussed in Chapter 2 above.

5. Keeping Children and Families Safe Act of 2003 / Reauthorization of the Child Abuse Prevention and Treatment Act (CAPTA)

The Child Abuse Prevention and Treatment Act (CAPTA) has long provided modest grants to states for child abuse prevention purposes. Perhaps more important, it includes a floor of performance requirements applicable to state child welfare systems as a condition precedent for receiving those funds. The program was reauthorized by the Keeping Children and Families Safe Act of 2003. The CAPTA state grant program requires states to submit a five-year plan and an assurance that the state is operating a Statewide child abuse and neglect program that includes citizen review panels; expungement of unsubstantiated and false reports of child abuse and neglect; preservation of the confidentiality of reports and records of child abuse and neglect, and limited disclosure to individuals and entities permitted in statute; provision for public disclosure of information and findings about a case of child abuse and neglect that results in a child fatality or near fatality; expedited termination of parental rights (TPR) for abandoned infants, and provisions that make conviction of certain felonies grounds for TPR. In addition, the CAPTA amendments of 2003 added several new eligibility requirements for states, including policies regarding drug-exposed infants; triage for referral of children not at imminent risk of harm to community or preventative services; notice to an individual who is the subject of an investigation about allegations made against them; training for CPS workers on their legal duties and parents' rights; provisions to refer children under age three who are involved in a substantiated case to early intervention services under IDEA Part C; and flexibility for states to determine open court policies in cases of child abuse and neglect.

Community-Based Grants for the Prevention of Child Abuse and Neglect (formerly known as the

Community-Based Family Resource and Support Program and now known administratively as the Community-Based Child Abuse Prevention grants (CBCAP) are provided to states to develop community-based, prevention-focused programs to strengthen families and prevent child abuse and neglect. The program was moved into the CAPTA amendments of the “Keeping Children and Families Safe Act of 2003.” Under this program, federal, state, and private funds are blended and made available to community agencies for child abuse and neglect prevention activities and family support programs. In FY 2003, 56 jurisdictions nationally received grants totaling \$31.5 million.

The Children's Justice Act helps States to develop, establish, and operate programs designed to improve the investigation and prosecution of child abuse and neglect cases, particularly cases of child sexual abuse and exploitation, in a manner which limits additional trauma to the child; and to improve the handling of cases of suspected child abuse or neglect related fatalities. The CAPTA amendments of 2003 authorizes grants from this program to address the handling of cases of children with disabilities and serious health problems who are victims of child abuse and neglect. Funds for this program are allocated from the Department of Justice's Victims of Crime Fund. In FY 2003, \$17 million was available for distribution.

6. Adoption Promotion Act of 2003

The Adoption Promotion Act of 2003 reauthorized the 1997 statute (the Federal Adoptions and Safe Families Act discussed above), extending the federal adoption incentives to 2008. Each additional foster child winning adoption over and above the total from the previous year triggers a federal incentive grant to the states to use for further adoption facilitation. The 2003 reauthorization increases the bonus going to states from \$4,000 to as much as \$8,000 per child for increased adoptions of children nine years or older—recognizing the difficulty of placing older children. The new law authorized \$43 million nationally for these performance based incentives. The Act has been partly credited with an increase in national foster care adoptions from 31,000 in fiscal 1997 to 51,000 in fiscal 2002 (see discussion below regarding diversion of the federal adoption assistance funds to California general fund relief).

7. Pending Federal Legislation in 2004

The Congress entertains numerous bills relevant to child welfare that fail to win enactment. Those currently pending and with dubious or uncertain prospect of passage include:

- The Keeping Families Together Act (S. 1704 (Collins) / H.R. 3243 (Ramstad and Kennedy)) would provide grants so that Seriously Emotionally Disturbed (SED) children do not have to enter the child welfare system (involving parental surrender of rights) in order to obtain mental health services for their children.

- The Child Protective Services Improvement Act (H.R. 1534 (Miller and Cardin)) is an alternative to the foster care block grant proposal of the Bush Administration. Such a block grant alternative would remove AFDC-FC money for foster children as an entitlement. Essentially, the federal jurisdiction would be abandoning insistence that its funds be used for minimal care for children subject to state parental jurisdiction.

- The Adoption Equality Act (S. 862) would promote adoption of children with special needs, and most importantly, delink adoption assistance from the eligibility of abusive families for AFDC (now TANF). As discussed above, basing receipt of adoption assistance on the abusive parent's qualification for welfare benefits has no rational basis relevant to the children involved.

- The Unaccompanied Child Alien Protection Act (S. 1129 (Feinstein) / H.R. 3361 (Lofgren)) would provide for the protection of unaccompanied non-citizen children. These children, as discussed above, are subject to serious abuse by immigration authorities, often including treatment similar to serious criminal offenders.

- Staff Training and Standards for Child Welfare Workers and Attorneys. Five separate bills (S. 407

and S. 409 (DeWine and Rockefeller), H.R. 734 and H.R. 1306 (Miller), and H.R. 1378) would provide grants and loan forgiveness to improve the training of child welfare workers, teachers, nurses, attorneys representing abused children, and to improve standards and outcome accountability for those persons.

I. Recent California Child Welfare Legislation

1. Major Enacted California Child Welfare Legislation: 1996 to 2000

a. 1997 Kinship Adoption Statute

Effective since January 1, 1998, the 1997 Kinship Adoption Statute:

- specifies additional circumstances under which reunification services need not be offered, roughly similar to the 1997 federal changes;
- requires the juvenile court to conduct an inquiry into the identity and address of all presumed and alleged fathers, and to notify them of pending proceedings (to prevent allegedly belated claims by fathers to children after adoption is under way or completed);
- removes some barriers to adoption by relatives, allowing relatives to file petitions for adoption, and allows a parent to enter into a voluntary “kinship adoption” agreement to expedite permanency placement; and
- allows a family foster care placement to have more than the maximum six foster care children at one time—if necessary to keep siblings together.¹²¹

b. Kin-GAP Status for Relatives: Guardianship

Further refining the kinship changes of 1997, SB 1901 (McPherson) was enacted in 1998 and amended in 1999¹²² relevant to dependency court appointment of non-parent relatives as legal guardians. The program is called the Kinship Guardianship Assistance Program (Kin-GAP). The court is required to read and consider a specified list of factors considered by the agency supervising the minor and the county adoption agency to gauge the eligibility and commitment of the prospective guardian. Under prior law, once a guardianship was established for such a dependent minor, the court could continue dependency jurisdiction, but under the new law, the court must terminate its jurisdiction absent exceptional circumstances after a period of time in satisfactory guardianship over the child. Thus, the new procedure gives kin guardians the chance to obtain parental control over the child similar to the authority of adoptive parents (there is no supervening court authority).

Equally important, underlying law provides aid to any minor who has been placed in foster care because he or she has been adjudged a dependent child or ward of the juvenile court or because of other specified circumstances. SB 1901 established, as of July 1, 1999, the Kinship Guardianship Assistance Payment program to provide financial assistance for children who are placed in legal guardianship with a relative. The bill directs DSS to establish payment rates, adopt emergency regulations, and administer and apply for any necessary federal waivers to implement the program.

Current benefits under “Kin-GAP” include: (1) 100% of the basic TANF-FC rate schedule, based on the age of the child; and (2) aid beyond the age of 18 continues (as does CalWORKs and TANF-FC) if the minor is in high school, or an equivalent training program full-time and is “reasonably expected” to finish prior to his or her 19th birthday.

To qualify, the minor must have lived with the guardian for at least twelve months; juvenile court jurisdiction must terminate after January 1, 2000; the child’s parent does not reside in the same home; and the minor meets basic CalWORKs eligibility.

On July 10, 2000, former Governor Davis signed AB 2876, a budget trailer bill, which further

improves the program. For example, it makes dependency court jurisdiction termination optional (recognizing that there are circumstances where a child's best interests may make continued jurisdiction preferable, and a guardian may so opt. Further, Kin-GAP children now become eligible for the Independent Living Program at age 16. These children will be allowed to retain cash savings up to \$10,000 including interest, and other technical changes are made to give these children the same options available to foster children generally. As noted above, the Kin-GAP population has tripled from its 1999 start, and the number is now estimated at over 15,000 as of the 2002–03 fiscal year.¹²³

c. Child Welfare Statewide Computer System in Place in 1998

Prior legislation and budget decisions led to the completion of a single statewide automated child welfare computer system in January 1998. Called the "Child Welfare Services Case Management System" (CWS/CMS), the system has problems of timely entry, accurate tracking, and adequate scope. But it is now in place as a vehicle for information sharing allowing more information to "follow the child" through the foster care system. It is intended to track locations, demographic information, and case plan goals for children and their families. It is operated from 294 sites in the state's 58 counties and has 16,000 users, including county caseworkers, adoptions workers, Title IV-E eligibility worker, and state and county administrative, policy and research staff.

d. Audits and Expanded Independent Living Program

SB 933 (Thompson) (Chapter 311, Statutes of 1998) made several significant reforms to California's foster care system, based on the recommendations of a task force assembled by the Joint Legislative Budget Committee. The task force was convened in response to high-profile media criticism of the foster care system in the *Los Angeles Times*, *Sacramento Bee*, and the *Los Angeles Daily Journal*, particularly the state's regulation of group homes and out-of-state placements. This law appropriated \$65.5 million to fund annual audits of group homes, perform background checks on group home employees, improve staff training, expand support services for foster children, expand the Independent Living Program, increase monitoring of foster placements, and other programmatic changes. Another \$50 million was appropriated in this measure to give group home and foster family agency operators a 6% increase in the rates paid by the state.

e. Proper Social Worker Caseloads

SB 2030 (Costa)¹²⁴ required DSS to contract with an independent and qualified entity to conduct a study to determine appropriate caseloads per child welfare social worker and best practices within the child welfare field that will adequately protect children. The bill required DSS to report caseload information in 2000. The Report found excessive caseloads for CPS social workers, and the state then implemented Child Welfare funding increases totaling \$343 million over three years, a 22% increase from 1999 to 2002. However, part of this increase was absorbed by population and inflation increases over the three year period. DSS' July 18, 2002 Statewide Assessment acknowledges that caseload standard deficiencies continue. Moreover, under state and county budgets for 2004–05 caseloads are likely to return to the high levels leading to federal threats of fund cut-off (see discussion of federal/state reports below).

f. Attorneys for Abused Children

SB 2160 (Schiff) (Chapter 450, Statutes of 2000) provided that every child subject to dependency court jurisdiction has a presumed right to independent counsel to represent him/her, unless the court makes specific, detailed findings that such representation is not necessary. Specifically, California Rules of Court, Rule 1438, provides that appointment of counsel for a child is required unless the court finds that the child would not benefit from the appointment of counsel. In order to find that a child would not benefit from the appointment of counsel, the court must find that (1) the child understands the nature of the proceedings; (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and (3) under the circumstances of the case, the child would not gain any benefit by being represented by

counsel. The result of the legislation is likely to be, for the first time, universal representation for children—a right afforded parents of such children in California and all other states.

g. Amnesty for the Surrender of Newborns

SB 1368 (Brulte) (Chapter 824, Statutes of 2000) allows any person having lawful custody of an infant less than 72 hours old to surrender that infant to a public or private hospital ER room (or other designated locations) without suffering liability for child abandonment. The legislation was supported by child advocates across the political spectrum. It is intended to prevent a substantial number of infanticide offenses now occurring.¹²⁵

h. Dependency Court Visitation Orders Survive Jurisdiction Termination

AB 2464 (Kuehl) (Chapter 921, Statutes of 2000) resolves a conundrum plaguing juvenile dependency courts. Theoretically, the court's jurisdiction terminates upon reunification *et al.*, but the court has heard substantial evidence and has entered orders which properly apply *post hoc*. This bill provides that any order made by the juvenile court regarding the custody of, or visitation with, a child who is a dependent of the juvenile court at the time the juvenile court terminates its jurisdiction shall be a final judgment and shall remain in effect after that jurisdiction is terminated. While a seemingly esoteric procedural point, it has momentous practical implications in allowing courts whose first obligation is the protection of children to extend that protection further.

i. Must Report Certain Crimes Against a Child Under 14 Years of Age

Spawned by the well-publicized strangling of a young girl in the bathroom of a Nevada casino, the Legislature enacted a measure to require the reporting to a peace officer any observed lewd act accomplished by force or fear, murder, or rape where the victim is a child under the age of 14. AB 1422 (Torlakson) (Chapter 477, Statutes of 2000) makes it a misdemeanor offense for any person who sees one of the three crimes listed above and does not report it. One inducement for the statute was the fact that the companion of the killer of the Nevada casino victim did not report the offense and suffered no civil or criminal sanction as a result.

j. Immediate Criminal Checks of Foster Care Providers

SB 2161 (Schiff) (Chapter 421, Statutes of 2000) facilitated the timely criminal record checks of persons with whom county authorities place foster children, including relatives of the children. Failure to obtain such timely checks has contributed to molestations and further victimization of foster care children while in the supposed protective custody of the state. The bill gives county welfare departments access to criminal history information in the California Law Enforcement Telecommunications System (CLETS).

k. Partial Expansion of Wraparound Services

AB 2706 (Cuneen) (Chapter 259, Statutes of 2000) expanded the number of children able to participate in the Wraparound Services Pilot Project. This concept allows counties to provide comprehensive services for children without removal from their current homes, rather than place such children in more expensive and impersonal group home settings to obtain those services.

2. Major Enacted California Child Welfare Legislation: 2001–02

a. Transitional Aid

AB 1119 (Migden) (Chapter 639, Statutes of 2001) provides \$18 million for transitional aid to foster children 18–21 years of age who have emancipated out of the system (see discussion above of the reduction of funds for foster children from a promised \$330 million to this limited addition for foster children). The funds are divided between transitional housing help (\$10 million), educational costs (\$6.5 million) and health related coverage (\$1.5 million). The amounts committed will fund from 10% to 15% of anticipated transitional/education costs for the population addressed. As noted below, help to age 23

at a scale to assure higher education opportunity for emancipating foster children was killed in the appropriation's committee "suspense file" without vote.

b. Review of Child Welfare System and Federal Standards Compliance

AB 636 (Steinberg) (Chapter 678, Statutes of 2001) requires a work group for child and family service system review, and the systematic state monitoring of county welfare systems consistent with applicable federal standards, with reviews to be completed by January 2005. The measure is to some extent a preemptive effort by the state to anticipate a federal probe of county child welfare performance (see discussion of investigations below). It is modeled after the federal Child and Family Services Review and uses a peer review process.

c. Non-Cost Legislation

As the budget crisis started to develop in 2001–02, important legislation for foster care children was killed in "suspense files" (discussed below). However, several bills that do not involve appreciable cost were enacted, including the following:

- AB 333 (Wright) (Chapter 675, Statutes of 2001) requires that social worker visits with foster care children include a private conversation with the child. The change is not academic, since foster parents commonly seek to be present while visited by county child protective service workers and such presence may impede accurate information about a child's living situation.
- AB 685 (Wayne) (Chapter 679, Statutes of 2001) requires family foster care homes to report accidents of injury or death to DSS before the close of the next working day, including reports to parents and guardians.
- AB 1261 (Migden) (Chapter 686, Statutes of 2001) conforms state law to amended federal law concerning the independent living program, *i.e.*, it allows a foster child to have \$10,000 in total savings or resources (rather than the previous \$5,000) in order to be eligible for assistance. However, note that if a child is the beneficiary of an insurance policy or other income meant only for him or her, the state claims the right to take such monies to recompense itself for foster care costs. Legislation to allow such children to benefit from such revenue intended for them has thus far failed. Similarly, federal cases and state practice take gifts, bequests, Social Security death benefits, and even substantial earnings—where amounting to more than the now \$10,000 ceiling—from foster care children to recompense the state.
- SB 104 (Scott) (Chapter 688, Statutes of 2001) reduces from 90 days to 30 days the period during which parents can sign a written statement revoking a previous signed consent to the adoption of their child.
- SB 841 (Alpert) (Chapter 694, Statutes of 2001) requires DSS to provide technical help to counties that elect to develop Early Start Emancipation Programs for youth ages 14–15 (see discussion above of more liberal allowance for federal funding from the new federal Foster Care Independence Program—allowing some help down to this age so a child in the foster care system may prepare for emancipation).
- AB 364 (Aroner) (Chapter 635, Statutes of 2001) requires that DSS' Child Welfare Services Stakeholders Group include recommendations and strategies for reducing child welfare social worker caseloads in its next planned report.
- AB 1938 (Aroner) (Chapter 1118, Statutes of 2001) strengthens protection for children who are the subject of guardianships in the Probate or Family Court by placing a greater emphasis on the stability, permanency and best interests of children.

- SB 1505 (Kuehl) (Chapter 354, Statutes of 2001) adds teen dating violence to the issues required to be covered by a statewide training program for county child protective service social workers and other mandated reporters of child abuse.
- SB 1677 (Alpert) (Chapter 785, Statutes of 2001) requires the local educational agency to appoint a surrogate to make educational decisions for a child who has been made a dependent or ward of the court, where the court has specifically limited the right of the parent or guardian to make educational decisions, and the child has no responsible adult to represent them. The bill also states the duties and responsibilities of the appointed surrogate and includes the grounds for termination. Among other things, the bill also requires the Department of Education to develop a module surrogate parent training module and manual to be made available to the local educational agency.
- Perhaps most significant among these non-cost bills is AB 899 (Liu) (Chapter 683, Statutes of 2001), establishing in one place the existing 13 “rights” of foster children in California and adding four new enumerated rights. Social workers must inform children of them. A separate Foster Care Ombudsman’s Office is charged with assuring compliance. That office is available to foster children via a toll free 800 number. These statutory rights are now listed in Welfare and Institutions Code § 16001.9. Grouping them in summary form, they provide for:
 - The right to live in a safe, comfortable home with enough clothes and healthy food, a place to store personal things, an allowance (if in a group home), a phone that the child can use to make confidential calls.
 - The right to be treated with respect, go to religious services of his/her choice, send and get unopened mail, contact people who are not in the foster care system (like friends, church members, teachers), make contact with social workers, attorneys, probation officers CASAs, foster youth advocates and supporters, be told about placement by the social worker or probation officer.
 - Freedom from being locked in a room or building (unless in a community treatment facility), abused physically, sexually, or emotionally, punished by physical injury, and having his/her things looked through without a good and legal reason.
 - The rights to go to court and talk to the judge, see and get a copy of his/her court report and his/her case plan (if over 12 years old), keep court records private, unless the law says otherwise, and be told about any changes in the case plan or placement.
 - Health rights, *i.e.*, to see a doctor, dentist, eye doctor, or talk to a counselor, to refuse to take medicines, vitamins, or herbs (unless a doctor or judge requires it).
 - School rights, *i.e.*, to go to school every day, to go to after-school activities that are appropriate for his/her age and developmental level.
 - Rights to do some things on their own, including maintain his/her own emancipation bank account (unless the case plan forbids it), to learn job skills right for one’s age, to work (unless the law forbids it due to age), manage the money he/she earns (if right for the child’s age, developmental level and a part of the case plan), and go to Independent Living Program classes and activities if old enough.
 - Family rights, such as the right to visit and contact brothers and sisters (unless a judge forbids it), contact parents and other family members (also unless a judge forbids it).
 - Other rights, including the right to tell the judge how he/she feels about his/her respective family, lawyer, and social worker, to tell the judge what he/she wants to

happen in the case, to have his/her own lawyer, to live with a family member if that would be a safe place, and to call the Foster Care Ombudsman Office and/or Community Care Licensing at any time.

And children are promised that no one can scare them, hurt them, or get them into trouble for reporting any violation of these rights.

- Although not legislation, the California Child and Families Commission (the Proposition 10 state commission) voted in November of 2001 to develop a set of “operating instructions”—a collection of eight informational booklets, a resource guide, and six videos, to assist new parents. The statewide project will be funded with a \$20 million grant, and follows the format of an Alameda County pilot project in place since October 2000. The material was compiled by experts at the University of California at Berkeley. About 500,000 of the brightly colored boxes of information will be distributed at hospitals, prenatal clinics, or during home visits.

3. Major 2003 Enacted California Child Welfare Legislation

Several bills of importance to child welfare were enacted in 2003. The two most important were AB 490 (Steinberg) and AB 1151 (Dymally).

a. Non-Public School (NPS) Reforms for Foster Care Children

AB 490 (Steinberg) (Chapter 862, Statutes of 2003) includes several provisions addressing the serious problem of educational shortfall for foster care youth, particularly in Non-Public School (NPS) settings (discussed above):

(1) The law declares that educational stability must be considered as a factor when making out-of-home placements. (Often, children are moved between schools for the convenience of local agencies, losing educational continuity; thus, the law requires that proximity to school and educational stability be considered.)

(2) Educational placements must consider the child’s best interest and must ensure his or her access to the same resources and activities available to all pupils, and that the child be placed in the “least restrictive” educational program.

(3) A removed child has the right to remain in the current school placement for at least the remainder of a pending school year where in his or her best interest, and the proponent of an immediate move has the burden of providing a written explanation establishing such a best interest.

(4) Where a child is moved to a new school jurisdiction, he/she has a right to immediate enrollment.

(5) Every school district must appoint an educational liaison for foster children to facilitate their educational continuity, and must address the enrollment delay and credit transfer problems often attending foster child movement between schools.

(6) Children in foster care are presumptively entitled to be mainstreamed in their public school district unless an IEP (for special needs children) requires other placement, or a person exercising educational decisionmaking for a child determines an alternative educational placement is in the child’s best interest.

(7) Children in emergency homeless shelters may receive educational services.

(8) Where foster children move between schools, transfer of records for proper enrollment is the responsibility of both the county placing agency and the school district and the statute specifies who

must do what within tight timeframes (e.g., the receiving school must contact the previous school to obtain records within two business days of the request for enrollment).

(9) A foster child's grades may not be lowered due to absences caused by placement change, or due to required court hearing attendance.

