



# **TESTIMONY TO THE COMMISSION TO ELIMINATE CHILD ABUSE AND NEGLECT FATALITIES**

**BY**

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**MADISON, WISCONSIN**

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## CHILDREN'S ADVOCACY INSTITUTE

- Based at the USD School of Law since 1989, the Children's Advocacy Institute (CAI) is an academic, research, and advocacy organization working to improve the lives of children and youth, with special emphasis on improving the child protection, dependency court, and foster care systems, and improving outcomes for youth aging out of foster care.
- By seeking to leverage change through impact litigation, regulatory and legislative advocacy, and public education programs, CAI's efforts are multi-faceted — comprehensively embracing all tools of public interest advocacy to improve the lives of children and youth.



# STATE SECRECY AND CHILD DEATHS IN THE U.S.

An Evaluation of Public Disclosure Practices about Child Abuse or Neglect Fatalities or Near Fatalities, with State Rankings

*A joint report of the Children's Advocacy Institute and First Star*

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April 2008

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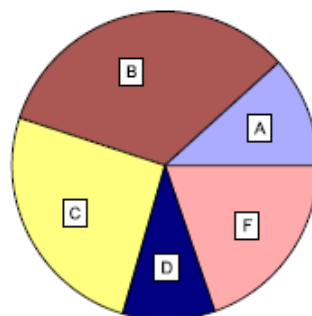
## 2008 Report:

# GRADE DISTRIBUTION



| Grade | Jurisdictions   |
|-------|---|
| A     | Nevada, New Hampshire   |
| A-    | California, Indiana, Iowa, Oregon   |
| B+    | Florida, Illinois, New York   |
| B     | Arizona, Kansas, Minnesota, Washington  |
| B-    | Alabama, Connecticut, District of Columbia, Hawaii, Idaho, Michigan, Mississippi, Missouri, New Jersey, West Virginia |
| C+    | Nebraska, Ohio, Oklahoma, Texas   |
| C     | Alaska, Delaware, North Carolina, South Carolina  |
| C-    | Arkansas, Kentucky, Louisiana, Rhode Island, Virginia   |
| D+    | Maine, Wyoming  |
| D     | Colorado, Wisconsin   |
| D-    | Massachusetts   |
| F     | Georgia, Maryland, Montana, New Mexico, North Dakota, Pennsylvania, South Dakota, Tennessee, Utah, Vermont            |

Distribution of Grades





**AP** Associated Press

April 28, 2008

## Report faults many states on child abuse policies

By DAVID CRARY  
AP National Writer

Many states often fail to release adequate information about fatal and near-fatal child abuse cases, placing confidentiality above disclosure to a degree that thwarts needed reforms, two child advocacy groups say in a new report.



**Nation**

# Child advocates seek more abuse data

Groups say lack of transparency will lead to future tragedies

By Wendy Koch  
USA TODAY

USA TODAY · WEDNESDAY, APRIL 30, 2008 · 3A

**States graded on reporting children's deaths**

More than half the states received a "C+" or lower grade, including 10 states that got an "F," for what they disclose about the deaths or serious injuries of abused or disabled children. The grades are based on whether the states have policies or laws that require disclosure of information that Arizona recently adopted a statute on disclosure. There's not much information.

confidential, but Harfield says "a state's interest in confidentiality is a legitimate concern."