(10) School districts must award credit for full *or partial* coursework satisfactorily completed while attending another school. The law also clarifies to some extent who can be appointed by the court to make education-related decisions for a foster child. In general, the statute addresses a mix of commonly confronted education problems for foster children.

b. Affirmation of the Duty to Protect: Reversal of *Terrell R.*

AB 1151 (Dymally) (Chapter 847, Statutes of 2003) enacts the Duty to Foster Children Reaffirmation Act, a measure that reverses the puzzling 2002 California court of appeal decision in *County of Los Angeles v. Superior Court, Terrell R., Real Party in Interest*, 102 Cal.App.4th 627 (2002). *Terrell R.* held that virtually all statutory mandates to protect children in foster care placement decisions were "discretionary" with county social workers. As a result of the decision, no financial liability could attach because statutorily agencies have no liability for exercise of "discretion" where they have no "duty" to act. Most importantly, such "discretionary" status (and notwithstanding explicit mandatory language) deprives juvenile courts of basic jurisdiction over the workers supervising the children who are under the *in loco parentis* charge of those courts. The holding applies to the 38 "shall" commands relevant to foster child placement.¹²⁶ (The denial of "mandatory" status and relegation to "discretion" are terms of art that effectively preclude court mandamus authority over the acts covered.¹²⁷) This anomalous decision even declares that "child protection" excludes child sexual abuse in the same referenced code sections. The Westlaw headnote summarizes the five-time repeated conclusion of the court that the child protection statutes at issue "set(s) forth legislative priorities for discretionary foster care placement; [they] create no mandatory duties...[their] purpose is not to prevent sexual abuse."

AB 1151 also provides that where children die while in foster care, their names and dates of death shall be subject to California Public Records Act disclosure. This modest proposal encountered surprising opposition, allegedly because it would infringe on "privacy rights." Since the privacy interests of the deceased were somewhat moot, the opposition argued that siblings or others might be embarrassed by public disclosure of the death of the child. Child advocates argued that such disclosure allowed public scrutiny of a population that is vulnerable and subject to no other extra-agency check, and that the death of a child should dictate examination of a foster child's sibling's placement and condition, rather than the projection of a theoretical privacy concern. And they noted that the information here revealed was nothing more than the information commonly posted on the tombstone of cemeteries worldwide. The measure as enacted was modest in another regard: It does not apply to state DSS, but only allows collection of death information through requests at the county level. The basis for that exclusion involves the state DSS compilation of a list of such deaths, only to discover that a number of the persons entered on it were still alive. Concerned about the public embarrassment from disclosure of an erroneous list of deaths—and its inference as to the current state of foster child oversight—DSS insisted on and won its exclusion from any disclosure requirement.

c. Other 2003 Enactments

- AB 353 (Montanez) (Chapter 28, Statutes of 2003) expands the definition of the term "sibling" to include relationships by affinity through a common legal parent. The bill allows courts to consider a parent's sexual abuse of one of his/her biological or foster children as legal grounds for denying reunification services regarding the parent's other children, regardless of whether those children are biological siblings of the abused child.
- AB 408 (Steinberg) (Chapter 813, Statutes of 2003) makes several changes in dependency law to help achieve permanency for older foster youth. Among other things, the bill requires the court to determine whether a minor of at least ten years was properly notified of his/her

right to attend his/her juvenile court hearing when the minor was not present at that hearing; requires, at various points in the dependency process for children ten or older who are placed in group homes, that the social study, evaluation, or supplemental report used by the court include a discussion of whether the child has relationships with individuals other than the child's siblings that are important to the child; requires the social worker to ask a child who is age ten or older who is placed in a group home to identify any important individuals, consistent with the child's best interest, and permits the social worker to ask a child younger than ten, as appropriate; requires the social worker to make efforts to identify other individuals who are important to the child; and creates new requirements for efforts to be made to maintain such relationships, and for the court to review information on such efforts at various points in the dependency process. All of these provisions will help older children in foster care achieve permanency by helping reduce their reliance on the foster care system.

- AB 458 (Chu) (Chapter 331, Statutes of 2003) establishes the right for foster children and others in the foster care community to be free from discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or human immunodeficiency virus (HIV) status. Additionally, it requires training for administrators, licensing personnel, licensed foster parents, and relative caretakers to include training about these rights.
- SB 182 (Scott) (Chapter 251, Statutes of 2003) allows the adoption of a minor who has been in the custody of a legal guardian for at least two years, if the court finds, after consideration of specified factors, that the minor would benefit from being adopted by his or her legal guardian; provides that the thirty-day waiting period for revocation of consent to adoption continues to run upon revocation of consent by the birth parent or parents; and makes several technical changes to provisions relating to independent adoptions. These provisions are intended to facilitate adoptions.
- SB 591 (Scott) (Chapter 812, Statutes of 2003) would direct child protective service agencies to provide the caregivers of foster children with specific personal information relating to the child and the child's case, within a specified time frame. The required information will help caregivers better know and meet their foster children's needs.

4. California Recent Legislation Vetoed or Killed in “Suspense File” Without Public Vote

a. California’s “Suspense File” Graveyard for Foster Care Legislation

Every bill that may cost more than \$150,000 travels the normal legislative course to policy committee, but then is referred to the appropriations committee of each house prior to final vote on the floor. However, such measures are not voted upon, but are placed in what is termed a “suspense file.” The Governor’s Office of Finance or other representatives then inform the two respective chairs of the Assembly and Senate Appropriations committees as to which measures should be “pulled” from that “suspense status” for vote. Such consultation is particularly feasible where the committee chairs and Governor are from the same party. The procedure allows legislators to introduce important legislation, for it to be debated publicly, voted upon favorably in policy committees and on the floor of either Assembly or Senate, and then fall into the suspense file, from which it never emerges. No legislator is obliged to vote against it, and the Governor escapes having to affirmatively and publicly veto it. Bills are killed without public vote.

During 2000–03, over 40 such measures relevant to abused children were terminated by the “suspense file” method. Given the lack of political influence of the children who would benefit from these measures, they tended to dominate as subject matter within suspense files. Most had received widespread bi-partisan support and had been approved in every public vote conducted. Most had been introduced by authors with ostentatious press releases.

In 2001, the State Assembly Democratic Caucus met and announced that foster care reform would be the “highest priority” of the Legislature, presenting an impressive package of bills and a price tag of \$330 million. As discussed below, the most important bills were then terminated in the suspense files of the appropriations committees, or otherwise modified. The sum for foster care children yielded at session’s end was under \$18 million, which was being deferred into 2002–03 for additional savings.

b. Important Bills Vetoed or Killed: 1999–2003

Three important bills to protect abused children were vetoed by former Governor Davis in 1999. First and foremost, SB 305 (Vasconcellos) would have required basic parenting skills as a part of high school curriculum. The former Governor’s veto message contends that such subject matter should be left to parents, churches, and non-profits. AB 645 (Honda) would have required the juvenile court to ensure that children within their jurisdiction are screened for special education qualification and given these and related services to which they are entitled. The former Governor’s veto message contended that “this bill would create mandated costs for local governments to expand the scope of assessments,...[which] exceed the level of funding provided for these purposes in the Budget Act of 1999.” Finally, AB 607 (Aroner) would have required foster care children to receive mental health assessments and the annual physical examinations required for impoverished children (see EPSDT account in Chapter 4). The former Governor’s veto message similarly cited budget concerns.¹²⁸

Former Governor Davis continued his veto pattern during 2000–02. One legislator remarked that Governor Davis vetoed a substantially greater number of her child-related bills than former Republican Governor Wilson had. Abused children suffered the most serious rejections of the former Davis administration, generally advised by a Department of Social Services that child advocates regard as one of the most child insensitive in the nation. Vetoes by the former Governor of particular concern included:

- AB 1348 (Vasconcellos) was yet another attempt to introduce parenting education more effectively into public curricula. The case for that introduction is implicit from the condition indicator discussion above. The measure would have required the Superintendent of Public Instruction to convene a summit by September 1, 2001 to develop a master plan for parenting education. As with his 1999 veto of another measure (above), the veto message stated that it would involve state intrusion “in a subject which is the rightful domain of families, faith-based entities and non-profit organizations.”
- SB 147 (Alpert) provided that independent foster care adolescents shall be Medi-Cal eligible without income or asset screening (to streamline and facilitate coverage).
- SB 2091 (Ortiz) would have created pilot projects in three counties to provide enhanced services to emancipating foster care youth (with possible roll out of strategies which prove successful).
- AB 2012 (Shelley) would have facilitated school district educational services to foster youth, an area of great concern given some group home assumption of this educational function.
- AB 2392 (Corbett) would have expanded the list of persons who could make educational decisions about foster care children to include foster parents (commonly denied that status to the detriment of involved children). The former Governor’s curious veto rationale was that such inclusion would “infringe on the rights of natural parents.”
- AB 2403 (Steinberg) would have required the California Basic Educational Data System (CBEDS) to include the number of foster children enrolled in education programs maintained by the county superintendents of schools and school districts. Former Governor Davis vetoed this modest measure (simply to count foster children when compiling basic educational data for policy decisions), explaining: “California already accounts for the number of foster children through existing programs in the Department of Social Services and the Department of Education. Mandating this data collection would create a

reimbursable state mandated local program, putting additional pressure on an already severely strained state budget. Now is not the time to fund new programs that may be worthwhile but compete with existing programs for scarce financial resources.”

- AB 2496 (Steinberg) would have revised court and probation procedures to help move juveniles more swiftly from secure juvenile detention facilities to nonsecure facilities, such as foster homes or community care facilities. Among other things, the bill would have required periodic review of any case, where a minor has been detained more than fifteen days to determine if the delay is reasonable, and authorizes a court to order the probation officer to develop and implement an individual placement acceleration plan, as specified, if the court finds that placement is unlikely to occur within five days.

This bill was passed by the Legislature but vetoed by former Governor Davis because “[w]hile this bill has some merit, I am vetoing it because it would impose additional state operations costs on [the Board of Corrections] and the Judicial Council for which they are not budgeted.”

- AB 2651 (Chu) would have declared legislative intent and state policy regarding the rights of youth who are in foster care; expressed the intent of the Legislature that the State Foster Care Ombudsperson address complaints brought by all foster youth, including gay foster youth, regarding their care, placement, and services, and required that the tollfree hotline be available to all youth in foster care, including those who are being physically, sexually, or emotionally abused. The former Governor vetoed the measure because: "The Department of Social Services' (DSS) resources are stretched too thin to ask the Department to take on a new priority outreach task at the same time we are making significant budget reductions and eliminating 7,000 positions in state government."

In addition to these vetoes, the suspense file termination of bills without vote described above led to the demise of many important measures, few of which received a single negative vote in winning approval from initial committees and their house of origin. The following measures were terminated in this fashion, out of the public eye, without public vote:

- SB 949 (Speier) would have increased the supply and quality of family foster care providers. The bill recognized that 80% of adoptions come from such providers. As discussed above, they cost one-seventh the amount publicly spent on group homes, a common alternative. Accordingly, the measure: (1) establishes an office with the assigned task of promoting family foster care supply, with a substantial outreach and media budget; (2) increases compensation for family foster care to attract supply; (3) keys adoption assistance payments to foster care levels to remove financial inducements not to adopt; (4) provides enhanced compensation for providers with special certification (enhanced training, skills). Although the increase in family foster care compensation involves a cost, each such placement saves substantial funds *vis-a-vis* the group home alternative, while increasing personal attention and likelihood of adoption.
- SB 1391 (Schiff), related to SB 949, would have shifted dependency court from a presumed confidential system to a presumed public process while allowing for closure where in the best interests of the child. Many child advocates agree that the shift is important and beneficial to children. While confidentiality may be important in individual cases, its pervasive status hides the over 100,000 children in foster care from attention which can facilitate adoption. That secrecy also hides mistakes and lowers the public visibility of these children, contributing to the intractability of their plight. As with the measure above, the costs associated with this measure are insignificant; nevertheless, it was placed in the “suspense file” and was not removed for public vote.

On April 17, 2001, the Democratic leadership of the Assembly publicly announced a coordinated package of foster care related legislation. They pledged \$330 million in resources to rectify deficiencies

across a spectrum of problem areas, and identified thirteen bills as part of their coordinated high priority program. Although a powerful combine, the final amount was reduced from that publicly announced total to a final appropriation of \$18 million for transitional living expenses. Then the May Revise 2002 announced a savings because of “deferred county implementation of the Supportive Transitional Emancipation Program.”¹²⁹ The 2001–02 legislative session produced virtually nothing for these children. The following two measures were of the greatest importance to emancipating foster youth:

- AB 557 (Aroner), as introduced, would have authorized and stimulated local recruitment of more family foster care providers, recognizing the current supply shortage. The foster care-related language of this measure was subsequently deleted from this measure.
- AB 1330 (Steinberg), as introduced, would have increased rates for family foster care providers, set up a certification system with a compensation augmentation, banned the designation of children as “unadoptable,” and established a state office dedicated to the enhancement of both supply and quality of family foster care providers. The foster care-related language of this measure was subsequently deleted from this measure.

Other measures of substantial benefit for foster children have been similarly terminated through suspense file death during 2002 and 2003. However, following the 2000 and 2001 extinguishment, child advocates and legislators generally ceased the introduction of productive reforms due to anticipated outcome futility. Child advocates argue that the three most critical systemic changes to benefit foster children were not reintroduced during 2003: (1) effective parenting education, (2) increasing the supply and quality of family foster care providers—the source of almost all adoptions and a lower-cost provider (see SB 949 and AB 1330 above), and (3) taking meaningful responsibility for emancipating foster youth and guaranteeing them educational opportunity past the age of 18—as responsible parents do. Regrettably, not one of these three high priority areas for child protection is being addressed in 2004.

5. Pending 2004 Legislation

a. Schwarzenegger Budget Trailer Repeal of 2003 Legislation

The Governor's 2004–05 Budget Bill includes trailer measures to repeal three child-related bills enacted in 2003—purportedly because they involve “costs.” They include AB 408 (Steinberg), AB 1151 (Dymally), and AB 529 (Mullin). As discussed above, the first measure involves consideration of existing child relationships in placement decisions; AB 408 proponents contend that taking such relevant factors into account does not incur an added expense. The third measure involves a minor change in the number of children family day care providers can serve—one that actually saves a small amount of money by allowing a few more homes to serve 8 children (small family day care) or 14 children (large family day care).

Perhaps the most dangerous proposed repeal is of AB 1151 (Dymally). As discussed above, this measure reverses the improvident *Terrell R.* decision, a curious holding that eliminates 38 “shall” legislative commands relevant to foster child placement, and declares them to be “discretionary” (subject to the discretion of local officials). As noted above, such a holding not only removes liability for the violation of these commands by removing their status as a “duty”, but jeopardizes juvenile court jurisdiction to order compliance—jurisdiction that depends upon categorization as a “duty” and not as “discretionary.” The holding further declared the Legislature's intent to exclude “sexual abuse,” including molestation, from the definition of “child protection” relevant to foster child placement.

AB 1151 passed the Legislature by unanimous vote—suggesting a misreading of such intent by the court. In the passage of AB 1151, it encountered opposition from DSS officials who, together with the Department of Finance, sought to kill the measure in suspense on the grounds it would cost several million dollars in state funds—allegedly resulting from Attorney General defense expenses and possible damage awards against the state flowing from liability that *Terrell R.* would otherwise prevent from its substantial grant of effective immunity. Whatever the ethical implications of seeking such immunity, the counties—not the state—bear the relevant liability exposure. The state is categorically not liable, rather

the counties (whose officials make the relevant decisions) bear that risk.¹³⁰ The issue addressed by AB 1151 has never cost the state monies since 1994, and cannot do so as a practical matter. The argument of DSS and DOF was presented to the Legislature’s appropriations committees and rejected as a cost factor based on *Scott* and other caselaw on point. Those same officials sought a veto from the Governor’s office, who reviewed the arguments, rejected the recommendation of his own DSS and DOF officials, and signed the measure.

Following the rejection of this “cost” argument in 2003 by all concerned, its misleading claim of increased state cost is now being invoked a fourth time to justify repeal of the measure. The cost claim is unsupported, and is made without comment on the implications of repeal (and reinstatement of the *Terrell R.* holding) for foster child protection.

Child advocates regret that of the paltry—and non-fiscal—child welfare legislation enacted in 2003, most would be voided by the current gubernatorial administration—and on bases lacking merit.

b. Other 2004 Legislation

A few of the measures introduced in 2004 focusing on abused children have merit and do not involve substantial expense. SB 1316 (Alpert) would separate out foster care child data from the general education information already required to be gathered for the tracking of educational performance. AB 2627 (Steinberg) would change juvenile dependency courts from presumed confidential to presumed public, with relatively easy opportunity for ordered confidentiality and sealing where in the best interests of the child. AB 2661 (Steinberg) would require the DSS to maintain a database of foster homes that have been decertified by an agency to prevent their licensure without knowledge of that record; the measure would require that at least every other child protective service visit to a foster child occur in the placement location so its nature and adequacy can be inspected.

J. Major Litigation: 2001–04

Several thousand trial and appellate child welfare cases were filed or decided in California over the last three years. Most concern the disposition of individual children or the refinement of rights pertaining to narrow issues of law. A small number of cases have important budgetary implications, particularly class actions challenging state underfunding or decisions that essentially compel spending. Not all of these cases take the classic form of appellate pronouncements. Momentous impact can occur from a trial court decision and order—an impact that lasts well beyond its entry. As the civil rights decrees of the 1960s and 1970s indicated, where the court enters a corrective order and retains jurisdiction, its decision may constitute a continuing potential hammer—one triggered by an enforcement motion by plaintiffs at any point in time where compliance has allegedly failed or ceased.

1. Youth Law Center Child Shelter Challenge

On December 18, 2000, the Youth Law Center filed *Warren v. Saenz* in San Francisco superior court,¹³¹ challenging the State Department of Social Services (DSS) oversight of the “receiving” shelters throughout the state where abused children are brought upon removal from their homes. The suit alleges that the state Community Care Licensing Act requires state DSS to license, monitor and regulate any shelter giving 24-hour residential care to abused children. The suit points particularly at the nine shelters run respectively by Los Angeles, San Diego, Santa Clara, Orange, Placer, Humboldt, Kern, San Joaquin, and Sonoma counties. The law requires shelters to conduct background checks and training for staff, to limit the use of physical restraint, and to prevent overcrowding. Theoretically, the violation of statutory minimums should yield state enforcement against the licensee. Accordingly, a petition for writ of ordinary mandamus may lie against a state official who “abuses his discretion” by violating a statute, or by failing to carry out a mandatory duty.

The suit seeks an order against DSS director Rita Saenz to either compel compliance, or to revoke the licenses of non-complying shelters. The detailed allegations in the Center’s pleadings are disturbing. They include the contention that police were called to the Los Angeles main shelter MacLaren Children’s

Center 339 times during the first six months of 2000, approximately twice a day! The allegations concerning crowding contend that the facilities are commonly well above their rated respective capacities. For example, although MacLaren is rated to serve a maximum of 125 children, its average population in the first 6 months of 2000 was 152 and it reached 181 on occasion. Other shelters were similarly overcrowded. Children who have been abused or badly neglected are removed from their homes and end up sleeping on cots, couches, and sleeping bags. The state's initial defense is that the receiving facilities which are the subject of the suit are not covered by the community care licensing statute (*i.e.*, that the state has no duty to assure compliance with the law).¹³²

On April 13, 2001, the Center obtained an order from superior court judge David A. Garcia, rejecting the state's argument, and commanding county run shelters to comply with state law. Failure of any shelter to do so could result in an order directing DSS to close it down. Importantly, the court ruled that the shelters must comply with the same strict licensing requirements imposed on privately run facilities. The order in *Warren v. Saenz* remains in effect and is subject to enforcement actions by plaintiffs where its terms are violated (*see, e.g.*, *Flores* enforcement motion made in 2004 discussed below).

2. Litigation to Require Monthly Visits of Children in Foster Care

In *Alliance for Children's Rights v. Los Angeles County Department of Children and Family Services*, 95 Cal.App.4th 1129 (2002), the Second District Court of Appeal upheld a Los Angeles superior (juvenile) court order that social workers must visit foster children at least once every month. The interpretation of state law interposing that requirement was decided in the context of 7 deaths of foster care children in Los Angeles County during 2001—a record number. The Los Angeles County Board of Supervisors voted in February 2002 to appeal the decision to the Supreme Court, but that Court denied review in May 2002.

3. Enforcement Order Regarding Abuse of Unaccompanied Minors

In *Flores v. Tom Ridge*,¹³³ child advocates filed a motion to enforce an existing settlement order, to be heard in March 2004. The 1997 settlement purported to end a lengthy and serious dispute over government treatment of 5,000 children nationally who are arrested each year for being “unlawfully present” in the United States. The case raises questions relevant to Chapter 9 below, but is properly considered a child welfare issue because most of these children are not delinquents. The plaintiff class contends that the “abuse and neglect” of these children occurs through the offices of the Immigration and Naturalization Service (and some related state agencies). These abuses also involve separation of these children from their parents, relatives or caregivers similar to the invocation of dependency court jurisdiction—but without the due process safeguards or reunification mandate applicable to the latter. The issue is of particular importance to child welfare law in this state given the disproportionate concentration of these children in California.

Bluntly stated, the plaintiffs' case is that the INS has arrested and detained immigrant children and used them as “bait” to secure apprehension of undocumented immigrant parents or relatives. These children are not easily returned to such relatives even where reclaim is attempted. The abuses alleged are shocking and include: (1) classifying detainees as adults based on the “junk science” of dental examinations notwithstanding birth certificates or other evidence of age; (2) automatically deeming detained children “escape risks,” hand cuffing them, confining them to lockdown without cause, strip searching them repeatedly without basis, and consigning them to “secure” facilities where they are mixed with serious law violators; (3) failing to provide education to “locked down” children, or assistance to children with special needs; and (4) failing to inform children about the reasons for their detention or to present them to a magistrate for bail review.

The plaintiffs' now pending motion contends that the Homeland Security Act has changed the jurisdiction of applicable federal agencies, giving important authority to the Department of Health and Human Services and its Office of Refugee Resettlement. That change led plaintiffs to delay its enforcement motion in the hope that the realignment might bring greater compliance. However, the plaintiffs contend that the changes have exacerbated already routine violations of the settlement

agreement purporting to end the complained of practices. Instead, the now fragmented system of authority imposes greater rather than fewer barriers to the release of improperly detained children, or to their proper care while in custody.

4. Foster Care Payments to Relatives

In *State of California Department of Social Services and Enedina Rosales v. Tommy G. Thompson* 321 F.2d 835 (2002), the Ninth Circuit held that if a child lived with a relative during the six months prior to removal, the child would be federally eligible for foster care because only the child's income would be taken into account. Prior law, as interpreted by the Bush Administration and the federal Department of Health and Human Services (DHHS), applied an Aid to Families with Dependent Children (AFDC) means test to parents of such children. That is, AFDC-FC would be payable for care of a child only if the parent were impoverished and eligible for AFDC (under old pre-TANF criteria). The only help relatives caring for such children would be entitled to might be a CalWORKs TANF “child only” grant of about \$350 per month. Under *Rosales*, such families may be eligible for a regular foster care grant closer to the actual costs associated with the child (about \$678 per month).

Child advocates go farther in their condemnation of the anachronistic limitation of foster care monies based on the income of any adult in prior placement. While parents with resources may be assessed foster care costs involving their children prior to termination of their rights, there is no reason to categorically base the support given to a child under state jurisdiction on any factor other than the needs of the child.

Although not as broad a rejection of the federal limitation as favored by child advocates, the ruling applies to at least 18,000 children in California—reflecting the large number of grandparents assuming child custody responsibilities. On February 12, 2004, federal district judge Frank C. Damrell Jr. applied the ruling retroactively to the foster parents denied compensation under the federal misinterpretation of the law. That application does not only impact the federal budget, but the state as well, since AFDC-FC monies are matched 50/50 by the state budget (see discussion of accounts below). The state estimates that it will cost \$10 million in state administrative costs to determine who is eligible for the back payments, and another \$144 million in payments due to foster parents wrongly denied compensation over the past six years. Half of that \$144 million is borne by the federal jurisdiction, but the remaining \$72 million in benefits and \$10 million in administrative costs will be borne by the state and counties, with \$40 million of that \$82 million coming from the state. For 2004–05 and thereafter, the state and counties can anticipate another \$6 million to \$10 million each in continuing obligation to foster care relatives.

As the case title above suggests, the state initially sided with the foster grandparent in the litigation. However, after plaintiffs lost at the trial court level, the state did not pursue the appeal to the Ninth Circuit. The legal aid counsel for the grandparent, assisted by child and elderly advocates, brought and prosecuted the case before the Ninth Circuit Court of Appeals. The state engaged in the extraordinary abandonment of their position on behalf of foster children and their caregivers, instead switching sides to argue against this foster care compensation—presumably based on the higher principle of budgetary inconvenience.

The Bush Administration 2005 budget proposal solves the budgetary problem by categorically denying foster care compensation to relatives—reversing *Rosales* legislatively and going somewhat beyond that line to more broadly limit foster care help in relative placements (see discussion below). Child advocates note that many grandparents live on small, fixed incomes and cannot afford to care for grandchildren from their own limited income. Ironically, such a reduction of public help to this population will provide an additional state motivation to place children with grandparents notwithstanding the best interests of the child given state savings. Child advocates contend that the child's needs and the needs of the foster care provider should be paramount, not the impoverishment of prior providers.

5. Child Abuse Central Index Inclusion Does Not Raise a Constitutional Claim

In *Miller v. State of California Department of Social Services*, 355 F.3d 1172 (9th Cir, 2004) the Ninth Circuit held that entry of one's name on the state's Child Abuse Central Index does not create a constitutional claim. Such a claim requires that the victim not only suffer defamation, but some additional injury (denominated by the court as "stigma-plus"). That additional element is lacking where inclusion in a non-public list does not itself deprive the person of property or liberty. Child advocates have been concerned that efforts during 2002 to the present to require due process hearings could seriously injure a confidential list of names used for investigative and inquiry purposes. The expense and difficulty of conducting due process hearings in order to enter the name of a person accused of child abuse on the list would undermine the kind of pattern detection essential to protecting children. While a single report might not warrant entry after due process hearing, a second, third and fourth report made subsequently by independent reporters could easily pass such muster, but would be precluded should preliminary hearings be required.

The court held that the statute was facially constitutional, and that the *Miller* claim did not create an "as applied" constitutional claim because he suffered no hardship or detriment, and in fact was awarded guardianship of the relevant child after the report had been entered. However, the case does not preclude an "as applied" challenge to such list inclusion where it is, in fact, used to deprive such a person of liberty or property. Child advocates and the Attorney General argue that the law has already been amended in the 1990s to require notice to anyone included in the list as a "substantiated" or as an "unsubstantiated" abuser. The third category of affirmatively "unfounded" implies exclusion rather than inclusion on the list. They also argue that entries are time limited and that any action taken to deny a person a right might then trigger a due process hearing, but that it should not be afforded "prematurely" and in a manner inhibiting maximum information to investigatory agencies.

This decision also held that the Millers' had no visitation rights where the child remained under dependency court jurisdiction, despite the fact that they (a) were the grandparents of the two girls involved, and (b) served as the de facto parents of the children for most of the time since 1994 and were so regarded by the children. Child advocates side with the Millers and against the Ninth Circuit holding on this issue. Here, the court denigrates the standing of "de facto" parents and ignores entirely the issue of the child's right to contact with the persons competently performing as their parents, and who they know and are bonded to as such.

6. Felony Child Endangerment Does Not Require Specific Intent to Injure

In *People v. Valdez*, 27 Cal.4th 778 (2002) the California Supreme Court held that felony child abuse involving indirect infliction of harm (Penal Code Section 273a(a)) requires only criminal negligence, not the purposeful placement of the child in a hazardous situation. This case involves the defendant's live-in boy friend Hiram Lebron, who repeatedly injured 11-month-old Thalia, including sequentially a serious circular burn, a broken arm, a black eye, and other events, including explanations from Hiram that were contradictory. Nevertheless, defendant Eva allowed her child to be cared for without supervision—during which time he shook and beat her to death. Eva was sentenced to four years in state prison. The court of appeal reversed the conviction, contending that Eva must have a specific intent to place her child in a hazardous situation. The Supreme Court reversed, upholding the criminal negligence standard. Child advocates contend that the Supreme Court's standard is an accurate reading of legislative intent, and is fully constitutional. They argue that parents who children depend upon for protection often fail to protect those children, particularly where molestation or beatings occur at the hands of live-in friends and spouses. A standard requiring specific intent to allow harm would inhibit the application of the child endangerment statute in situations often leading to child injury and death. The Supreme Court's decision upholds the constitutionality of society's invocation of criminal sanctions to protect children where a child relies on parental protection and is betrayed through criminal negligence leading to serious injury or death.

7. Right of Abused Children to Counsel in Dependency Court—Who May Also Serve as Guardian Ad Litem

In the case of *In re Charles T.* 102 Cal. App. 4th 869 (2002), the Third District Court of Appeal held

that under section 326 of the federal Child Abuse Prevention and Treatment Act (CAPTA), counties may no longer appoint social workers to act as *guardians ad litem* (GAL) for abused children subject to dependency court jurisdiction, rather, they were entitled to independent representation. Moreover, California has effectively required that those independent representatives be attorneys, with the Judicial Council adoption of rules in 2001 allowing exceptions only in extreme circumstances. The court in *Charles T.* holds that this attorney may also serve as the GAL. The court notes that a contrary holding would require two attorneys representing each child—one serving as counsel and the other as GAL. The functions of each do differ (the former is more obliged to represent the wishes of the child as counsel and the GAL is given more license to advocate his/her own view of the “best interests of the child”). However, the court held that such a theoretical or possible conflict did not require the appointment of persons for both roles. The court noted that a Court Appointed Special Advocate (CASA) volunteer, usually a non-attorney, may satisfy CAPTA and also may meet California law in child representation (in the unusual circumstances where Judicial Counsel rules permit a non-attorney to be selected). Although beyond the range of the issues before the court, nothing prevents the appointment of counsel for a child, and the additional appointment of a CASA (independent) *guardian ad litem* where there is a conflict in the two roles (as when a child vigorously pursues a remedy that is contrary to his/her best interests), or simply because the juvenile court believes that he/she will benefit from CASA assistance.

8. “Second Party” Adoption (Parental) Rights

In *Sharon S. v. Superior Court (Annette F.)* 31 Cal.4th 417 (2003), the California Supreme Court clarified the status of a “second party” adoption under California Family Code section 8617. Such second party adoptions are relevant to child welfare issues since they determine who has parental and likely custodial rights to children in an increasingly common situation: A biological parent has a new “partner” who seeks to adopt his or her step child (or as in the *Sharon S.* situation, the second parent is of the same gender as the biological parent). The case raises a critical issue: When the biological parent consents to the adoption of her child to someone to whom she is not married, must she necessarily “surrender” her own rights to the child?

The Court of Appeal’s decision in *Sharon S.* shocked family court advocates by holding that all independent adoptions (not arranged by DSS) that require consent (where the consentor is not married to him/her) necessarily means the cessation of parental rights. The implication of such a holding would be momentous to the approximately 20,000 children who have been adopted by “second parents” not married to the consenting biological or first parent.¹³⁴ Are these many adoptions still valid? If so, is the biological parent—intending to give consent to *add* a parent effectively subtracting *herself* (or himself) as a legally recognized parent? Even if the statute were to be changed, what are the implications for those 20,000 who believe they have two parents? What are the implications for family or dependency court in terms of custody and child rights to these biological, adoptive and *de facto* parents? Although the problem is relevant to gay couples since they are not legally able to marry, most of the children in this situation have heterosexual parents of each gender who simply have not married.

The California Supreme Court reversed the holding of the Court of Appeal, and held that section 8617 could effectively be waived where the parent sought to add a parent—whether married to him/her or not. If all concerned sought an addition, not a subtraction, section 8617 does not prohibit it. The dissent argues that the decision is written in an overly broad manner and would logically allow parents to add not just one, but two, three, or four new adoptive parents. The dissent of Janice Brown notes the societal benefit from marriage as a criteria for second parent adoption. Some child advocates acknowledge those benefits for children, but argue that a child’s loss of a functioning and possibly competent, loving parent is not the optimum means to stimulate such commitment. Interestingly, the legal discussion does not turn on the homosexuality of the case’s “second parent”—although an unstated subtext. The issue here litigated is broader, raising the issue of “marriage” as a condition precedent to second parent independent adoptions, and the limitation of state recognized parents to “two at most.”

9. *Higgins v. Saenz*, Youth Law Center Suit Over Lax Relative Placements

California’s Youth Law Center filed *Higgins v. Saenz* on October 24, 2002, against DSS. The case

challenges the agency's failure to enforce federal regulations requiring states to license foster homes of relatives that care for youth to ensure that the homes meet health and safety requirements. The suit charged that some children are living in substandard and dangerous conditions because of the state's failure to require counties to fully investigate relative homes and to provide assistance to relatives in meeting licensing requirements. As discussed above, over 40% of California's 117,000 foster youth are living in relative foster care homes.

The same basic complaint underlies a federal DHHS finding of state deficiency that has led to federal imposition of penalties of \$53 million per annum (largely because DSS had not demonstrated that it met the same standards for relative homes as non-relative homes, as required by federal law).

The Youth Law Center, operating with federally-assisted bargaining power, reached a settlement with the state upon filing. The settlement, which will be monitored by the court, requires uniform, statewide standards for foster parents who are related to the children in their custody. It also calls for an audit and requires counties to help unqualified relatives meet the standards, rather than simply not considering the relatives or taking the children away from them. The state will set aside \$1 million per year to help those families.

10. *Belcher-Dixon v. Saenz*: Adoption Delay

Belcher-Dixon v. Saenz challenges the continuing delays in the adoption process for foster children. The Youth Law Center and the law firm of Pillsbury Winthrop LLP filed suit in San Francisco Superior Court on February 11, 2003, charging DSS with failure to ensure that adoptions of foster children are processed in a timely manner. The lawsuit asks the court to order DSS to set and enforce standards for completing adoptions for children in foster care. The case follows the release of a federal audit finding California out of compliance with federal permanency standards for children in foster care. In November, the Los Angeles Auditor-Controller issued a review, which found significant delays in processing adoptions of Los Angeles foster children (see also the state 2002 audit discussed below).

Adoptions are administered county by county, but the suit attempts to use the leveraged influence of the state to compel minimum performance statewide. Interestingly, the suit occurs while the regulatory systems that inspect adoption agencies, group homes and family foster homes (where most foster adoptions arise) have reduced substantially. While licensing fees have been dramatically increased during 2003, inspections and review will be reduced so that only 10% will be visited annually. As discussed in Chapter 6 above, similar fee increases—and inspection reductions—apply to the regulation of child care homes and centers. These reductions stand in contrast to continuing obligations to inspect dog kennels at least annually. The reduction of regulatory oversight will not assist in the reduction of delay for adoption since qualification of family foster care providers will lack the visits and inspections that naturally complement approval for adoptive placement. The case is pending trial.

K. Major Audits/Reports 2000–04

1. DHHS Audit Report on Protections Provided to Children in Foster Care

On December 22, 2000, the federal Department of Health and Human Services (DHHS) released its audit on California's performance in complying with federal minimum standards in the protection of her children in foster care.¹³⁵ This audit focused on the smaller population of foster care children so designated through the delinquency side of juvenile court (e.g., possible juvenile offenses may be involved). Such children may be incorrigible as a result of abuse or neglect and are considered appropriate not for juvenile hall or punishment, but for probation referral to foster care to provide effective adult supervision.

The audit took a sample of 81 cases and found extensive violations of minimum standards. Findings included the following: 76 of the cases requiring periodic reviews did not always have such reviews or they were late or they failed to meet the state's own standards. The audit found that 52 of the cases were required to have a permanency hearing (to determine placement for the child) and 47 of these had

similar deficiencies. The audit also found that in some of the 59 cases where judicial determinations were made they were either “inconsistent with the facts of the case” or “were not in the best interest of the children.”

Consistent with some of the litigation allegations discussed above, the audit found a general lack of oversight by the state’s Department of Social Services. Most alarming was the concluding statement: “We found significant problems in the mandatory foster care protections provided to federally funding foster care children....the State plan requirements for the case review system were, in large part, not met.”¹³⁶

2. DHHS 2002 Audit of California’s Foster Care Performance

A 1999 report (see discussion above) found that the state needed to double its 6,449 child welfare workers to meet minimum legal requirements for caseloads. In addition, another federal General Accounting Office study released in November of 1999 found serious problems with California’s system of providing for the transition of foster care youth into independent adulthood.¹³⁷

Following these and related federal findings, the federal Department of Health and Human Services completed a compliance audit in 2002 and found numerous violations, leading to the imposition of \$54 million in federal penalties. Violations included a failure to properly license the relative placements favored by local officials (partly for financial reasons). Most of these placements did not meet the minimum requirements extant to provide foster care. Counties commonly failed even to engage in background checks of relatives for Mentally Disordered Sex Offender Status, and other basic safeguards. The federal audit noted other failures along the spectrum of foster care performance, including some findings of failure regarding timely completion of foster care and multiple placements also noted in the state’s own self-audit conducted shortly thereafter and discussed below.¹³⁸ In February 2002, DHHS announced its inclusion of Los Angeles County’s system, noting the death of seven children during 2001 while in foster care “protection.”¹³⁹

The DHHS emphasized that it intends to audit not merely process numbers, but gauge outcomes for affected children. Susan Orr, deputy director of the Children’s Bureau of DHHS noted that one quarter of all foster children emancipating from the system nationally become homeless as adults, half do not graduate from high school, and 60% of the girls have a child within four years of emancipation (see discussion of emancipation failures above).¹⁴⁰

3. CDSS July 2002 Statewide Assessment

Aware of the harsh judgment implicit in federal DHHS evaluation of California’s child welfare system, DSS has conducted its own “Statewide Assessment.” That internal review measures state performance in each area of statutory obligation under federal law and compares state outcome data with national averages and minimum federal standards.¹⁴¹ The Assessment is extensive, requiring eighteen months of work and involving 100 persons. Although much of the text defends state compliance and catalogues state and county efforts in some detail, it makes important and candid findings consistent with the federal negative findings. The Assessment acknowledges the continuing delay within dependency court proceedings—notwithstanding federal law dictating a twelve-month presumptive maximum time line. Continuances and delays are common—many traced to delay in social worker report completion, in turn relevant to the continuing problem of excessive caseloads.¹⁴² Consistent with the problem of delay is continuing foster care drift, as children are moved excessively from placement to placement (see discussion above, citing the Assessment). The Assessment concedes: “California’s performance regarding children who re-enter foster care within 12 months (after reunification with those same parents) does not meet the National Standard,” “[h]igh caseworker caseloads appear to impact the ability of child welfare agencies to provide sufficient aftercare (for child protection),” and “[a] typical foster child in California stays longer in care (26 months) than the national average (20 months).”¹⁴³

4. DSS Redesign for Child Welfare Services

In May 2001, DSS released the initial findings of a sixty-member group of “stakeholders”—foster parents, foster agency directors, adoption agencies, and DSS officials, including then-Director Rita Saenz; the group was charged with the task of reviewing the current child welfare system (CWS), which has remained largely unchanged for over twenty years, and make recommendations for its improvement. Among other things, the initial findings call for a retreat from the “punitive philosophy” regarding parental abuse, and a more positive attitude to facilitate reunification. Hence, counties are urged to make drug testing arrangements convenient for parents with addiction problems to remove gratuitous barriers to compliance (such as requiring testing at inconvenient locations and times). The findings also urged a more refined system, adaptable to the individual situations extant, and not attempting to force a standard regime of parental behaviors on all persons. The initial report recognized the problem of social worker caseload excess and the inadequacy of family foster care supply.

In September 2003, DSS released its final report on the CWS redesign. Key features of the redesign include an increased focus on prevention of child abuse and neglect; new intake processes that allow for multi-disciplinary and customized assessment and response; community partnerships that promote neighborhood involvement in caring for at-risk children and share responsibility; better support for foster youth as they transition into adulthood, including a “guaranteed preparation package” at age 18 and a life-long connection with a caring adult; standardized approaches that assure equity and reduce the disproportional representation of African American and Native American children in the CWS system; and workforce training and support with a focus on manageable caseloads.

The refinements sought by the redesign is not realistic given current resources committed to the child protective services, foster care, and adoptions. The Schwarzenegger Administration has not supported reforms likely to have the critical empirical impact: reproductive responsibility (children intended by two adults), parenting education, or increasing family foster care supply and quality. Similarly, neither the Legislature nor the new Governor has advanced support for emancipating foster care youth consistent with the actions of a responsible parent. Nor has the Legislature or Administration undertaken policies to revise dependency court/foster care confidentiality and other barriers to the adoption of children. The only reform likely to be seriously considered by the 2004 Legislature are those which do not involve public monies.

III. MAJOR PROGRAMS AND BUDGETS

State funding for child protection is allocated to five major accounts. Child Welfare Services (CWS) funds the initial response system and associated costs of “family preservation” (leaving the children in the home while providing counseling, parenting education, or other services). Where children are removed, parents normally have twelve months to seek reunification (the return of the child). Child Welfare Services can fund these services as well, which may involve drug testing and substance abuse rehabilitation. And the CWS account can fund the direct costs of care for a child for up to thirty days after removal from a parent’s home, including initial foster care.

While a removed child is under the jurisdiction of the juvenile court, he or she may be ordered into temporary placement with a relative or with a foster care provider. After 30 days, payment for care generally occurs through the Aid to Families with Dependent Children-Foster Care (AFDC-FC) account—the largest account in the child protection area.

Where reunification is denied, a child must be given a “permanent placement” plan, which hopefully leads to adoption, with help from the Adoption Assistance Program (AAP).

The state Office of Child Abuse Prevention (OCAP) promotes prevention programs, including “Healthy Beginnings” and a number of new prevention initiatives.

Finally, juvenile court costs were primarily paid as part of local county budgets until 1998, when state “trial court funding” took effect; the impact of this change is still unclear statewide, but troubling problems for children are developing in some counties, as discussed herein.

A. Federal Funding and State Child Welfare Accounts

All child protection programs in California are heavily dependent upon federal funding. Federal funds for Aid to Families with Dependent Children-Foster Care (AFDC-FC) are available for 50% of the cost of placement for children eligible under federal guidelines, based upon the income of the family of origin. These costs are funded through the Title IV-E Foster Care program. Federal welfare reform has not directly changed AFDC-FC, which is separate from the new TANF system—and remains an entitlement for every child in need.

Child Welfare Services is dependent for over 50% of its total dollars on federal Title IV-B Family Preservation and Support revenues. The rest is made up with state funds and state revenues realigned to counties.

Adoption and adoption assistance spending relies on the federal Title IV-E Adoption Assistance Program for 30% of program revenues.

The Office of Child Abuse Prevention, while the smallest state program, still relies on the federal government for over 20% of its program revenues.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRA) does not directly alter child protection programs. The traditional requirements of the federal Adoption Assistance and Child Welfare Act remain in force. Eligibility, entitlement status, and funding for AFDC-FC, Adoptions Assistance, and Medicaid for foster care and adopted children were substantially maintained as in previous law. A child's eligibility for federal foster care and adoption assistance remains based on the eligibility of the child's family for AFDC—according to the rules in effect on June 1, 1995, rather than on the family's eligibility for the new TANF welfare block grant. (See discussion above of litigation (*Rosales v. Thompson*) expanding eligibility based on the present placement of the child rather than the historical family of removal).

The few foster care provisions in the 1996 PRA required states to consider giving preference to an adult relative over a non-related caregiver when determining a foster care placement for a child, and opened up eligibility for Title IV-E foster care payments to for-profit child care institutions, as well as nonprofit and public institutions. The PRA enhanced funding for states' foster care, adoption, and child welfare tracking systems for one year, and the DHHS Secretary was required to undertake a national random sample study of abused and neglected children.

1. Federal Social Services Block Grant Cuts

Although the PRA does not appreciably change rights or standards, it cuts federal funding contribution substantially. Funds for the Social Services Block Grant, which is used in part for child protection services, were reduced 15% in fiscal year 1997, and were maintained at that reduced level through 2003. Inflation and California child population gain have produced per capita real spending cuts 25%–30% lower by 2003 than was committed in 1996–97. In addition, new demands are placed on the Social Services Block Grant by other provisions of the welfare bill. A state is allowed to use up to 30% of its TANF funds to carry out programs under the Social Services Block Grant and the Child Care and Development Block Grant, provided that not more than one-third of the transferred amount may be used for Title XX child welfare programs.¹⁴⁴ Hence, up to 10% of federal TANF funds may be used for child abuse/neglect spending—an important provision if TANF cut-downs produce substantial foster care increases as children are surrendered or taken from families unable to provide basic sustenance and barred from adequate public help for that purpose.

2. Cross-Cutting Provisions

Although not altering the child welfare system's legal structure, some provisions of the PRA will affect child protection indirectly.

a. Emergency Assistance

Under the PRA, the Emergency Assistance Program is merged into the Temporary Assistance to Needy Families (TANF) Block Grant. States have the option of continuing to spend emergency assistance funds for family support and other child protection activities but are not required to do so. If they do, any assistance provided to a family under the TANF Block Grant, including family support and other crisis services, will count against the family's five-year time limit on assistance under the block grant even if the family is not also receiving cash assistance.¹⁴⁵

b. Supplemental Security Income (SSI) for Children

The PRA's changes to the SSI Program for children with disabilities is affecting children with disabilities and their families. Some children in state care have lost SSI, requiring states to use their own funds for care (see discussion in Chapter 5 above). SSI for some adopted children will also be jeopardized, although Title IV-E adoption assistance payments already being made have continued. Some children no longer eligible for SSI under its more restrictive rules provide a source of new foster children where parents are unable to provide sustenance or to properly care for the child.

c. Immigrant Children

The problem of unlimited arrival detention of unaccompanied child immigrants is discussed above. Beyond this population are immigrant children who may be abused once they find their families. These children (whether documented or not) continue to be eligible for foster care and adoption assistance payments, with the exception of children placed with foster parents who are themselves unqualified immigrants. The children also continue to be eligible for most child welfare and mental health services because such services can be described as child protection services and they are not "means-tested."

Legal immigrants are eligible for Title IV-B and IV-E foster care and adoption assistance programs, emergency Medicaid, the School Lunch Act and other Child Nutrition Act programs, Job Partnership Training Act, Head Start, and other programs. However, assistance is likely to be denied to many of these lawful immigrants or delayed for longer periods due to new rules on the counting of a sponsor's income in determining a family's eligibility (see discussion in Chapter 2).

These changes for legal immigrants are important in light of recent indications that immigrant children are now suffering extraordinary poverty and hunger (see discussion in Chapters 2 and 3). The increase in the number of children living in families unable to provide shelter and food prospectively may increase the number and burden of child welfare services "neglect" cases (see recent research so indicating discussed below).

3. The PRA and CalWORKs: TANF Cut-Downs and Cut-Offs

a. Limited Employment Availability, "Parent's Share" Cut-Downs, and the Child Welfare System Safety Valve

Although the child protection system cannot protect all of the children affected as families are cut from TANF support, those cuts may stimulate more reports of neglect—particularly for older children in school, where their physical condition will be more visible.

Under the "CalWORKs" alternative selected by California for PRA implementation, substantial numbers are now suffering "sanctions" amounting to a reduction of TANF grants of "the parent's share." Some should be sheltered by the rent/utilities voucher provision of CalWORKs (if implemented as written), but the state has interpreted that voucher allowance contrary to its protective intent (see Chapter 2 discussion). Moreover, large numbers of parents will reach their lifetime limit of sixty months of assistance during 2004 and 2005.

Two proposed 2004–05 changes will exacerbate the impact of these sanctions. First, the Bush

Administration proposes requiring that recipients work a minimum of 40 hours per week in order to be considered “working” for purposes of compliance with the PRA. Hence, the large numbers of parents who work 20–35 hours a week (either for child care reasons, health considerations, or job availability) will have each of those months count against the sixty-month lifetime limit. Second, sanctions in California subtract from a base amount already dramatically reduced from previous levels. TANF grants plus food stamps have traditionally provided close to poverty-line sustenance for children. Failure to match cost of living increases in TANF grants through most of the 1990s reduced that basic safety net (TANF grant plus food stamps) to 80% of the poverty line by the middle 1990s, and down to below 65% of the line in 2004. Further, the proposed Schwarzenegger 2004–05 budget refuses the cost-of-living increase and proposes a further cut of 5% for these grants. It is from this reduced platform that sanctions will be assessed. Hence, the benchmark mother with two children will lose “her share” of the TANF grant, reducing those children to family income below one-half of the federal poverty line—a level experts refer to as “extreme poverty.” To further endanger these children, the Schwarzenegger budget would subtract another 25% from the remaining “child’s share” grant, bringing such families into severe economic distress, common homelessness and undernutrition (see discussion and current evidence presented in Chapter 2).

How many of the children suffering sanctions for parental non-compliance with CalWORKs, or reaching their lifetime limit for assistance will be surrendered (or reported) to the child welfare system for foster care placement? Is the system equipped to detect the neglect implicit in extreme poverty, particularly in a state and culture lacking the extended family connections and movement stability that can soften economic distress?

Systematic or wholesale reliance on the child welfare system to protect children subject to these cut-downs and cut-offs is not supported by current system practices, as indicated above. Problems with such reliance where parents do not surrender or abandon their children to the system include the following:

- Parental rights may not be terminated without a finding of “unfitness” of a parent by “clear and convincing evidence.” Parents are entitled to publicly paid counsel to enforce that constitutionally grounded right.
- Few neglect cases have succeeded based on poverty alone, particularly where federal law independently requires the state to use “reasonable efforts” to preserve the family.
- Even severe harm is not likely to be reported for children aged 0–5, who are not yet in school (where their condition might be detected by mandated reporters), but who are at the age where they are especially vulnerable to damage from homelessness and malnutrition.
- Where protection is afforded, it would be through a foster care system which is two to three times more costly per child than is TANF.

The PRA raised the income level of some children through the employment of parents. But a large proportion of those who have left rolls have not obtained alternative employment, and are now in relatively desperate straits. While the economic recovery—perhaps with some help from the PRA’s increased investment in job training and work requirements—has reduced the number of children living below the poverty line somewhat, it has also reduced a larger number from just below the line (e.g., the 70% covered by TANF plus food stamps) to extreme poverty levels (below 50% of the poverty line). At such extreme levels, neglect may become endemic. However, such neglect is not reported to the child welfare system at point of income cut-off, but only after observable harm has occurred and is reported to the intake system.

Reports to county hotlines of even a small percentage of those scheduled for possible further aid reductions would arrive at already stretched facilities. Currently, 20,000 children are ordered by the courts into foster care statewide annually. If only 5% of those newly at risk by 2003–04 warrant removal, the current number would almost triple. The difficulty of protection is exacerbated by the generally low

priority given neglect reports over immediately endangering beatings or molestations.

b. PRA: Drug Offense—Lifetime Assistance Ban

Some of the PRA's specific "bright-line" restrictions will particularly affect child protection agencies. One such rule is a lifetime prohibition from TANF and food stamps to any person convicted of a drug offense. Although children remain eligible, those parents—even those attempting rehabilitation—will be categorically barred. A substantial majority of parents statutorily entitled to "reasonable efforts" to reunify with their children have alcohol and drug abuse problems. The cut-off of parents seems to conflict with the mandate of federal law to reunify families. A more balanced approach would be a "two-strike" rule. On first strike, all aid is in the form of rent and food vouchers to inhibit cash for drugs or alcohol. On the second strike, aid is barred and children are immediately removed for adoption unless minimum sustenance is assured for involved children.

c. PRA: Minors Removed—Assistance Terminates

The second PRA restriction with a child protection impact prohibits aid "where minors are absent from the home." While parents should not receive aid *qua* parents without children, here the state has removed them and is legally committed to assist with reunification. A short period of waiver so support could continue for four or six months if a reunification plan is in place would achieve statutory compliance.

d. Surrender of Children; Transfer to AFDC-FC

One possible overriding result of the PRA may be the voluntary surrender of children to juvenile court jurisdiction, and subsequent placement with relatives by court order, followed by AFDC-FC claims by grandparents, aunts and uncles, etc.—at higher levels of public cost than TANF, and payable even if their income is too high to qualify for TANF. Although irrational, such an end result would be more rational than most of the alternatives offered and may be expected for those children with competent counsel and willing relatives.

e. Desperation Outcomes

PRA cut downs and cut-offs will increase desperation. TANF fraud attempts, parental drug dealing and illicit income may become more prevalent. Prostitution, including child prostitution, will increase to some extent. These reactions will trigger additional caseload for child protective services and the accounts discussed in this chapter. As asked in Chapter 2, can California prove that it used "reasonable efforts" to preserve a family when neglect is the result of the state's withdrawal of assistance unless a parent gets a job—especially where there are fewer jobs than parents who are so required, and the state is unable to locate a job and is unwilling to offer a job itself beyond three years?

In October 2001, the Center for Law and Social Policy released a report summarizing extant research on the impact of the PRA on child maltreatment.¹⁴⁶ The Report concluded as follows: (1) Grant reductions are associated with increased entry into the child welfare system.¹⁴⁷ (2) Grant reductions are associated with lower levels of reunification.¹⁴⁸ (3) An increased proportion of working single mothers is associated with increased rates of neglect.¹⁴⁹ (4) Increased neglect may be greatest among the most disadvantaged families.¹⁵⁰ These conclusions are drawn from national data and are applied to a California economy with high rents and rising utility costs.

B. AFDC-Foster Care Account

The AFDC-Foster Care (AFDC-FC) program provides payments for the out-of-home placement of children who: (1) have been relinquished for purposes of adoption, or whose parents have lost their parental rights by court order; (2) have been removed from the physical custody of their parents or guardians as a result of a voluntary placement agreement or judicial determination that the child is a

dependent (finding of abuse or neglect) or a ward of the court (finding of delinquency); (3) are living in the home of a nonrelated legal guardian; or (4) have been placed in foster care under the federal Indian Child Welfare Act.¹⁵¹

Children eligible for AFDC-FC payments are placed in foster family homes, licensed group homes, and, in some cases, more intensive treatment facilities. Under California Welfare and Institutions Code section 11401, children “shall” receive these payments if eligible. AFDC-FC pays only for the actual placement of a child, and related administrative costs. Spending from other state and federal accounts, including Child Welfare Services, Medi-Cal, and mental health services, provides supplemental services for children in AFDC-FC placement.

Traditionally, there have been three sources of revenue for AFDC-FC: the federal government, the state, and the counties.¹⁵² As noted above, the federal government has paid 50% of the cost of foster care placement for children from a family eligible to receive TANF. These children must be placed in a family foster home or a nonprofit group home. However, abused children come from families at all income levels, and those ineligible for federal cost-sharing nevertheless have a right to placement under state law, although subject to state or county financing.

1. Foster Care Spending Trends

As Table 8-E indicates, the average number of AFDC-FC recipients per month has increased from 56,658 per month in 1989 to 88,066 in 1998–99 and has since contracted to 77,685 currently and 78,652 as projected for 2004–05. Some of the recent decrease derives from the concomitant increase in the state’s Kin-GAP program that provides foster care recompense to relatives willing to assume a more permanent guardianship status (see discussion above). Kin-GAP numbers have increased from 6,285 in 1999–00 to 15,309 in 2002–03. Kin-GAP funding is not included in Table 8-E and began with full statutory implementation in 2000–01 at \$32.7 million, growing to \$84 million in 2002–03, consistent with the enrollment numbers above.

The cost of caring for abused and neglected children has risen more sharply than has the number of children in care plus inflation. This difference is explained in part by the fact that the placement rate of children in more expensive group homes has risen faster than the placement rate in foster (family) homes, and which substantially accounts for the per capital increase of Table 8-E below.¹⁵³

Foster care spending is not trackable from 1989 because of different accounting since the 1995–96 alteration of the previous Aid to Families with Dependent Children (AFDC) to the new Temporary Aid for Needy Families (TANF) system, even though the foster care part of this system remains an entitlement. Family foster care rates did not increase with inflation from 1991 to 1998, almost a thirty percent real spending decline. The modest increases in 1998 and cost of living allowance since has brought compensation back up to 1989 levels as adjusted. However, providers were receiving compensation well below out-of-pocket costs at the start of the 1990s, and increases have not addressed the underlying and continuing shortfall. Moreover, the group homes also included within this account receive foster care payments averaging seven times the per child compensation rate paid to family foster care providers. Using much more professional and aggressive lobbying in Sacramento, they have won more substantial increases over the past decade.

	Budget Year								Estimated	Proposed	Percent Change	
	1989-90	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04			2004-05	'97-'03
Total	N/A	\$1,442,714	\$1,406,904	\$1,405,329	\$1,471,048	\$1,581,588	\$1,650,851	\$1,651,000	\$1,723,000	14.4%	4.4%	
Adjusted Total	N/A	\$1,696,688	\$1,608,532	\$1,569,157	\$1,586,002	\$1,683,286	\$1,702,424	\$1,651,000	\$1,666,946	-2.7%	0.1%	
Avg. recipients/mo	56,658	86,690	88,066	85,813	82,170	76,452	76,670	77,685	78,652	-10.4%	1.2%	
Avg. monthly grant per child [†]	\$932	\$1,166	\$1,180*	\$1,190*	\$1,280*	\$1,465*	\$1,530*	\$1,612*	\$1,694*	38.3%	5.1%	
Adjusted avg. monthly grant per child**	\$1,278	\$1,289	\$1,282	\$1,278	\$1,344	\$1,512	\$1,554	\$1,612	\$1,664	20.6%	3.2%	

Dollar amounts are in \$1,000s except per month figures. Sources: Governor’s Budgets, DSS. Adjusted to 0–19 population and deflator (2003–04=1.00). Adjustments by Children’s Advocacy Institute. * Estimated by Children’s Advocacy Institute. ** Adjusted to deflator only (2003–04=1.00).

[†] Per child grant represents the Family Foster Home/Group Home/Family Foster Agency combined average grant.

TABLE 8-E. Foster Care

The failure to adequately fund family foster care has resulted in fewer placements available, lower quality, and increased numbers of placements in group homes—at substantially higher overall public cost. The end result of underfunding is supply and quality diminution of the persons essential to the future of children most in need and most in trouble, and the persons statistically most likely to adopt abused children. Table 8-E indicates overall modest increases in per child adjusted spending for foster care provision. However, the grouping together of family foster homes and group homes obscures the disproportionate increase in expensive group home placements at over \$5,000 per month per child (see discussion of foster care compensation rates above).

Ironically, the budget has more consistently provided a cost-of-living increase for group homes, while denying it to family foster homes, increasing the financial distortion between these two forms of foster care and discouraging family foster care supply. That pattern is particularly frustrating for child advocates who point out that increasing family foster care rates and supply will put more children in placements at one-fifth or less than the current group home cost, with greater adoption possibility. Hence, over a three or more year period, such increases will accomplish substantial savings. However, the state's fiscal emergency has prompted the Legislature and the Administration's Department of Finance to focus only on immediate year impact.

2. Schwarzenegger 2004–05 Foster Care Proposal: Audit and Accountability

The 2004–05 Budget Summary of the Governor notes the increase in foster care payment expenses since 1998 (reflected in Table 8-E above). The Summary accurately attributes the increase to three factors: "(a) COLAs, (b) rate increases for group homes, (c) increased placements in higher-cost FFAs and Group Homes."¹⁵⁴ The summary announces the Governor's intent to "promote the care of more children in a family home environment and to shorten the period of time children spend in foster care, particularly in more restrictive placements such as group homes. These proposals are expected to save approximately \$20 million (in general fund monies) in 2004–05 and increasing amounts in subsequent years."¹⁵⁵ The Administration proposes to convene a "stakeholders group" to develop reforms and they would include performance-based contracting for the higher cost placements, and other accountability measures. The Legislative Analyst critique notes that the proposed reforms "lack necessary details" to explain how savings will occur and contends that no proposed reform has been proffered that will accomplish the general fund savings assumed by the proposed budget.¹⁵⁶

Most child advocates agree that the Governor's diagnosis has substantial merit. However, the current imbalance against family foster care and in favor of group homes reflects the greater economic power and organization of the latter. The Administration's penchant for "stakeholder" group discussions expect progress from the very parties who have created the apparent problem. Group home representation and advocacy success has given them seven times the per child compensation received by family foster homes. Those benefitting from that imbalance, and who created it, may not agree to an alteration to their economic detriment. It is unclear how the Sacramento pattern of mediating a consensus from among organized interests will achieve the stated ends sought. The problem is exacerbated by the short term vision of successive budgets—focusing on immediate savings. The Governor's proposal appears to rely on making the expensive group homes more accountable, encouraging more placements with less expensive families, and stimulating adoptions for further long-term savings. But these important goals are not achievable simply by imposing "performance-based contracts" on group homes and the other measures listed in the budget. In fact, child protective agencies and dependency courts strongly favor more foster care placements—and more adoptions. But the quality and supply of those placements is deficient, as discussed above. The "stick" applied to the group homes may have some merit in improving their performance, but the goals enunciated by the Governor require the "carrots" necessary to increase family foster care providers and stimulate adoptions.

Child advocates without ties to foster care providers have advocated a series of measures that would accomplish these stated ends: increase family foster care rates to at least equal the out-of-pocket costs of caring for the children involved (at least a 22% increase); assign an office within DSS with the specific

task of improving family foster care supply and quality; create a budget for such an office to enable it to stimulate a range of measures from mass media recruitment to community college courses; and raise the quality of family foster care by providing for advanced certification and reward those who achieve it with a premium compensation rate. These measures have been a part of legislation killed in Suspense in 2001 and in 2002 (see above discussion of AB 1330 (Steinberg)). The enactment of such reforms would cost more over the immediate several years, but would yield increasing economic returns as (a) more children are cared for by families at \$900 per month (even with the stated increase) and fewer at \$5,000 per month in group homes, and (b) more children would be adopted. Hence, progress here, as in other areas, requires some investment in children now in order to yield financial savings and child improvement over the longer term. Such a perspective has not been a part of the state’s deliberations, and is not reflected in the proposed 2004–05 Budget.

The disconnect between proper diagnosis and concrete proposals contradicting or unrelated to those intentions is also reflected in the major 2004–05 proposal of the Legislative Analyst (to cut back on adoption assistance coverage and payments). This puzzling proposal reflects the same short term vision and misunderstanding of the economics of foster care. Adoption assistance only partially offsets the expenses of foster children; denying those payments or cutting them so that only higher income foster care providers can adopt lessens the number of those adoptions without economic gain (foster rates are similar to adoption assistance in amount). And it again relegates larger numbers to group home settings at seven times foster care (or adoption assistance) cost and imposes other public expenses (see discussion of adoption accounts below).

C. Child Welfare Services Account

The Child Welfare Services program provided by state and county authorities is mandated by state statute to cover a broad array of needs.¹⁵⁷ CWS’ goals are to protect all children; prevent or remedy problems which may result in neglect, abuse, exploitation, or delinquency of children; prevent unnecessary separation of children from their families and provide services to restore families where children have been removed; identify children to be placed in suitable adoptive homes, if appropriate; and assure adequate care of children living away from their homes.¹⁵⁸

Generally, Child Welfare Services includes: (1) emergency response to abuse allegations; (2) a Family Maintenance Program to provide ongoing services to children (and their families); (3) a Family Preservation Program of intensive services for families whose children may be removed in the absence of such services; (4) a Family Reunification Program providing services to children in foster care who have been temporarily removed to facilitate possible reunification; and (5) a Permanent Placement Program for children in foster care who cannot be safely returned to their families.¹⁵⁹

California now has in place a statewide Child Welfare Services/Case Management System (CWS/CMS) operating in each county to allow inter-county coordination of social workers, to provide statistical information, and to comply with federal reporting requirements.

	Budget Year									Percent Change		
	1989-90	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05	'89-'03	Proposed
General Fund	\$289,330	\$308,868	\$455,295	\$428,325	\$494,650	\$522,223	\$608,068	\$596,166	\$635,418	\$616,285	1196.0%	-3.0%
Reimbursements	\$0	\$23,233	\$32,247	\$26,926	\$27,450	\$34,785	\$34,075	\$44,993	\$36,642	\$42,908	na	17.1%
Federal Trust Fund	\$93,231	\$603,965	\$569,389	\$570,678	\$853,215	\$940,805	\$1,044,254	\$1,134,986	\$1,148,420	\$1,201,757	1131.8%	4.6%
Other	0	407	\$135	\$615	\$54	\$523	(\$2,505)	(\$738)	\$910	\$0	na	na
State Budget Total	\$382,561	\$936,473	\$1,057,066	\$1,026,544	\$1,375,369	\$1,498,336	\$1,683,892	\$1,775,407	\$1,821,390	\$1,860,950	376.0%	2.2%
(Counties)	\$68,520	\$151,871	\$151,945	\$165,013	\$171,719	\$162,782	\$182,663	\$190,211	\$205,103	\$208,853	199.0%	1.8%
State/County Total	\$451,081	\$1,088,344	\$1,209,077	\$1,191,557	\$1,547,088	\$1,661,118	\$1,866,555	\$1,965,618	\$2,026,493	\$2,069,803	349.0%	2.1%
Adjusted State/County Total	\$765,224	\$1,259,983	\$1,379,157	\$1,326,064	\$1,684,678	\$1,799,645	\$1,967,308	\$2,018,237	\$2,026,493	\$2,011,616	164.8%	-0.7%

Dollar amounts are in \$1,000s. Sources: Governor’s Budgets. Adjusted to 0–14 population and deflator (2003–04=1.00). Adjustments by Children’s Advocacy Institute.

TABLE 8-F. Child Welfare Services

1. Post-2000 Spending Increases: Caseload Reduction Success and Retraction

Table 8-F presents the total level of state, federal, and county Child Welfare Services funding.¹⁶⁰ From 1989 to 2000–01, adjusted spending grew substantially. However, some of this apparent increase reflects the use of a conservative “child population” adjuster. Child abuse reports and investigations increased at a higher rate than did general child population. New spending since 2000 has had three objects. First, some new funds were added for special machines to fingerprint foster care providers to address federal findings of inadequate checks to protect foster children.¹⁶¹ Second, some monies were devoted to “Child Welfare Service Augmentation,” spending to meet new demand in emergency response, family maintenance/reunification, and permanent placement (with most of it directed at emergency welfare services). However, increases here have not substantially outpaced inflation and dependency case levels, particularly to the current 2003–04 year.

Third, and most significant, most of the new funding from 1999 to 2002 indicated in Table 8-F reflects caseload reduction efforts spurred partly by SB 2030 (Costa) (Chapter 785, Statutes of 1998), requiring a study of proper caseload levels. The April 2000 findings of excessive workloads, and resulting protection failure led to a conscious infusion of \$343 million in 2000, 2001 and 2002 to ameliorate the problem. However, child abuse cases, family preservation work and foster child populations limited the actual caseload reductions over this period, and DSS’ July 18, 2002 Statewide Assessment acknowledged that caseload standard deficiencies continue. In fact, the Assessment’s detailed study of the many continuances routinely granted found that those continuances were attributed in significant part to social workers’ inability to submit necessary reports and testimony. Social workers’ caseloads, even after the infusion of funds, inhibit timely completion of work to meet the six-, twelve-, or eighteen-month deadlines for determining where most children subject to dependency court jurisdiction should be permanently placed. More important, the budgets since 2002, and as proposed for 2004–05, have been substantially flat, with the small increases obtained not focusing on caseload reduction. The problem acknowledged as serious in 1999 and 2000 now approaches those levels again because the resource infusion has not been maintained to properly outpace case growth.

2. Proposed 2004–05 Increase: Structural Reform

Critics have long contended that child welfare service funding has been fragmented and has not always produced services beneficial to involved foster children. Programs tend to be organized around the convenience of adult agencies and officials (see discussion of “horizontal versus vertical” structure above). SB 163 (Solis) (Chapter 795, Statutes of 1997) established a statewide program to coordinate services provided to foster children and their families by attempting to redirect existing resources from a more “bottom up” or child-need- directed perspective. The 1997 statute sought to eliminate restrictions on categorical funding to free counties to spend money more flexibly and in less restrictive environments. The approach is sometimes termed “wrap-around” because the services are intended to focus on the children where they are (in the community) rather than moving them into institutional settings. It is intended to surmount narrowly circumscribed services based on “from the top” decisions by officials and to facilitate children obtaining the help they most need (see the discussion of the similar “system of care” concept in mental health services discussed in Chapter 5). As noted above, AB 2706 (Cuneen) (Chapter 259, Statutes of 2000) mandated the expansion of these wraparound services, but it is unclear what monies, if any, have been allocated for that expansion.

Related to this effort to re-organize child welfare services are the studies and audits discussed above. These include (1) the federal DHHS performance-based review of California (and other states) to measure success (states that failed the reviews were required to develop a Performance Improvement Plan (PIP)); (2) the *2000–01 Budget Act* created the “CWS Stakeholders group” to review the current CWS system in California and make recommendations for redesigning the program (see discussion above); and (3) AB 636 (Steinberg) (Chapter 678, Statutes of 2001) enacted the Child Welfare System Improvement and Accountability Act, mandating a “county review” of child welfare strengths and weaknesses, sharing, and best practices implementation.

The Governor’s 2004–05 proposed budget’s major child welfare addition consists of \$39.2 million for the above three “system improvement” endeavors: Federal Performance Improvement Plan (\$10.6

million), the stakeholders study (\$9.5 million), and the AB 636 Improvement and Accountability Act of 2001 (\$19 million). Only \$4.5 million of the total sum is from the general fund, \$18 million is from federal TANF funds (reducing those needed job training and child care monies accordingly) and the remaining \$16.7 million is other federal funds (\$10.9 million, state special funds (\$3.9 million) and county funds (\$1.6 million). The last two sources can ill afford additional obligations given fiscal pressures extant.

PIP spending is critical given the fall 2002 federal review of California child welfare performance, including findings of state failure as to all seven of the safety, permanency, and well-being outcomes measured. The state also failed five of the seven “systemic factors” that measure service quality. Hence, the Performance Improvement Plan is not optional, but is a required expenditure to avoid penalties beyond those already assessed. The plan must include specific, measurable improvements. The 2004–05 budget proposes \$10.6 million for these purposes, including \$3 million to recruit minority foster parents, \$6 million to backfill social workers so others may attend training, and \$1 million for data improvement (see CWS/CMS system discussed below).

The AB 636 “Accountability Act” funding aims to improve data gathering for “county self-assessments, funding six reviewers for required peer quality case reviews and hiring 58 county coordinators to conduct self-improvement plans. The Legislative Analyst concludes that “there is no funding dedicated to helping the counties implement any corrective actions that may be necessary as a result of the reviews.”¹⁶²

The Child Welfare Stakeholders' Group was charged with reviewing the existing CWS program and recommending improvement (termed “CWS Redesign” project, discussed above). The former Davis Administration expended three years on this effort. The result has been akin to an elephant birthing a mouse. The Legislative Analyst generously concluded that the three-year effort produced a report that “offers high-level concepts for improving the child welfare services program. It also notes that there currently are funding constraints which do not allow many of the concepts to be implemented and that state and federal law changes are necessary to implement many of the Redesign objectives.” Nevertheless, the Governor’s budget proposes \$19 million to counties to continue this process. The Analyst proposes eliminating all of these redesign funds, concluding that the effort “has failed to produce a detailed implementation plan that outlines the specific programmatic changes that will take place and their associated costs and outcomes.”¹⁶³

The Legislative Analyst’s blunt evaluation is reinforced by two dynamics guiding “evaluative studies for system improvement.” First, they tend to reinforce spending along current lines, an understandable consequence of a “stakeholder” approach. Domination of state policymaking discussion by those entities currently receiving funds is already the common means for public policy determination. The Legislature tends to act as “passive mediator” among the 1,500 registered lobbyists seeking their influence. Such a process makes recommendations no more likely than corrective legislation that has historically not been forthcoming. Such reliance inhibits more than “thinking outside the box,” it dismisses commitment to prevention and it tends to produce aspirational and overly general recommendations that minimally inconvenience those contributing to it. Second, all three of these efforts are unlikely to achieve any real improvement because of the removal of substantial new funding from the table—even where such new funding might accomplish long run efficacy and savings.

3. State Computerized Records (CWS/CMS): Federal Non-Compliance and Penalties

The Child Welfare System Case Management System (CWS/CMS) provides a statewide database, case management tools, and a reporting system for the state's CWS program. The system has been in operation for seven years and is maintained and operated by an independent contractor. The CWS/CMS system costs about \$100 million annually to operate. The system is eligible for substantial federal incentive payments. As of 1993, any state providing a statewide satisfactory data entry system for shared use by child protective service social workers and others investigating child abuse could receive 75% of its total costs for its first three years of development, and 50% of subsequent operational costs from the federal government. California began its system in 1994 and announced completion

(operational in all counties) in 1997. However, according to federal reviewers, the system has serious shortcomings, including: (1) inadequate adoption case management; (2) no automated interface between CWS/CMS and the state's welfare and child support automation systems; (3) lack of authorization for service provider payments; and (4) lack of foster care eligibility determinations. Of these requirements, the state has only begun addressing the adoption component.

Further, the 2002 federal review found that the "all county" adoption of the system was inaccurately claimed—counties were given discretion as to how much of the system to use, and some do not use the health and education components. A major purpose of a statewide system is to allow the data concerning a child to "follow the child" as social workers change or children are moved between placements and counties. The failure especially of health and education information to follow children who change providers or location has been an endemic problem. Its solution was a major progenitor of the statewide system requirement. In particular, having Medi-Cal and foster care information tied together allows children to receive more assured health coverage. Finally, the system operates from the contractor's center in Boulder, Colorado, and the federal jurisdiction has repeatedly ordered that it be transferred to a state facility given the nature of the data and the need for quick and reliable adjustments. Such state control is also important given the possibility of private contractor change, possible private firm bankruptcy, and the irreparable harm that would flow from system loss. As of 2004, California had not started to comply with any of these requirements.

As a result of these failures, the federal jurisdiction withdrew substantial funding for the system—in an amount that leads the current budget to understate general fund costs to the state by \$43 million.¹⁶⁴ But the price is greater than that. First, because the system does not comply federally, the state owes the federal jurisdiction the \$50 million it received over three years for its development. The federal jurisdiction requested that one-time payment in June 2003, but none of it is included in the 2004–05 proposed budget. Second, starting in August 2005, the federal government will stop further funding under the current CWS/CMS contract, adding to the state's continuing burden. The Legislative Analyst estimates the loss from 2005–06 to at least 2007–08 to total \$75 million.¹⁶⁵ Compliance with the reasonable federal requirements to override county demands for individual variation, to locate the hardware under state control in California, to include health and education information, and to meet other standards, should not cost the full amount of the federal penalty. If implemented, these changes would benefit the children involved—at essentially federal cost *vis-a-vis* the alternative (see Chapter 2 discussion of similar computer system problems in overcoming county balkanization and federal imposed penalties in the child support data system).

4. Federal Interaction Problems: Child Welfare Penalty and Supplantation

From 1989–90 to 2002–03, the proportion of federal funds rose from 20.7% to 62.4% of Child Welfare Services account funding. This trend represents maximum use of federal monies and general fund savings. One concern evolving from this trend is the overall supplantation effect it may imply. That is, federal monies are added to provide additional services consistent with Congressional intent, not to replace state general fund monies already committed to the ends that the federal jurisdiction seeks to supplement. The pressure for that supplantation may be reflected in the proposed 2004–05 to move TANF and other non-general fund state monies into the child welfare account in order to capture federal funds, while reducing actual state commitment to impoverished children. The taking of TANF federal funds for child welfare studies discussed above is one example, but the budget includes many more. The state's taking of adoption incentive funds for general fund reduction, rather than for Congressionally intended adoption enhancement, is an important example of such diversion (see discussion under Adoption Assistance below).

These accounting practices are not likely to assuage federal officials who have found serious deficiencies in child welfare performance, as discussed above. Nor is their disappointment theoretical, with currently assessed penalty reduction amounting to \$53 million per annum as of 2003. The growth of federal funding's proportion of child welfare spending underlines the critical threat of federal spending penalties. The Legislative Analyst does not begrudge the PIP spending intended to stave off further or continued federal funding penalty reductions. However, new services, prevention strategies (such as

parenting education in schools and reproductive responsibility mass media public campaigns), enhancement of family foster care supply and quality, adoption assistance, and emancipation help consistent with parental responsibility all require some financial commitment beyond focus groups, conferences, meetings, “facilitated” brainstorming, and reports. It is uncertain whether the federal jurisdiction will find that the state meets federal standards based on \$39 million for some training, but largely for “talk” without resource commitment for substantive change.

D. Adoption Assistance

1. In General

The Adoption Assistance Program (AAP) is a state-financed program which distributes monies to counties to facilitate the adoption of “difficult to place” children. To be eligible for an AAP payment, a child must have at least one of the following characteristics: (1) the child is a member of a sibling group which should remain intact; or (2) the child—by virtue of race, ethnicity, color, language, age, or a parental background that may adversely affect the child’s development—will have difficulty being placed.¹⁶⁶

AAP is currently a state entitlement; a child must receive benefits if eligible.¹⁶⁷ The Legislative Analyst reported that, in an average month in 1993, there were 268 AAP adoptions; this amounts to a yearly average of 3,216 children.¹⁶⁸ In an average month during 1994–95, 19,871 children received AAP payments each month.¹⁶⁹ This number increased to 34,285 in 1999–2000, to 40,763 in 2000–01, 48,003 for 2001–02, and 54,823 for 2002–03.

As illustrated in Table 8-G, the budgetary totals have run above inflation and child population increases since 1989 to the current year. Most of this is the result of a conscious effort to stimulate adoptions from 1997 to 2001, an effort that did increase foster child adoptions from 3,000 to 4,000 in the middle 1990s, to 7,000 to 8,000 in 2001, and also produced a federal “adoption incentive” reward, discussed below. However, adoptions have leveled over the past three years and as proposed for 2004–05, as Table 8-G indicates. The proposed 2004–05 budget will decrease adjusted adoption spending by 2%. As discussed above, over 50,000 California foster children (not in stable relative care) should ideally be adopted. Against this measure, the state’s progress has been marginal—and the trend since 2002, and as proposed, suggests retraction.

	Budget Year								Estimated	Proposed	Percent Change	
	1989-90	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03			2003-04	2004-05
General Fund	\$28,851	\$64,691	\$66,979	\$76,241	\$94,397	\$124,009	\$163,215	\$196,517	\$223,179	\$247,837	245.0%	11.0%
Federal funds	\$11,061	\$42,752	\$57,186	\$77,042	\$95,321	\$126,984	\$167,046	\$194,899	\$221,558	\$246,445	418.0%	11.0%
State Budget Total	\$39,912	\$107,443	\$124,165	\$153,283	\$189,718	\$250,993	\$330,261	\$391,416	\$444,737	\$494,282	314.0%	11.0%
Adjusted State Budget Total	na	\$344,343	\$355,477	\$373,005	\$379,899	\$405,325	\$440,882	\$451,740	\$444,737	\$435,753	29.2%	-2.0%
(Counties)	na	\$21,564	\$24,703	\$27,466	\$31,451	\$40,452	\$52,842	\$66,095	\$74,393	\$82,612	245.0%	11.0%
State/County Total	\$39,912	\$129,007	\$148,868	\$180,749	\$221,169	\$291,445	\$383,103	\$457,511	\$519,130	\$576,894	302.0%	11.0%
Adjusted State/County Total	na	\$413,454	\$426,200	\$439,842	\$442,878	\$470,650	\$511,423	\$528,022	\$519,130	\$508,583	25.3%	-2.0%
Avg Monthly Caseload	na	23,090	25,341	29,086	34,285	40,763	47,872	54,074	61,245	67,647	na	10.4%

Dollar amounts are in \$1,000s. Sources: Governor’s Budgets. Adjusted to 0–14 population and CPI-U (2003–04=1.00). Adjustments by Children’s Advocacy Institute.

TABLE 8-G. Aid for Adoption of Children/Adoption Assistance Program

2. Adoptions Facilitation Account

In 1995–96, then-Governor Wilson proposed an “Adoptions Initiative” apart from the funding in the Adoptions Assistance Account above. The laudable aim of this additional spending was to increase the number of adoptions of children who would otherwise remain in long-term foster care.¹⁷⁰

Table 8-H presents the funds committed to this effort. The account (1) provides relinquishment adoption services through four state offices and 31 licensed county adoption agencies; (2) conducts

studies of all independent adoption placements through six state offices and three county adoption agencies; (3) reimburses licensed private adoption agencies for expenses incurred in placing special needs children; and (4) provides minority home recruitment activities through directly provided and contracted services. Funding of some of these functions occurred prior to 1996, but the former Governor’s initiative brought related funds into a single account, and added a small sum to it. Since 1997–98, this amount has increased in both raw and adjusted numbers to year 2000–01. It has since declined, with a substantial reduction in 2002–03. The proposed budget imposes another 4% adjusted reduction. In general, the spending pattern tracks the success and failure of adoption incidence, with increases to 2001, and retraction thereafter.

	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	Estimated 2003-04	Proposed 2004-05	% Change, Proposed
General Fund	\$45,069	\$44,176	\$47,561	\$63,971	\$59,719	\$48,378	\$53,239	\$58,054	9.0%
Federal Funds	\$23,219	\$28,833	\$47,215	\$48,094	\$58,750	\$52,306	\$48,614	\$43,449	-10.6%
Total	\$68,288	\$73,009	\$94,776	\$112,065	\$118,469	\$100,684	\$101,853	\$101,503	-0.3%
Adjusted Total	\$83,483	\$86,402	\$107,731	\$124,303	\$126,218	\$103,685	\$101,853	\$97,786	-4.0%

Dollar amounts are in \$1,000s. Sources: Governor’s Budgets. Adjusted to 0-14 population and CPI-U (2003–04=1.00). Adjustments by Children’s Advocacy Institute.

TABLE 8-H. Adoptions

Child advocates argue that the demographic data suggest that 50,000 foster children appropriate for adoption remain in foster care settings—many of them at a cost of \$5,000 per month, and some subject to group home education, at a total cost of over \$80,000 per annum each (\$60,000 foster care, \$20,000 NPS education payment). Most of them would benefit from a committed parent, at substantial public cost savings.

3. Major Adoption Funding Problems

a. Office of Legislative Analyst Proposed AAP Reduction

The Office of Legislative Analyst, in a discussion entitled “Reforming the Adoptions Assistance Program” proposes substantial reductions in AAP spending. The Analyst notes the growth in AAP spending, and cites disapprovingly the high 93% proportion of adults adopting foster children who receive that assistance. It suggests lowering levels of payment, imposing income (poverty) qualification, and otherwise limiting payments for a savings of \$2 million in 2004–05, eventually growing to \$12 million.¹⁷¹ The Analyst’s position omits important information relevant to the impact of its proposal, as follows:

(1) Adoption assistance money is limited to the amount received by family foster care providers, and ranges from \$425 to \$597 per month (increasing slightly for older children). That amount provides an estimated 70% to 80% of a child’s costs to an adoptive parent. Adoptive parents do not profit financially from adopting a child—obviously the parents will incur costs, but that cost is partly offset by adoption assistance funds. Offsets for children are not confined to adoptive parents—for instance, the tax system’s dependency deductions and credits similarly create a society-wide partial offset for related costs. This particular offset is paid to persons who have taken children “of the state” and assumed responsibility for them, relieving the state of its parental role and costs—including dependency court, child protective services monitoring, and foster care provision costs.

(2) Adoption assistance rates necessarily influence the number and quality of adults willing (and able) to adopt. Nor is such an incentive important only for poor or lower middle class adoptive parents. Even a middle class family earning \$60,000 a year in gross earnings will take home approximately \$50,000 and after typical mortgage or rental costs, utilities and food, may have available \$10,000 to \$15,000 annually in discretionary income. Adopting two children, even with AAP payments, asks a commitment of the 20% to 30% not covered by that assistance, or about \$5,000 per year. If one or both of those children is under five years of age and requires child care while parent(s) work, that amount will

increase to consume most if not all discretionary income. Hence, even middle class adoptive parents may not be able to realistically afford adoption without assistance, unless they have accrued savings or independent reservoirs of wealth. The development of a bond that links a parent and a child regardless of financial sacrifice should and likely will occur over time. But the decision to adopt a child necessarily involves an initial calculation of cost. Most adoptive parent candidates are foster care providers, and the denial of AAP payments asks them to bear the full (rather than partial) cost of these children if they agree to adopt them. A perceived expense beyond available resources necessarily reduces the pool of those willing to explore the option. The Analyst's concession that the average adoptive parent is a "white, married couple, with some college education...not related to the child and had other children in their home. The median age is 44. Their median gross annual income is \$41,000."¹⁷² The average child adopted is from 2 to 5 years of age. These demographics underline the appropriate continuation of AAP monies in order to realistically create and enlarge the pool of prospective parents able to afford adoption.

(3) Each adopted child effectuates substantial savings for the state in many forms not reflected in the AAP account. First, the federal jurisdiction pays 50% of AAP payments for the vast majority of foster children.¹⁷³ Each child so adopted is removed either from foster care expense, with costs averaging more than twice the AAP monies paid given the much higher recompense going to Family Foster Care Agencies and group homes. Increases in adopted foster children creates federal adoption incentive monies, with an increase authorized for 2004–05 for children over 8 years of age. As discussed below, that incentive now will pay twice the state's share of AAP for each additional child adopted. But reduction in AAP eligibility or amounts will inhibit adoption incidence increase, and limit or preclude that revenue. When foster children turn 18, they are eligible for Independent Living Program tuition and rent monies, as discussed above, but because adoptive parents remove such children from foster care, no such expense will attend their emancipation. Rather, as with parents generally, most will provide housing and education help to their children past the age of 18. Finally, adoption frees an extensive bureaucracy from oversight expense, including child protection social workers, attorneys for foster children, dependency court judges and associated personnel, and others.

Other aspects of the LAO's proposal also betray a lack of understanding of the economics of foster care and adoption. One suggestion is that adoption assistance payments not increase from \$425 for four-year-olds to \$597 for children over 14 years of age—arguing that the federal jurisdiction does not require these increases (although it finances half of the amount). In fact, expenses for a 16-year-old are substantially greater than for a 6-year-old, as studies attest. The rates fail to increase sufficiently to offset greater expense as a child grows, as Department of Agriculture studies of child costs discussed above indicate. Moreover, lowering the percentage of compensation for older children makes fewer adoptive parents able to afford the population most difficult to place. The federal jurisdiction recognizes this problem not reflected in the Analyst's recommendation—as its 2003 enactment reflects in allocating an extra \$2,000 in adoption incentive funds for the adoption of additional children over eight years of age.

The increase in AAP spending decried by the Analyst occurred because of the limited success in achieving adoption increases among foster children. The increase in that account was more than offset by the economic savings factors listed above, and benefits involving children by providing them with a parent. Child advocates contend that the Analyst's proposal is inimical to the interests of foster children, is ill conceived, and is penny wise and pound foolish.

b. State Diversion of Federal Adoption Incentive Monies

As discussed above, since the Adoption and Safe Families Act of 1997, the federal jurisdiction has offered special incentive payments to states who increase numbers of foster children who are adopted. Some \$4,000 was authorized for every additional child successfully adopted beyond prior levels. Federal 2003 legislation increases the sum to as much as \$8,000 for additional foster children over eight years of age so placed—acknowledging the relative difficulty of placing older children in adoptive homes. The Congressional intent in making these payments is for their exclusive dedication to further adoption success. The DHHS / Bush Administration formal 2005 budget document directly states that these monies are "to use toward recruiting prospective adoptive parents, child welfare staff training, and post

adoption family support services.”¹⁷⁴ Similarly, the National Conference on State Legislatures bill analysis confirms: “States are required to reinvest incentive bonuses back into IV - B or IV - E programs. Bonuses cannot count as a state expenditure for purposes of federal matching payments.”¹⁷⁵

According to one source, California received \$4.38 million in 2000 for its 1999 performance in raising the number of foster care children adopted. Those monies, or their equivalent, were added to adoption efforts as Congressionally intended; the monies were passed on to counties based upon their performance and constituted the incentives to county adoption workers to continue increasing their adoption numbers. In 2002, the state received \$4.39 million covering its year 2001 performance. Received during its general fund shortfall, the state then effectively diverted these funds into general fund relief. The federal statute does not include the inflexible safeguard of a required “maintenance of effort” spending level from the state for adoption related accounts. Hence, the state may argue that it did not divert these funds from their intended use, but merely applied it to the correct accounts, and moved previous state funds out of those accounts based on other and unrelated considerations. However, such an explanation is contradicted by the timing, nature, and explicit rationale for the absorption of this and other revenues into general fund reduction in order to preserve tax reductions.

The increase in possible incentive monies after 2004 to \$8,000 for children over 8 years of age means that increasing adoptions from among over 25,000 such older children appropriate for adoption—by just 2,000—would generate \$16 million in federal monies for California. This federal incentive amount is more money than these 2,000 children will cost in AAP funds. And since the state only pays half of those costs, it amounts to double the state’s share of those payments. Hence, the federal government essentially finances any increased children adopted for the first two years, and then contributes 50% of the AAP monies thereafter (for the vast majority of foster children adopted). The channeling of these incentive monies into their intended use is both legally required, and serves the economic interests of the state, as it produces ever increasing federal incentive payments as adoptive numbers grow. And even after incentive payments available to finance such growth then become moot, the collateral financial benefits discussed above will accrue from such adoptions (relief from group home high costs, reduced dependency court/social work/foster provider regulatory costs, lower ILP costs).

E. Licensing and Regulation

Governor Schwarzenegger’s proposed 2004–05 budget increases Community Care Licensing (CCL) fees over the next three years. These increases delineate two of the few populations subject to tax increases (albeit denominated as “fees”) in 2004: providers of foster care and child care services. (The other major population so assessed is youth in public higher education (see discussion in Chapter 7).) The CCL fees are assessed against an industry with extraordinarily low-paid employees. Foster family homes, small family homes, and group homes have suffered fee increases of from 25% to 100% in 2003–04. Under the 2004–05 budget, they would be hit again with another annual license fee increase of 25%. A small family home with from one to 6 children will incur a \$375 annual fee, plus another \$80 for certified family homes. Foster family agencies and adoption agencies will be assessed \$1,250 in annual fees.¹⁷⁶ Many of the small family foster care homes are persons on fixed incomes trying to care for one or two children, and for whom \$455 is not a small annual sum. The purpose of the increase is to relieve the general fund of any obligation for inspections and regulatory oversight of the facilities where children are cared for. (For discussion of the implications of this policy in child care regulation, see Chapter 6.) In terms of foster care, the failure of the state to properly license family foster care providers has helped to produce a \$53 million federal penalty.

The confinement of regulation to monies produced by a low-paid industry has been implemented in radical fashion in California. In 2001–02, CCL fees made up 8% of their regulatory costs. The momentous increases in the current budget year brought total compensation to 40% of monies expended. The Governor not only proposes a 25% further increase in 2004–05, but sequential future increases in 2005–06 and 2006–07, so that regulation will be fully financed by fees assessed providers.

The Legislative Analyst has warned that all of these increases are not “special fund” protected,

meaning they may be expropriated by the general fund without legal bar. But beyond diversion of fees to other uses, child advocates argue that the regulation of foster care licensees involves the protection of children under the custody and responsibility of the state, and to confine that regulation to the regime affordable by an underfunded industry is not responsible. While physician regulation may be special funded by physician fees—with costs passed onto patients and insurance carriers, foster care providers do not have a similar pass-through opportunity. They are not able to increase prices where payment for their services is set by law. Rather, they directly absorb such costs and necessarily lessen funding available for children.

In addition, such a tie between revenue and regulatory expenses may artificially limit the latter since amounts produced may not relate to the external costs and dangers to involved children that inspections and regulation is intended to limit. In addition to fee increases, the inspection schedule for community care licensed facilities has been severely contracted. As discussed in Chapter 6 covering child care regulation, California requires substantially more inspections per annum of dog kennels than of facilities caring for children.

F. Juvenile Court Funding

The process affected by the accounts listed above intimately involves the activities of the dependency side of juvenile court. Following the removal of a child, an immediate detention hearing is held to review its legal basis and appoint counsel. Traditionally, this has meant an attorney for the parents, and as trends have developed, an independent attorney for the child. Child advocates have long argued that the child's attorney is critical due to the conflict of interest between the child's best interests and the social worker making the decision to pull a child. For example, the law focuses on services to protect a child and change parental behavior, but deputy county counsel representing social workers and local agencies commonly have budgetary pressures limiting available services. Only an independent attorney can demand appropriate services, raise related issues, and litigate to compel action. A county agent (social worker) and his or her counsel cannot. Further, child advocates contend that without independent counsel, there may be nobody to detect social worker errors—which commonly occur. And the court misses the contribution of an advocate for the child to enrich information relevant to what will be among the most important decisions made about the child in his or her life.

After the detention hearing occurs, there is a jurisdictional hearing. This proceeding substitutes court jurisdiction over a child for the authority a parent would normally exercise pending final resolution of the case. When the juvenile court assumes jurisdiction, it takes charge of a child *in loco parentis*, and those persons dealing with the child operate at the direction of the court in a much more direct way than do the deputy district attorneys, police, and defense counsel *vis-a-vis* other courts. Accordingly, the information gathering, legal representation, and many associated costs are a part of the juvenile court budget.

Juvenile courts traditionally had been funded from local county budgets. This funding included not just the courts themselves, and associated clerks and marshals, but also attorneys and even some social work-related expenses. Starting in 2000–01, state trial court funding took effect. Now funding is coordinated through the Judicial Council, the administrative arm of the state Supreme Court. This appropriation has taken the form of block type grants disbursed under local discretion. Amounts available to provide counsel and investigators to represent children vary by county as do the methods of representation. Fortunately, a recent practice in several counties of appointing attorneys for only some children pulled from their homes (*e.g.*, based on the Welfare & Institution Code allegations made) is now violative of recently enacted SB 2160 (Schiff), see discussion above. However, a serious problem remains with the assurance of representation: attorneys representing abused children commonly have caseloads in excess of 500 children each.

In early 2002, the Judicial Council imposed a practical obligation to appoint counsel for children (California Rule of Court 1438(b), indicating the three findings a court must make to justify not appointing counsel).¹⁷⁷ The Judicial Council's administrative arm is considering caseload standards for attorneys representing children—of importance since some jurisdictions may respond to the requirement of

counsel by simply adding caseload to the point of representation incompetence. Rule 1438(a)(2) required each superior court to have local rules for appropriate caseloads by January 2002. The Administrative Office of the Courts (the Judicial Council’s administrative arm) released an RFP for a “Study of Court-Appointed Counsel in Juvenile Dependency Proceedings” on November 19, 2001, with proposals and standards work scheduled for 2002–03. The setting of caseload maximums requires due care from unintended consequences given the variations extant in child representation between counties.¹⁷⁸

In November 2003, the Judicial Council released its Interim Report on appropriate caseloads for court-appointed dependency counsel. Among other things, the Interim Report recommended a maximum caseload figure of 155 cases per full-time dependency attorney as a base-level standard of performance. However, the Report noted that modifications to the caseload model are required to take into account factors such as writ work, travel time, sibling group affiliation, and support staff impact. Because these modifications may result in adjustments to the recommended figure, the Judicial Council released a Request for Comment in order to solicit feedback on those factors; the deadline for such comments was December 22, 2003.

G. Office of Child Abuse Prevention

The Office of Child Abuse Prevention (OCAP) provides child abuse prevention services through 175 or more projects administered through contracts. OCAP also provides training and technical assistance for these projects. OCAP is the major budget item dedicated explicitly to child abuse prevention. OCAP’s existing projects include data collection, research projects, and education programs in local communities and schools.

As Table 8-I reflects, OCAP’s budget was slashed by almost 50% in the early 1990s. Starting in 1998, funding for these programs had recovered to 1989 levels as adjusted. The major increase in 1998–2000 reflects \$8 million added from the Juvenile Crime Prevention Program. This program funds prevention and family-based services for youth who are truant or first offenders, and strengthens education programs to help families combat drug and alcohol abuse. The account was cut radically in 2000–01 and is currently 36% below 1989–90 adjusted spending. It is proposed for an adjusted increase of 9.6% that will leave investment at about 25% below 1989 levels.

	Budget Year								Estimated	Proposed	Percent Change	
	1989-90	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03			2003-04	2004-05
General Fund	\$21,499	\$19,642	\$19,851	\$24,932	\$25,096	\$34,329	\$13,088	\$13,922	\$15,508	\$21,727	-27.9%	40.0%
State Children's Trust Fund	\$749	\$248	\$218	\$306	\$2,226	\$3,309	\$2,339	\$1,334	\$1,943	na	159.0%	na
Federal Trust Fund	\$974	\$3,936	\$4,297	\$3,212	\$8,169	\$5,594	\$4,140	\$4,588	\$6,965	\$6,588	615.0%	-5.4%
Reimbursements	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$41	\$809	\$150	na	-81.4%
Total State Budget	\$23,222	\$23,826	\$24,372	\$28,450	\$35,491	\$43,232	\$19,567	\$19,885	\$25,225	\$28,465	8.6%	12.8%
Adjusted Total	\$39,394	\$27,584	\$27,794	\$31,662	\$38,647	\$46,837	\$20,623	\$20,417	\$25,225	\$27,664	-36.0%	9.6%

Dollar amounts are in \$1,000s. Sources: Governor’s Budgets
Adjusted to 0-14 population and deflator (2003–04=1.00). Adjustments by Children’s Advocacy Institute.

TABLE 8-I. Office of Child Abuse Prevention (OCAP)

H. Meritorious—but Unimplemented—Child Abuse Prevention Programs

In 1998–99, former Governor Wilson launched a “Healthy Beginnings” initiative relevant to child abuse and neglect. The proposal grows from the famous Hawaii program, where parents who fit a future abuse profile are taught parenting skills during pregnancy, and then visited at home by trained parenting educators, nurse practitioners, etc. (depending upon the risk factors present). Some apparently positive results have led to its widespread advocacy among child advocates, social workers, and health professionals.

The initiative included vestiges of Governor Wilson’s 1997–98 “Infant Health and Protection Initiative” (IHPI), which was not enacted. It was to include four elements:

(1) All hospitals would have to apply a drug assessment protocol when a child is born; families with demonstrable substance abuse would be immediately referred to county CPS, which must perform an in-hospital response and consider petitioning juvenile court to remove the child, if appropriate.

(2) That decision would be guided by a uniform child risk assessment tool for statewide use (and which might also apply to other CPS responses, for example, from mandated abuse reporters generally).

(3) In five pilot counties, about 2,500 families identified by the drug screening protocol would be served by a three-year home visiting program to assure infant protection.

(4) Drug and alcohol treatment services would be expanded to meet additional prenatal service needs.¹⁷⁹

The Healthy Beginnings program was intended to provide grants for local programs. The money would be used by community coalitions of businesses, churches, and nonprofits to support new parents in the proper care of their infants. Each community could determine the most beneficial approach. However, as with the IHPI Initiative, the Healthy Beginnings program has not been implemented.

I. Recent Federal Budget Changes

1. Federal Child Welfare Spending 2000–04, Proposed 2005

Although almost all federal funding is incorporated within the state accounts listed above, its separate federal packaging indicates the subprograms within those accounts dependent on federal funding and illuminates spending trends within state accounts. The major federal child welfare related programs have been funded as follows, with California’s share generally from 10%–15% of these national totals. The Child Abuse State Grants, Child Abuse Discretionary Grants, and Community-Based Family Resource accounts are all part of the federal Child Abuse Prevention and Treatment Act (CAPTA). The “Family Preservation and Support” entry below refers to the Safe & Stable Families Act (Title IV-B). Unlike the entitlement structure of most of the four largest accounts of Table 8-J, these are essentially grant programs subject to federal discretion.

	FY 2000 federal funding	FY 2001 federal funding	FY 2002 federal funding	FY 2003 federal funding	FY 2004 federal funding	Proposed FY 2005 federal funding
Foster Care (Title IV-E)	\$4,572	\$5,064	\$5,056	\$4,885	\$5,019	\$4,900
Social Services (Title XX)	\$1,775	\$1,725	\$1,700	\$1,700	\$1,700	\$1,700
Adoption Assistance (Title IV-E)	\$1,020	\$1,198	\$1,426	\$1,585	\$1,730	\$1,800
Child Welfare Services (Title IV-B)	\$292	\$292	\$292	\$291	\$290	\$292
Promoting Safe and Stable Families	\$295	\$305	\$375	\$405	\$405	\$505
Independent Living	\$140	\$140	\$140	\$140	\$200	\$200
CAPTA	\$90	\$90	\$90	\$90	\$90	\$134
Runaway and Homeless Youth	\$64	\$69	\$88	\$105	\$105	\$105
Independent Living Education Vouchers	\$0	\$0	\$0	\$42	\$45	\$60
Mentoring Prisoners’ Children	\$0	\$25	\$50	\$50	\$50	\$50
Community Based Family Resource	\$33	\$33	\$33	\$33	\$34	\$65
Adoption Opportunities	\$28	\$27	\$27	\$27	\$27	\$27
Child Abuse State Grants	\$21	\$21	\$22	\$22	\$22	\$42
Adoption Incentives	\$20	\$18	\$15	\$43	\$8	\$32

Child Abuse Discretionary Grants	\$19	\$33	\$26	\$34	\$35	\$27
Abandoned Infants Assistance	\$12	\$12	\$12	\$12	\$12	\$12
Child Welfare Training	\$7	\$7	\$8	\$7	\$7	\$7
Total:	\$8,388	\$9,059	\$9,360	\$9,471	\$9,779	\$9,958
Adjusted Total:	\$9,134	\$9,814	\$9,865	\$9,725	\$9,779	\$9,678

Dollars in millions. Adjustments by the Children’s Advocacy Institute. Adjusted to 0–14 population and deflator (2003–04=1.00).

TABLE 8-J. Major Federal Child Welfare-Related Programs: National Spending

The big item accounts correspond to the state accounts of the same name or function listed above and provide the federal funding listed within them. These numbers are unadjusted and actual inflation, population adjusted totals would require a 5% increase to stay even as to California children. The total federal funding is down as adjusted from fiscal 1998. Moreover, California’s share of the critical social services Title XX block grant has been funded consistently at below 12% of the federal total, a figure well below the state’s national proportion of child abuse reports and foster care population. The formula for allocating this \$1.7 billion to California factors in state personal income, which is higher than the national average. However, such a calculation ignores the state’s higher housing, transportation and insurance costs. Further, the existence of a wealthy upper and middle class does not lessen the need for impoverished children—where California’s percentage is among the nation’s highest (see Chapter 2 discussion). The federal shortfall from this flawed allocation formula is substantial, exceeding \$200 million annually. Governor Schwarzenegger has acknowledged the problem and declared obtaining the state’s fair share of federal funds to be a top priority.

2. Recent and Proposed Increases

From 2001–03, the Bush Administration proposed and won enactment of three new initiatives relevant to child abuse and neglect. All three were part of the Promoting Safe and Stable Families Amendments of 2001 (P.L. 107-133). The new initiatives include (1) \$130 million authorized to promote marriage and responsibility through grants for education and assistance projects; (2) \$67 million authorized to finance a mentoring program for the children of prisoners (see above for discussion of this vulnerable population of children); and (3) \$60 million authorized for the education of foster children who are emancipating out at age 18. Actual amounts appropriated have been substantially lower than authorized amounts, although the administration has proposed increases through 2001 to 2004 for these projects, as Table 8-J indicates. Hence, marriage responsibility grants are responsible for most of the increase in the growth to \$405 million currently under the “Safe and Stable Families” account. The Table separates out spending for mentoring prisoners’ children, now at \$50 million, and the education grants, now at \$45 million.

The largest area of spending increase during 2003 and 2004 were in grants to local government and to faith-based private applicants for abstinence education, marriage strengthening, and paternal responsibility. As the federal legislation discussion above notes, the Administration has sponsored “Responsible Choices” to teach abstinence education and has proposed doubling this funding to \$273 million by 2005. Much of this funding is in the form of grants for Community Based Abstinence Education, with \$186 million proposed for 2005, to provide 440 grants to reach children from ages 12–18. A Responsible Fatherhood and Healthy Marriage Initiative is funded at \$25 million and would be doubled for 2005 to \$50 million, financing 75 grants to encourage paternal support.

The fiscal 2005 proposed budget continues this trend, with the major proposed increase for child welfare consisting of \$100 million more for these kinds of local and faith-based grants, with Safe and Stable Families spending to reach \$505 million. The second area of substantial proposed increase is a \$44 million increase for CAPTA, bringing these total grants to \$134 million. This increase is also focused on CAPTA elements that similarly provide grants for family strengthening purposes.

As discussed above, child advocates universally endorse the education voucher addition of the administration. However, it has limited utility for California’s foster youth. The state’s relatively low

tuition and its limitation to that expense allows very few foster youth to utilize its benefits. Private higher education tuition has reached well above \$20,000 per annum and approaches \$30,000 for many institutions. Hence, the vouchers offer both too much and too little. Too much to allow substantial use for higher public education, and too little to allow attendance at private schools. The most important element of help for California's foster youth is living expenses (funds for rent, utilities, transportation, clothes and food). Room and board and other basic expenses apart from tuition run well over \$20,000 for the state college and university system. Most foster youth are compelled to work close to full-time in order to live, making school attendance problematic. The numbers indicating that the vast majority of foster children want higher education and intend to seek it, that substantial numbers apply and a fair number enter the first semester of schooling, but only a small fraction (well under 20%) obtain any kind of certificate or degree to facilitate future employment. The Administration's proposal has some utility, but does not match the needs of these children of the state. The portrayal of this account as providing real educational opportunity does not apply to California's foster children.

The increases in abstinence education, paternal responsibility and the strengthening of marriage evoke predictable contention, with traditional liberals contending that such spending represents an attempt to impose cultural biases that define "family" in narrow and anachronistic forms and further a political agenda unrelated to child protection. The Bush Administration, with substantially more empirical support than critics will acknowledge, contend that unwed births, reproductive irresponsibility (unintended children), and paternal abandonment correlate closely with child poverty, and child abuse/neglect. The reality of those correlations—and indeed their causative connection—is indelibly reinforced among those child advocates who represent abused and neglected children in dependency court. However, these child advocates, sympathetic to the intentions of the federal Administration, are concerned about the efficacy of grants to a relatively small number of agencies and faith-based groups in addressing the clear cultural impotence of these children to influence adult reproductive and commitment decisions that create and imperil them. As discussed above, these critics question efficacy without either funding to the scale of the problem (which may not be feasible through locally based grants) and without clear outcome measurement. Such efforts are inhibited by other rather overwhelming cultural forces from commercials, movies, television, music, and videos with contrary messages. Some child advocates who agree with the private responsibility thesis of the Administration argue that the increased grants will provide employment for social workers and well intended charities, many of whom may disproportionately support the Bush Administration politically. But they question the beneficial impact on children—and on adults making reproductive decisions. What is the comparative efficacy of such a sporadic grant approach *vis-a-vis* alternatives, such as a massive public relations campaign on responsible parenting (as has occurred with some success in anti-tobacco ads), public high school parenting education, mature information about sex and contraception—perhaps with an abstinence emphasis, and education of males as to the multitude of measures now arrayed in California to assess child collection?

The 2003 reauthorization of the Child Abuse Prevention and Treatment Act (CAPTA) is reflected in the proposed \$44 million increase of Table 8-J. The Keeping Children and Families Safe Act of 2003 amended CAPTA to add grant authority to blend federal, state, and private funds to community agencies for child abuse and neglect prevention activities, including family support programs. The CAPTA amendments also authorize grants from the Children's Justice Act of 2003 under the aegis of this account. These grants are directed at the investigation and prosecution of child sexual abuse or neglect related fatalities as a high priority, including in particular grants to cover abused children with serious health problems. The funds for this program are not a part of Table 8-J, but amount to \$17 million from the Department of Justice's Victims of Crime Fund.

3. Failure to Increase: Constriction of Basic Funding Over Time

The focus of the Bush Administration on its agenda of private responsibility has come at a high cost for existing programs, which suffer from static funding. That raw number maintenance is presented federally (as at state levels) as if it were preservation of *status quo* investment. Actually, preservation of raw number amounts from year to year means actual spending decline as properly adjusted for population (or numbers of foster children) and inflation. Table 8-J presents major federal spending

programs and trends for child related accounts. As applied to California in particular, most accounts have been cut over the past decade in real spending per child amounts. Specifically, the pattern has been static raw number spending—effectuating a 4%–5% annual real spending reduction per child. Hence, the monies from federal fiscal year 2000 to current 2004 are over 20% lower for most accounts. Those accounts include the major Title IV-B child welfare account, adoption opportunities, discretionary grants, abandoned infants assistance, and child welfare training.

The two Title IV-E accounts of Table 8-J are entitlements and as such, vary based on qualified demand. However, Title XX Child Welfare funding that provides child welfare system monies for departments of social services investigating child abuse reports and pursuing child protection in dependency court was set at \$2.3 billion in fiscal 1998. It was reduced—before adjustment for inflation/population—to \$1.775 billion by 2000 and has been since been reduced to \$1.7 billion in fiscal 2002, a level that has just been maintained to the current year, and as proposed for 2005. The total reduction in this critical child protection account is over 50% in adjusted spending, an extreme and momentous disinvestment.

The addition of new monies for abstinence education, paternal responsibility, and faith based grants moderates these cuts overall, but total spending including these increases has fallen since 2001–02, and as proposed. More important, apart from these favored new initiatives, established accounts long serving children have been reduced by more than \$400 million in adjusted spending.

4. Bush Administration Child Welfare Policy Changes

The Congress reauthorized Child Abuse Prevention and Treatment Act (CAPTA) funding in 2003, and the Bush Administration proposes an additional \$44 million in funds for 2005 related to those additions. They include new eligibility requirements for states involving drug-exposed infants; encouragement of additional family preservation options and spending, notifying child abusers of their inclusion on investigative lists, training for CPS workers on parental rights, early use of IDEA funds to help pre-school neglected children, and flexibility to states to open up dependency court hearings to greater public scrutiny, as discussed above.

Beyond the issue of gradual reduction (raw number maintenance without adjustment for population or inflation), the Bush Administration has proposed for fiscal 2005 momentous child welfare policy changes promising serious investment reduction for foster children. The first is a proposal to convert the traditional entitlement of Title IV-E foster care money into the capped grants to the states favored by recent Republican policy. Such a shift is proposed for 2005 on a “voluntary basis” (with states choosing a possibly short term higher appropriation than immediate qualified demand may yield, with the risk of subsequent shortfall). The rationale for such capped grants in the case of TANF welfare reform is to encourage states to lower welfare rolls by providing incentives to persons receiving funds to work or to limit additional children at state cost. Whatever the merits of such an approach, it does not apply to the child welfare system where the persons potentially denied funding support are the children, who are not in a position to lessen their own abuse or neglect. The cut-off of funding for children in such straits in order to encourage state experimentation raises basic ethical questions the proponents have not addressed.

The second policy change in the Bush Administration's fiscal 2005 budget is to legislatively reverse the *Rosales v. Thompson* case discussed above. The Administration seeks to maintain a bar on foster care recompense for providers of children unless the original homes of those children would have qualified for AFDC assistance. Such a criteria has no connection with the needs of the child at issue. It would deny assistance for children taken from homes with incomes above the poverty line, even where the home where the child since moved to, or is now in, qualifies for such assistance to defray the cost of the child. The Administration's stated basis for this regrettable position is simply that it “represents the longstanding policy of DHHS.”

5. Federal Penalties and State Diversion of Federal Funds

Since 2002, the federal government has withheld \$53 million in foster care funds from California on the grounds that the state was not adequately licensing relative foster care homes, among other violations of applicable federal standards. As the reports and audits discussed above indicate, the state has completed its own assessment of its performance and hopes to limit federal penalties through corrective action. However, it is unclear how bona fide correction can occur while federal, state and county budgets propose substantial spending reductions.

III. SUMMARY AND RECOMMENDATIONS

A. Consequences

The number of abused and neglected children has soared over the past two decades, as has the apparent degree of abuse. Spending from the accounts devoted to child protection comes too late, only mitigating harm which should never have occurred. Enhancements to other public accounts could influence child abuse incidence. Chief among such abuse-preventing accounts are parenting education in public schools, nutrition assurance, and health and prenatal care, among others. But adequate new resources have not been so committed. Within the child protection accounts, prevention spending has received low priority, as the account totals indicate.

The President's initiative to find ways to stimulate marriage and paternal commitment to children should be embraced by child advocates, not reflexively rejected. Drug use and child poverty correlate strongly with child neglect, and unwed births and lack of paternal commitment to children are so statistically central to child abuse and neglect that the evasion of this subject area is an abdication by Democrats and liberals paralleling the investment in children abdication of Republican policies over the past decade.

The post-incidence failures of the system are also momentous, with foster care drift, lack of compensation/training and supply of family foster care providers, impediments to adoption, excessive secrecy impeding progress for children subject to dependency court jurisdiction, and a continuing failure to provide a fair chance for foster care children, who are unfortunate enough to have the state as their parent—an inconsistent parent at best, and a neglectful one all too commonly.

The consequences of child abuse and neglect are momentous. Some of the results are indicated in Chapter 9, which documents the increasing costs of the juvenile justice system. Even though some foster care children have a positive experience because of dedicated foster parents, and most become responsible citizens, foster care—and foster care drift incidence—correlate highly with adult incarceration, now consuming an increasing and record high percentage of state discretionary spending.

B. California Children's Budget Recommendations

Recommendation #1. Family foster care compensation rates should be increased by 15% and tied to the Consumer Necessities Index without budgetary discretion to waive. Compensation should be increased where providers are certified through additional education and qualification, and additional compensation should be provided for any foster care child qualifying for an IEP under the federal IDEA statute. Estimated cost: \$80 million with offsetting savings of \$300 million within ten years.

The proposed 15% increase in family foster care rates would be offset by substantial state savings. It would stimulate supply and enhance quality choices for placement—reducing the number being placed in group homes at four times such an enhanced family foster care rate. The California Family Foster Care Association contends that such an increase still would not meet the out-of-pocket cost of children, particularly given the increased incidence of disability. But it would mean those who take on such a momentous task can do so without as much of a sacrifice for their other children or their own post-retirement plans. In so doing, the pool of possible candidates would be increased, allowing more choice where these children go, rather than permitting the few willing and able to afford such a sacrifice to pick among the children.

The certification augmentation is recommended to enhance the status of the foster care function, and to increase the competence of providers. Parenting is difficult work, particularly where children have been abused seriously, and when they enter adolescence. There are transmittable skills and lessons

which can much improve parenting skills, particularly where special problems are encountered.

The augmentation where there is special education status provides an incentive to foster care providers to test children for qualification, and compensates them for the general additional work such children entail. This additional cost is recommended above and beyond current limited special needs augmentation (e.g., for seriously physically disabled children).

Many of these recommendations were contained in AB 1330 (Steinberg), killed in suspense in 2001 (see discussion above). Its sponsors were unable to find an author in 2004 due to the political bar for short term spending, regardless of long term savings or meritorious consequences.¹⁸⁰

Recommendation #2. Family foster care supply and quality must be enhanced through (1) creation of an Office of Foster Care Supply and public campaigns to generate applicants, (2) removal of racial barriers to adoption, and (3) diminution of dependency court confidentiality. Estimated cost: \$16 million.

The creation of a state Office on Family Foster Care Supply will focus efforts on the enhancement of placement choices for foster children. Since over three-fourths of all adoptions of foster children come from family foster care providers, it will also stimulate adoptions and permanency. The office can launch public campaigns and educate the public. That effort can be assisted by the lessening of dependency court confidentiality. Allegedly imposed for the protection of the child victims, it does not serve their interests. While dogs in need of homes are advertised on television, the 120,000 children in foster care are not exposed to public discussion or consciousness. Hence, qualified parents unable to conceive spend substantial money on artificial implantation and surrogate parent strategies, or adopt children in Romania or Brazil. Meanwhile, many thousands of California children remain in foster care drift, lacking a reliable, permanent home.

About 70% of foster children are minorities, but minority parents matching their ethnic background are rarely found. The result tends to be relative placement, or foster care drift (often with Caucasian foster parents). Although not publicly discussed often, child advocates are well aware of the strong bias of many welfare workers—particularly those who are minorities—to resist Caucasian parent adoption of minority children. Whatever the advantages of matching ethnicity, the reality of foster care drift and its consequences do not compare with any race-related problems from parent-child mismatch. The research on the subject makes clear the relatively benign consequences of ethnicity variation between children and adoptive parents. The current bias is deep and widespread, and its elimination will require aggressive policy changes, including the dismissal of social workers who insist on personal notions of racial purity over the interests of involved children.

Recommendation #3. Adoption assistance should be allocated without regard to parental income and increased commensurate with family foster care rates. Rates for older and special needs children should be increased. Estimated cost: \$20 million.

Pursuant to federal rules and sound policy, the commitment to care for a child with special needs until adulthood is a momentous gain for the child and society. The small additional sum available should be provided so that financial sacrifice is moderated in making such a decision. This sum does not represent a public benefit appropriate only for the indigent. California has 50,000 foster children eligible for and seeking adoptive parents. There has been insufficient success in placing them.

The most difficult to place are those eligible for adoption assistance—those with special needs, minorities, or with siblings who should ideally be adopted together. For objectors who point to the need for pure motivation (which they contend financial sacrifice assures), there is a practical answer. In this matter, love is not seeing an adorable puppy in the window. Unplaced children are older, difficult, hostile, suspicious, and frightened. Love, trust, and healing come with time. The lasting bonds are not bought with an increased incentive, but it buys that needed time for nature to take its often constructive course.

The recent legislative change and order by federal district court discussed above is an important improvement over prior law, but a bright line disregard of income is appropriate for any parent assuming the task of raising a child with special needs. The costs entailed in the raising of such a child should be substantially provided by the state so that a parent performing this work does so at manageable additional cost—and that those rates do not lessen the supply of available adoptive parents—at least until foster children who would benefit from adoption are substantially so served.

Recommendation #4. Foster care children reaching 18 years of age should be assisted into employment and independence to age 23, including full tuition and room and board while a student in good standing at a vocational school or college. Estimated Cost: \$40 million.

The state serves as the parent of foster care children. They have been abused, and it is incumbent on the state to perform not as a neglectful parent itself. A responsible and loving parent does not kick his son or daughter out of the house at 18 years of age. The recent “reforms” discussed above give dispensation for another year or two for continued foster care assistance, allow medical coverage to continue, or qualify such children for mental health services. But such gestures do not grasp the responsibility of a parent. That obligation commonly involves keeping a child at home when that home is needed for additional years, helping to pay for college or schooling, help with that first job, even that first house down payment. The state has taken these children from parents and now serves that function; it should be setting an example, not shirking the same duties it has sanctioned others for avoiding. Accordingly, foster care assistance to those providing parental services should continue until the youth is 23 years of age if necessary. The age should be raised if special needs of the child require it, again, as we would expect of any devoted parent. Every child who is working toward employment and self advancement, and is in training or school and remains in good standing, should receive \$10,000 per year in living expenses if not living with assisted foster care providers, \$3,000 per annum if they are and their room and shelter needs are met, and tuition, fees and book expenses. Such assistance is not a handout—it is the investment in our children we all properly make, one most of our parents made in us.

The enactment of AB 1119 (Midgen) (Chapter 639, Statutes of 2002) provides a framework for this assistance. However, the age limit should be lifted to 23, and the paltry \$18 million amount added for these children in 2002 should be increased by \$40 million—consistent with stated legislative intent. These funds would easily provide the 20% match to garner the state’s maximum share of John Chafee (Foster Care Independence Act of 1999) federal money (\$20 million). Given the education related vouchers now available, California’s \$8 million share would add to this total to produce \$68 million. Some of this sum should be used for foster care youth ages 15–18 to prepare for emancipation, including help in preparing for college entrance tests or vocational school requirements. Funds should be available for room and board subsidies for all emancipating youth for at least two years, and for full room and board and tuition for any youth who is a student in good standing at an accredited institution making progress toward a degree, credential, or employable skill.

Recommendation #5. Prevention spending should be substantially enhanced, including “Healthy Beginnings” and early intervention, education during pregnancy, and other initiatives. Estimated cost: funding included in other chapters.

Governor Schwarzenegger should increase Healthy Beginning funding, and resurrect Governor Wilson’s promising 1997–98 Infant Health and Protection Initiative (IHPI). As discussed above, the IHPI was to include a drug assessment protocol when a child is born, immediate referral of families with demonstrable substance abuse to county CPS, in-hospital response, juvenile court petition if appropriate, a uniform child risk assessment tool for statewide use, five pilot counties (with 2,500 families identified by the drug screening protocol served by a three-year home visiting program to assure infant protection), and expansion of drug and alcohol treatment services. This imaginative proposal should be funded as originally intended, at \$58.5 million—from funds available in Chapter 2, 4, 6, and 7 accounts.

Other prevention-based spending likely to affect child abuse and neglect—in addition to spending listed above—is included in other chapters; those recommendations most likely to have an impact include:

- The media campaign to persuade people that children have a right to be intended by two parents (Chapter 2);
- Parenting education in grades six through twelve, including developmental information ranging from the consequences of shaking a baby to the 18 years of child support obligation for an unintended child (Chapters 2 and 7);
- Assurance of a minimum safety net to preclude involuntary neglect (Chapter 2);
- Minimum wage increase and adjustment of regressive taxation through a state Earned Income Tax Credit to provide a bridge toward self-sufficiency and as a reward for work (Chapter 2);
- Enhanced standards for child care, with a “child development” emphasis, so children learn and grow when not with their parents (Chapter 6);
- Intervention among prospective delinquents (Orange County’s “8% Solution” discussed in Chapter 9, to supplement Healthy Beginnings intervention with new parents); and
- Substantial investment in higher education to allow more families to escape poverty, secure jobs, and develop a stake in California’s future (Chapter 7).

Finally, as recommended above, President Bush’s marriage and responsibility investments should be supported and California should actively participate, suggesting ways to accomplish the important goals enunciated, and paying attention to the results from other states. Similarly, the paternal responsibility and even the abstinence education initiatives warrant support from child advocates. Some of these efforts may not succeed, and may have alternatives better able to benefit children for reasons discussed above. However, lessons may be learned from the effort and can inform other efforts consistent with *bona fide* intent: to respect a child’s right to be intended by two loving, prepared and committed parents.

Chapter 8

ENDNOTES

1. California Department of Social Services, Child Welfare Services/Case Management System, *Comprehensive Children's Report: Characteristics of Children Receiving Child Welfare Services in California* (Sacramento, CA; July 2002) (hereinafter "*Comprehensive Children's Report 2002*") at 9. California Department of Social Services, Child Welfare Services/Case Management System, *Comprehensive Children's Report: Characteristics of Children Receiving Child Welfare Services in California* (Sacramento, CA; April 2001) (hereinafter "*Comprehensive Children's Report 2001*") at 9. California Department of Social Services, *Caseload Trends by Service Components for Children in California* (Sacramento, CA; July 2000) at 3 (hereinafter "*Caseload Trends*"); California Department of Social Services, *Preplacement Preventive Services for Children in California* (Sacramento, CA; September 1996) at 1 (hereinafter "*Preplacement Preventive Services*"). This publication and many other DSS publications are available via the Internet at <http://www.dss.cahwnet.gov>. See also Little Hoover Commission, *Now In Our Hands: Caring for California's Abused & Neglected Children* (Sacramento, CA; August 1999) at 5 (hereinafter "*Now In Our Hands*").
2. *Comprehensive Children's Report 2002*, *supra*note 1, at 12.
3. Legislative Analyst's Office, *Child Abuse and Neglect in California* (Sacramento, CA; January 1996) at 13 (hereinafter "*Child Abuse and Neglect in California*").
4. *Comprehensive Children's Report 2002*, *supra*note 1, at 9.
5. See, e.g., Rosemary Chakl, Alison Gibbons, and Harriet J. Scarupa, *The Multiple Dimensions of Child Abuse and Neglect: New Insights Into an Old Problem*, Child Trends Research Brief (Washington, D.C.; May 2002) at 2–3 (see <http://www.childtrends.org>): "[T]he rate of child abuse and neglect appears to be diminishing. For example, the rate of child victimization from abuse and neglect declined from highs of more than 15 for every 1,000 children in ... (1992-94) to a decade low rate of 11.8% in 1999. However, the severity of cases associated with reports of abuse and neglect has not changed, and the level of harm may actually have increased. For example, fatalities from child maltreatment, though rare, remain at relatively stable rates.... Moreover, national studies ... have shown a significant rise in the incidence of seriously injured children..."
6. See California Department of Social Services, *California DSS Manual CWS* at 9 (ER service definition), quoting the stated elements contained in CAL. WELF. & INST. CODE § 16501(f).
7. U.S. General Accounting Office, *Child Welfare: Complex Needs Strain Capacity to Provide Services* (Washington, D.C.; September 1995) at 11.
8. William A. Vega, Ph.D., Bohdan Kolody, Ph.D., Jimmy Hwang, Ph.D., and Amanda Noble, Ph.D., *Prevalence and Magnitude of Perinatal Substance Exposures in California* 329:12 *NEW ENG. J. MED.* 850, at 853 (Sept. 16, 1993).
9. *Id.* at 852–54.
10. Ellen L. Wolfe, Thomas Davis, Joseph Guydish, *Trends in Perinatal Drug and Alcohol Use in California 1991–1998, Final Research Report to the California Policy Research Center, University of California, Institute for Health Policy Studies, UC San Francisco* (San Francisco, CA; April 2003) at 12.
11. Robert Mathias, National Institute on Drug Abuse, *NIDA Survey Provides First National Data on Drug Use During Pregnancy*, NIDA NOTES (Bethesda, MD; January/February 1995).
12. *Id.*
13. See *Use of Alcohol Linked to Rise in Fetal Illness* *N.Y. TIMES*, Apr. 7, 1995, at A27.
14. American Speech-Language-Hearing Association, *Fetal Alcohol Syndrome* (1996).
15. *Id.*
16. Drug Strategies, *California Profile: Alcohol, Tobacco & Drugs* (Washington, D.C.; September 1995) at 20. Current research shows that drug-exposed infants have serious developmental and physical delays which can be remedied with appropriate early intervention. Ellen Franck, *Prenatally Drug-Exposed Children in Out-of-Home Care: Are We Looking at the Whole Picture?* LXXV:1 *CHILD WELFARE* (January/February 1996) at 19.
17. Children's Defense Fund, *Children in California* (Washington, D.C.; January 2003) at 2.

18. Children's Defense Fund, *The State of Children in America's Union: A 2002 Action Guide to Leave No Child Behind* (Washington, D.C.; 2002) at 60 (available at www.childrensdefense.org/pdf/minigreenbook.pdf).
19. Ira Chasnoff, M.D., *Silent Violence: Is Prevention a Moral Obligation?* PEDIATRICS 1998 (July 1998), at 145-148.
20. The Children's Advocacy Institute has operated a clinic in San Diego Dependency Court since 1992, with students paired with attorneys who represent children removed from their home and subject to court jurisdiction. Our clinic reviews substantial numbers of cases before the court and our count places substance abuse as seriously involved in dependency court cases at above an 80% rate. It is not merely the use of intoxicants, altered consciousness or the economic demands of substance abuse here at issue—rather, the self-absorption attending such abuse alters normal human maternal/paternal instincts in ways not comprehensible to those viewing the family from the outside. See also IJ Chasnoff, A. Anson, KM Laukea, *Understanding the Drug Exposed Child; Approaches to Behavior and Learning* Imprint Publications (Chicago, IL.; 1998) passim.
21. Chapter 5 lists some of the research regarding Fetal Alcohol Syndrome damage, focusing on that contaminant because of its physical implications and disability evidence. For studies of illicit drug use, see: B.M. Lester, M.J. Corwin, C. Sepkoski, R. Seifer, M. Peucher, S. S. McLaughlin, H.L. Golum, *Neurobehavioral Syndromes in Cocaine-exposed Newborn Infants*, CHILD DEVELOPMENT, Vol. 62 (1991) at 694-705; see also L.T. Singer, R. Garber, R. Kliegman, *Neurobehavioral Sequelae of Fetal Cocaine Exposure*, JOURNAL OF PEDIATRICS, Vol 139 (1991) at 667-672; see also L.N. Eisen, T.M. Field, E.S. Bandstra, J.P. Roberts, C. Morrow, S.K. Larson, B.M. Steele, *Perinatal Cocaine Effects on Neonatal Stress Behavior and Performance on the Brazelton Scale*, PEDIATRICS, Vol. 88 (1991) at 477-480.; see also A. Ornoy, V. Michailivskaya, I Lukashov, R. Bar-Hamburger, S. Harel, *The Developmental Outcome of Children Born to Heroin-Dependent Mothers, Raised at Home or Adopted*, CANADIAN MEDICAL ASSOCIATION JOURNAL OF MEDICINE, Vol; 151 (1994) at 1591-1597.
22. U.S. Department of Health and Human Services, *Child Maltreatment 2001: Reports from the States to the National Child Abuse and Neglect Data System* (Washington, D.C.; 2003) (see www.calib.com).
23. Andrea J. Sedlak, Diane D. Broadhurst, U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Third National Incidence Study of Child Abuse and Neglect* (Washington, D.C.; September 1996) at v-vi (Executive Summary).
24. Department of Health and Human Services, *Blending Perspectives and Building Common Ground, A Report to Congress on Substance Abuse and Child Protection* (Washington, D.C.; April 1999) at Chapter 4.
25. Judicial Council of California, Administrative Office of the Courts, *Foundation for a New Century: 2000 Judicial Council Annual Report*: (San Francisco, CA; 2000) at 11.
26. *Id.*
27. *Id.*
28. See Penal Code Section 11165.7 and listing 35 specific positions and occupations.
29. See *People v. Stritzinger* 34 Cal.3d 505 (1983) for a discussion of the limitations on such supersession given California's Constitutional right to privacy (Ca. Const. Article I, Section 1).
30. Assuming available funds (without sacrifice of child protection funding), many child advocates would not oppose financing relatively efficient administrative hearings where persons could contest false entry on the Index—including some assistance for those without counsel, and with possible reasonable attorney fee recompense. Such opportunity could improve the accuracy of the list without undue barriers to Index inclusion for pattern detection. However, in the interests of balance, should not such appeals include objections to the failure to make such entries? Harm to children may flow from mistakes in either direction. Erroneous exclusion deprives future protectors of children's information from the Index to assist them in their work. Whomever the petitioner, proceedings would be confidential given the non-public investigatory role of the Index. In addition to *post hoc* opportunity to contest a designation, some limitations on the use of Index designations where invoked without independent subsequent inquiry could benefit children. Finally, many child advocates would not object to criminal prosecution of non-mandated reports that allege serious child abuse—particularly molestation—that the reporter knows to be false. Such false charges do occur during custody disputes and where the maker knows them to be false, child advocates may argue for harsh and certain penalty—including felony prosecution and incarceration. The argument advanced is that the failure of the court system and prosecutors to treat such false allegations seriously may allow them to proliferate. Where made, they serve to ruin the reputation of their victim, and may deprive children of a competent parent. Ironically, most of the damage from such false allegations occurs within the offices of family courts, not due to inclusion in the Child Abuse Index with its limited disclosure.

31. See Penal Code section 11167.5 listing the persons with possible access to the Index and the specific circumstances for such access.
32. See the Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 42 U.S.C. § 620 et seq.
33. Previously, federal contribution was thought to be limited to services supporting the “reunification” of children who had been removed—and requiring state or local financing of in-home options. Some jurisdictions argued that they were forced to remove children well served at home in order to qualify for these federal dollars. Beginning in 1994–95, federal money was used in larger measure to supplement the program.
34. See George Peacher, Jr., California Department of Social Services, *Response to Data Request of the Children's Advocacy Institute* (Sacramento, CA; September 9, 1996) at attachment II (hereinafter “*Response to Data Request*”).
35. *Preplacement Preventive Services supra* note 1, at 6–11.
36. *Child Abuse and Neglect in California supra* note 3, at 12.
37. California Department of Social Services, Information Services Bureau, *Preplacement Preventive Services Characteristics Survey of Cases Closed in January 1993* (Sacramento, CA; 1993) at 7–11.
38. Richard P. Barth, Center for the Future of Children, The David and Lucile Packard Foundation, *The Juvenile Court and Dependency Cases*, in 6:3 THE FUTURE OF CHILDREN: THE JUVENILE COURT (Richard E. Behrman, M.D., ed.) (Los Angeles, CA; Winter 1996) 100, 103.
39. *Id.*
40. *Id.* at 104.
41. See *Santosky v. Kramer*, 455 U.S. 755 (1982); see also *Cynthia D. v. Superior Court* 5 Cal. 4th 242 (1993).
42. California Department of Social Services, *California Child and Family Services Review Statewide Assessment July 18, 2002*, at 197 (hereafter “*2002 Statewide Assessment*”).
43. Judicial Council of California, *Court Statistics Report: Statewide Caseload Trends, 1991–1992 through 2000–2001* (San Francisco, CA; 2002) at 56; Judicial Council of California, *Court Statistics Report: Statewide Caseload Trends* (San Francisco, CA; 2000) at 56; Judicial Council of California, *Court Statistics Report: Annual Report 1998* (San Francisco, CA; 1998) at 134; Judicial Council of California, *Invested in Justice: 1999 Judicial Council Annual Report* (San Francisco, CA; 1999) at 17.
44. Judicial Council of California, Administrative Office of the Courts, *State Court Outlook: California Courts in Crisis* (San Francisco, CA; 1996) at 17–18.
45. Department of Social Services, *CWS/CMS—Characteristics of Children in Out of Home Care for the Month of November 2003, California* (Sacramento, CA; 2003) (hereinafter “*CWS/CMS November 2003 Report*”) (see www.dss.cahwnet.gov/research).
46. Office of the Governor, *Governor's Budget 2003–04* (Sacramento, CA; Jan. 2003) at HHS-155.
47. California Department of Social Services, *Public Assistance Selected Statistics, FY 1980 through 1996* (Sacramento, CA; November 1996) at Table 8.
48. Office of the Governor, *Governor's Budget 2004–05* (Sacramento, CA; Jan. 2004) at HHS 158; California Department of Social Services, *Aid to Families with Dependent Children Foster Care Caseload Movement and Expenditures Report* (Sacramento, CA; January 2002).
49. See, e.g., Institute for Research on Women and Families, Center for California Studies, California State University at Sacramento, *Code Blue: Health Services for Children in Foster Care* (Sacramento, CA; March 1998) at 1.
50. *CWS/CMS November 2003 Report, supra* note 45; note the 2002 figure of 26 months discussed above.
51. California Department of Social Services, *Children in Out-of-Home Placements Supervised by Probation, by Placement* (Sacramento, CA; April 2003).

52. California Department of Social Services, *Characteristics of Probation Supervised Children Living in Out-of-Home Placements (For the Month of April 2001)* (Sacramento, CA; 2001).
53. Center for Social Services Research, University of California, Berkeley, *California Children's Services Archive: Child Welfare Placement Stability* (July 2002).
54. *2002 Statewide Assessment*, *supra* note 42 at 179–180; see also continuance discussion at 23–29.
55. Center for Social Services Research, *California Children's Services Archive: Child Welfare Length of Stay from CWS/CMS* (Sacramento, CA; July 2001) at 1.
56. California Children's Services Archive, *Child Welfare Length of Stay from CWS/CMS* (Sacramento, CA; July 2002).
57. *Response to Data Request*, *supra* note 34, at Attachment V; DSS places average length of stay in foster care as follows, using FCI-520 forms as source:

FY 1990–91	36.9 months
FY 1991–92	38.8 months
FY 1993–94	40.5 months
FY 1994–95	39.7 months

The 1996–1998 data maintain a similar rate of number terminated each year in relation to the population as a whole, indicating the continuation of these average length of stay numbers.

58. California Department of Social Services, *CWS/CMS January 2003 Report* (Sacramento, CA; January 2003).
59. Barbara Needell, Danial Webster, Richard Barth, and Michael Armijo, Child Welfare Research Center, University of California at Berkeley, School of Social Welfare, *Performance Indicators for Child Welfare Services in California: 1995, Selected Findings* (Berkeley, CA; 1997) at 28. See also Legislative Analyst's Office, *California Counties: A Look at Performance* (Sacramento, CA; May 1998) at 10–11 (a 16% figure during 1993–96).
60. Heather N. Taussig, PhD, Robert B. Clyman, MD, and John Landsverk PhD., *Children Who Return Home From Foster Care: A 6-Year Prospective Study of Behavioral Health Outcomes in Adolescence*, PEDIATRICS Vol. 108 No. 1 (July 2001) at 10.
61. *2002 Statewide Assessment*, *supra* note 42, at 178.
62. See, e.g., Tracy Weber, *Caretakers Routinely Drug Foster Children*, L.A. TIMES, May 17, 1998, at A-1. See also Tracy Weber, *Despair of the "System Kids"*, L.A. TIMES, May 21, 1998, at A-1; *Dependency Court: Lives in the Balance*, L.A. TIMES, May 22, 1998, at A-1, A-28 (two-part series) (hereinafter "*Lives in the Balance*").
63. California Department of Social Services, *Report to the Legislature on Investigation of Complaints Against Certified Family Homes and Foster Family Agencies* (Sacramento, CA; June 2001) at ii.
64. *2002 Statewide Assessment*, *supra* note 42, at 178.
65. *Id.* at 122.
66. The percentage placed with relatives has increased dramatically over the past twenty years, from less than 20% of all placements in 1985 to almost 50% today. See *id.* at 31.
67. *Performance Indicators for Child Welfare Services supra* note 59.
68. *Child Abuse and Neglect in California supra* note 3, at 45.
69. Legislative Analyst's Office, *Analysis of the 2002–03 Budget Bill* (Sacramento, CA; 2002) at C-221.
70. *Id.*
71. Center for Social Services Research, University of California, Berkeley, *California Children's Services Archive: Child Welfare Foster Care Exits Over Time from CWS/CMS* (July 2002).

72. *Lives in the Balance*, *supra* note 62, at A-1, A-28.
73. California Department of Social Services, Community Care Licensing Division, *Licensed Children's Residential Facilities* (Sacramento, CA; March 2004); see <http://cclid.ca.gov/res/pdf/ChildrensResStats304.pdf>.
74. California Department of Social Services, *Licensed Children's Residential Facilities, December 15, 2003* (Sacramento, CA; December 2003).
75. *Id.*
76. Sandra Boelter, California Foster Care Parents Association, *Foster Care Reimbursement Rate Resolution Findings* (1995) at 1.
77. David Hasemyer, *Lax Licensing Laws Beleaguer Foster Care*, THE SAN DIEGO UNION-TRIBUNE, April 26, 1999, at A-1.
78. *2002 Statewide Assessment*, *supra* note 42, at 108–09.
79. California Department of Finance, *A Performance Review: California's Child Welfare System* (Sacramento, CA; April 1997) at 12 (Table 1-8).
80. Department of Social Services, Fiscal Policy & Estimates Branch, November 2003 Subvention (Sacramento, CA; Nov. 2003) (available at <http://www.dss.cahwnet.gov/localassistanceest/jan04/05EstimateMethodologies.pdf>); Department of Social Services, Administration Division, *Public Assistance Programs: Comparison of Average Monthly Grants* (Sacramento, CA; May 1999); see also *Response to Data Request*, *supra* note 34, at Attachment III (Foster Care and Adoption Assistance Program Expenditures); California Department of Social Services, *Public Assistance Facts and Figures January 1998* (Sacramento, CA; April 17, 1998) at 1.
81. See John G. Orme, Cheryl Buehler, and Kathryn Rhodes, Casey Family Program Foster Parent Project, *Foster Family Retention* (Knoxville, TN; December 1999) at 1-5 (Executive Summary).
82. California Department of Social Services, *Characteristics of Agency Adoptions in California, July 1, 1998 - June 30, 1999* (Sacramento, CA) at 2.
83. *Id.* at 65.
84. See Heitzi Epstein, National Association of Child Advocates, *FY 1999 Adoption Opportunities Grants*, CHILD WELFARE UPDATE (October 15, 1999) at 3 (www.hhs.gov).
85. See, e.g., Associated Press, *137 Children Find Homes on Adoption Day*, SAN DIEGO UNION TRIBUNE (November 29, 1999) at A-3.
86. California Department of Social Services, *Adoptions in California, Annual Statistical Report, July 1, 2001 - June 30, 2002* (Sacramento, CA; October 2003) at 8, 12; see <http://www.dss.cahwnet.gov/research/res/pdf/Childreport/AdoptinCA/AdoptinCAJul01-Jun02.pdf>.
87. Of approximately 117,000 children in foster care, approximately 46,000 are living with relatives. Most of the remaining children are properly considered for adoption, with now 8,000 per annum achieving it. Although the state acknowledges over 15,000 children as recommended for adoption, it gives up on a much larger number, labeling them “unadoptable,” an appellation that tends to fulfill itself.
88. *Performance Indicators for Child Welfare Services*, *supra* note 59, at 30.
89. See Pub. L. No. 104-188.
90. Mark Nadel, *Foster Care: Challenges Faced in Implementing the Multiethnic Placement Act*, General Accounting Office, GAO/T-HEHS-98-241 (September 15, 1998).
91. *Id.* at 6.
92. See the summary of research briefly listed by Hillary Rodham Clinton, *First Lady Announces New Efforts to Support Transitioning Foster Care Youth* (Washington, D.C.; January 1999). See Chapter 9 for discussion of foster care relationship to delinquency and crime.

93. Robin Nixon (director of Youth Services for the Child Welfare League of America), testimony before the House Committee on Ways and Means, Subcommittee on Human Resources, *Hearing on Challenges Confronting Children Aging Out of Foster Care* (March 9, 1999) available at www.waysandmeans.house.gov/legacy/humres/106cong/3-9-99/3-9mico.htm. See also U.S. General Accounting Office, *DHHS Foster Care: Effectiveness of Independent Living Services Unknown* (November, 1999).
94. University of California at Berkeley, *Former Foster Youth Study*, (CDSS 2003) at Summary of Findings. (Hereafter, “*Former Foster Youth Study*”). The study used linked administrative data covering the 1992 - 1997 period, using databases from: Community Colleges Chancellor’s Office, Department of Corrections, Department of Education, Department of Health Services (Medical Services and Vital Statistics), Department of Mental Health and the Youth Authority. See <http://cssr.berkeley.edu/childwelfare/researchdetails.asp?name=youth>.
95. California Department of Social Services, *Independent Living Program Annual Statistical Report, Federal Fiscal Year October 1, 2001–September 30, 2002* (Sacramento, CA; October 2002).
96. California Department of Social Services, *Report on the Survey of the Housing Needs of Emancipated Foster/Probation Youth*, Independent Living Program Policy Unit, Child and Youth Permanency Branch, June 2002, at 1, see <http://www.childsworld.ca.gov/res/PDF/RptontheHousingNeeds.pdf>.
97. Research conducted by Karen Prosek, Children’s Advocacy Institute (CAI), preparatory to litigation challenging these residency restrictions; further details available at CAI, University of San Diego School of Law, 5998 Alcalá Park, San Diego, California 92110.
98. State Auditor, Bureau of State Audits, *Los Angeles County: The Department of Children and Family Services Can Improve Its Processes to Protect Children from Abuse and Neglect* (Sacramento, CA; October 1996).
99. *Id.* at 3.
100. See James Rainey and Sonia Nazario, *Child Abuse Reports Swamp County System*, L.A. TIMES (Jan. 11, 1998) at A-1, A-18, A-19.
101. See also Matea Gold, *All Their Many Children* L.A. TIMES, July 13, 1999, at B-1, contending that the problem remained during 1999.
102. *Id.*
103. See e.g., Caitlin Liu, *County Foster Care System ‘Broken’, Grand Jury Reports* L.A. TIMES, July 1, 2000, at B-1.
104. See e.g., Cheryl Romo and Megan Webb, *Foster Care System Founders Despite Task-Force Guidance*, L.A. DAILY JOURNAL, August 24, 2001, at 1.
105. See discussion of the problem in Cheryl Romo and Megan Webb, *System’s Youth Face Claims Maze*, L.A. DAILY JOURNAL, August 24, 2001, at 12.
106. Cheryl Romo, *State Controller Orders Audits of LA Foster Care* L.A. DAILY JOURNAL, July 27, 2001, at 1.
107. Troy Anderson, *Foster Care in Crisis*, LOS ANGELES DAILY NEWS, December 27, 2003.
108. Chapter 785, Statutes of 1998.
109. See calculations of Frank Mecca, *Estimated Staff Reductions Related to the May Revision Cuts* May 15, 2002, at Table 1.
110. Curtis McMillen, et al., *Educational Experiences and Aspirations of Older Youth in Foster Care* 82 CHILD WELFARE 475 (2003).
111. *Former Foster Youth Study*, *supra* note 94, at Summary of Findings.
112. California Department of Social Services, *Data Systems and Survey Design Bureau, Independent Living Program, Annual Statistical Report* (2002), <http://www.dss.cahwnet.gov/research/res/pdf/Soc405a/2002/SOC405AOct01-Sep02.pdf>.
113. Ronna Cook, *Are We Helping Foster Youth Prepare for Their Future?* 16 CHILDREN & YOUTH SERVICES REV. 213 (1994).
114. Margie Gentzel, *Which California Agencies Are Responsible for Children Whose Parents Are Incarcerated?* CAPITOL WEEKLY, May 15, 2000, at 1.

115. *Id.* at 1, 11.
116. *Id.*
117. See discussion of pending Congressional legislation to address this issue, *Judges Are Told to Aid Children Who Migrate to U.S. Alone*, N.Y. TIMES, June 6, 2002.
118. See testimony of Frank Mecca of the California County Welfare Directors Association before the state Assembly Committee on Human Services on March 16, 2004; see discussion of the issue in Clea Benson, *Foster Care Gets Capitol Scrutiny*, SACRAMENTO BEE, March 17, 2004, "Politics" section.
119. The enacted version was based on a compromise between H.R. 867 and the Senate's SAFE and PASS Acts. However, it omitted a number of important provisions sought by child advocates, including more money for permanency services and training for child protection case workers. The child protection system depends critically upon the professional judgment of social workers employed by county child protection agencies (working within county departments of social services). An incompetent or strongly biased social worker can influence decisions affecting the health, safety, and future of children. Child advocates contend that the competence and expertise of this group is uneven. Civil service protection makes weeding out those who consistently manifest bad judgment difficult.
120. H.R. 3443, P.L. 106-169; note that the pre-existing federal independent living program is renamed by this statute in honor of the late Senator John Chafee of Rhode Island.
121. AB 1544 (Assembly Committee on Human Services) (Chapter 793, Statutes of 1997).
122. Chapter 1055, Statutes of 1998; see Welfare & Inst. Code §§ 11360–70, as amended by AB 1111 (Chapter 147, Statutes of 1999).
123. Office of the Governor, *Governor's Budget 2002–03* (Sacramento, CA; January 2002) at HHS 150.
124. Chapter 785, Statutes of 1998.
125. Women who give birth to children they do not want or cannot provide for often abandon the infants immediately after birth. A "Garden of Angels" in Los Angeles has the bodies of 38 such infants collected within two years and given dignified burial by loving hands. This measure gives such women an option that will benefit their newborns and gives the women the right to avoid prosecution for child neglect which would otherwise apply, if they leave their babies in an emergency room or in other specified locations, no questions asked.
126. See Welfare and Institutions Code Section 16501.1
127. See CCP Section 1085, see e.g., *U.S. Ecology v. State of California* (2001) 92 Cal.App.4th 113 repeating well settled law that "mandamus cannot be used to compel the exercise of (agency) discretion in a particular manner..."
128. For further description and veto message detail, see Children's Advocacy Institute, *Children's Legislative Report Card 1999–2000* (San Diego, CA; 1999) at 13–14 (available at www.acusd.edu/childreissues).
129. Office of the Governor, *Governor's May Revise 2002–03* (Sacramento, CA; May 2002) at 54.
130. See *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125.
131. *Warren v. Saenz*, SF Sup. Ct. #317487, filed December 18, 2000.
132. See Greg Lucas quoting the DSS position in *State to be Sued Over Care in Kids' Shelters* S.F. CHRONICLE, December 18, 2000.
133. Case No. CV 85-4544 RJK(Px), in the United States District Court for the Central District of California.
134. See 31 Cal.4th 417 at note 14. The court cites evidence of 10,000 to 20,000 second adoptive parents subject to the holding of the court of appeal as written. Many of those parents have adopted more than one child of the biological or initial parent, leading to our rough estimate of 20,000 children.
135. June Gibbs Brown, Office of Inspector General, *Audit of Protections Provided to Foster Care Children through the Juvenile Justice System in California* (Department of Health and Human Services, A-09-99-00057; December 2000) at i-ii.

136. *Id.* at i.
137. General Accounting Office, *Foster Care: Effectiveness of Independent Living Services Unknown* (GAO #HEHS-00-13; November 1999) *passim*. The national study included a sample from Contra Costa County and found particularly deficient assistance in California *vis-a-vis* other states, including deficiencies in special education services, employment services, daily living skills training, and specific financial assistance (see pp. 24, 26, 28, and 30).
138. See e.g., Sonia Krishnan, *California Scrambles to Improve Foster Care* L.A. TIMES, March 6, 2001.
139. See e.g., *Federal Probe to Look at California's Troubled Foster Care* Associated Press, February 17, 2002 (see www.safate.com).
140. Orr is quoted in Mareeva Brown, *U.S. Is Forcing State to Change Foster Care* SAC. BEE, March 25, 2002, at 1.
141. *Statewide Assessment*, *supra* note 42, at 1 - 199.
142. *Id.* at 23–41.
143. *Id.* at 177–81.
144. These funds must not be used for services to children or families with incomes below 200% of poverty.
145. TANF funds transferred to the Social Services Block Grant are not subject to this provision.
146. Rutledge Hutson, *Red Flags: Research Raises Concerns About the Impact of "Welfare Reform" on Child Maltreatment*, Center for Law and Social Policy (Washington D.C., Oct. 2001).
147. Citing K. Shook, *Does the Loss of Welfare Income Increase the Risk of Involvement with the Child Welfare System?* Children and Youth Services Review, Vol. 21, Nos. 9-10. (1999) at 781–814.
148. Citing K. Wells and S. Guo, *The Impact of Welfare Reform on Foster Care and Child Welfare: A Case Study of Reunification of Foster Children in the First Entry Cohort* Children and Youth Services Review (2002).
149. The studies cited in Chapter 2 concerning recent evidence of the neglect of adolescents who do not receive child care (now assured only to age 11). The CLASP Report cites C. Faxson and J. Waldfogel, *Welfare Reforms, Family Resources, and Child Maltreatment, in The Incentives of Government Programs and the Well Being of Families* (2001), available at www.jcpr.org/book; see also C. Paxson and J. Waldfogel, *Work, Welfare and Child Maltreatment* Journal of Labor Economics (2002).
150. Citing H. Goldberg and L. Schott, *A Compliance-Oriented Approach to Sanctions in State and County TANF Programs*, Center on Budget and Policy Priorities (Washington, D.C.; Oct. 2000) (see www.cbpp.org), noting that sanctioned families frequently have barriers to employment.
151. See CAL. WELF. & INST. CODE § 11401.
152. In an attempt to force counties to control the cost of AFDC-FC placements, the Legislature realigned spending for AFDC-FC in 1991. Prior to realignment, the state paid 95% of the cost of non-federally-eligible children, and counties paid 5% of the cost from county general fund revenues. After realignment in 1991, the state transferred funds generated from vehicle license fees and sales taxes for deposit in local revenue funds. The county share of AFDC-FC for non-federally-eligible children rose to 60%, while the state share decreased to 40%. For federally-eligible children, the federal government currently pays 50%, the state pays 20%, and the county pays 30% of the total cost. Legislative Analyst's Office, *The 1992–93 Budget: Perspectives and Issues* (Sacramento, CA; 1992) at 107.
153. From 1989 to 1995, the number of children placed in family foster homes rose by 22%. The number of children placed in group homes rose by 43%. As noted by the Legislative Analyst's Office, while group homes comprised about 25% of the AFDC-FC caseload, their share of expenditures accounted for 65% of total foster care spending. *Child Abuse and Neglect in California*, *supra* note 3, at 39.
154. Office of the Governor, *Governor's Budget Summary 2004–05* (Sacramento, CA; January 2004) at 132.
155. *Id.* at 132–33.

156. Office of Legislative Analyst, *Analysis of the 2004–05 Governor's Budget* (Sacramento, CA; February 2004) at "Foster Care"; see http://www.lao.ca.gov/analysis_2004/health_ss/hss_21_cws_anl04.htm#_Toc64278404 (hereafter, "LAO 2004–05").
157. CAL. WELF. & INST. CODE § 16500 et seq.
158. *Id.* at § 16501.
159. Legislative Analyst's Office, *Analysis of the 1993–94 Budget Bill* (Sacramento, CA; 1993) at C-140 (hereinafter "LAO 1993–94"); see also CAL. WELF. & INST. CODE § 16500.5.
160. Due to the realignment of child welfare services dollars in 1991–92, it is necessary to add together three different fund sources from the Governor's Budget to get an accurate picture of spending for these services. In 1991–92, the Legislature approved a change in cost share between the county and state for child welfare services: It became a 70%-30% state-county split. These dollars were part of the "social services subaccount," which contained a portion of sales tax revenues set aside by statute for child welfare services and other social services programs included in Realignment I. Office of the Governor, *Governor's Budget 1995–96* (1995) at HW-131 (hereinafter "Governor's Budget 1995–96").
161. The account expended new money from 2001 to 2003 for 100 "live scan" fingerprinting machines to clear foster care providers who are relatives for placement of children (the state check for prior child molestation and abuse problems now required).
162. LAO 2004–05, *supra* note 156, at "Child Welfare."
163. *Id.*
164. *Id.* at "Child Welfare, CWS/CMS."
165. *Id.*
166. CAL. WELF. & INST. CODE § 16120.
167. *Id.*
168. LAO 1993–94, *supra* note 159, at C-139.
169. Office of the Governor, *Governor's Budget 1995–96* (Sacramento, CA; January 1995) at HW-114.
170. Legislative Analyst's Office, *Analysis of the 1996–97 Budget Bill* (Sacramento, CA; 1996) at C-139.
171. LAO 2004–05, *supra* note 155, at "Adoptions Program."
172. *Id.*
173. A small percentage of children benefit from "state only" payments due to the irrational limitation of federal help to children taken from families who would be eligible for AFDC (as the program existed in 1996), see discussion of related litigation herein.
174. U.S. Department of Health and Human Services, *FY 2005 Budget in Brief* (Washington, D.C., 2004) at 89 (see www.acf.dhhs.gov).
175. National Conference on State Legislatures, *Bill Analysis of P.L. 105-89* (December 8, 1997) (see <http://www.ncsl.org/statefed/hr867.htm#incentive>).
176. See AB 1752 (Committee on Budget) (Chapter 225, Statutes of 2003), an urgency measure accomplishing the license fee increases.
177. The text is available at <http://www.courtinfo.ca.gov/rules/2002/titlefive/1400-98-51.htm#TopOfPage>.
178. For example, one rule proposal would cut attorney caseloads down to below 200 cases per attorney. Many counties have an "attorney-investigator" team model which allows counsel for the child to have a professional investigator/expert/witness assist him or her, at a price of a somewhat higher caseload. The result of a mechanical imposition of a low attorney - child

caseload could be the dismissal of investigators, the hiring of only attorneys, and the payment of low salaries—resulting in high attorney turnover and the loss of investigative assistance as well. A preferable policy is to have a sliding scale of maximum caseloads which turn on (a) investigators exclusively assigned to counsel, and (b) experience level of counsel. Accordingly, a caseload of 100 may be appropriate with no investigators and no attorneys with more than five years of child representation experience, but a caseload of 250 may be appropriate with assigned investigators and minimum experience levels. Such a “flex” system allows different models to function.

179. Office of the Governor, *Governor’s Budget Summary 1997–98* (Sacramento, CA; 1997) at 29.
180. Modeled after 2000’s SB 949 (Speier), sponsored by the Children’s Advocacy Institute.