**Newsweek**

## Report faults many states on child abuse policies

Report faults many states for inadequate disclosure about severe child abuse

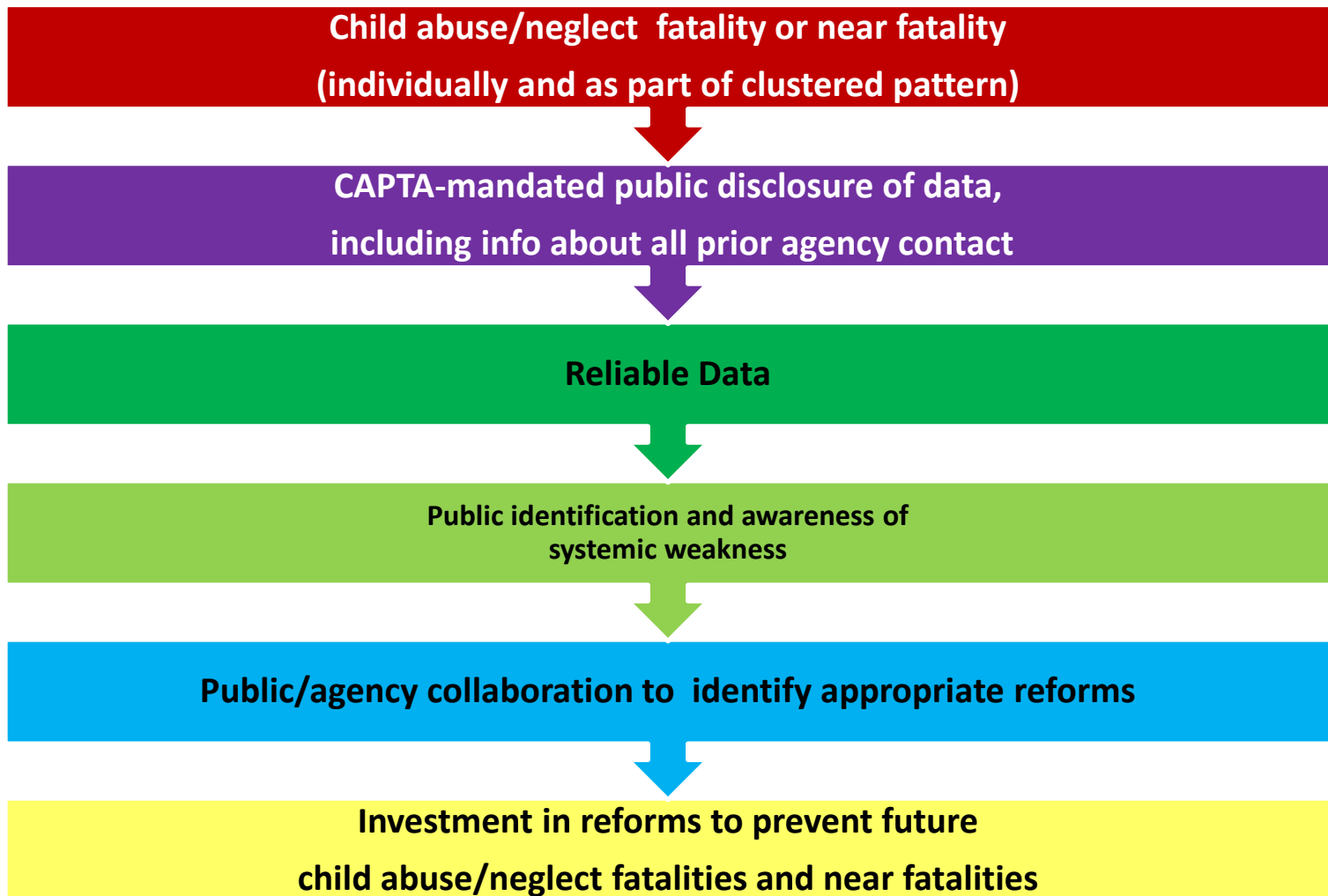
DAVID CRARY AP National Writer  
AP  
Updated: 12:17 AM ET Apr 29, 2008

## Disclosure a key to keep kids safe

By Boston Herald Editorial Staff | Thursday, May 1, 2008 | <http://www.bostonherald.com> | Edited

When a child is abused or neglected to the point of death or near-death are filed, press conferences are held, the requisite blue ribbon committee rare cases someone might even lose his job.

But a scathing report released yesterday by two child advocacy organizations exposes the shameful failure of most states - and Massachusetts figures prominently among them - to actually learn from their fatal mistakes. Well-intentioned or not, the effort to protect







Los Angeles Times

**LOCAL / L.A. Now**

# Social worker fired over child's beating death about to get job back



Gabriel Fernandez was allegedly beaten to death by his mother and her boyfriend.

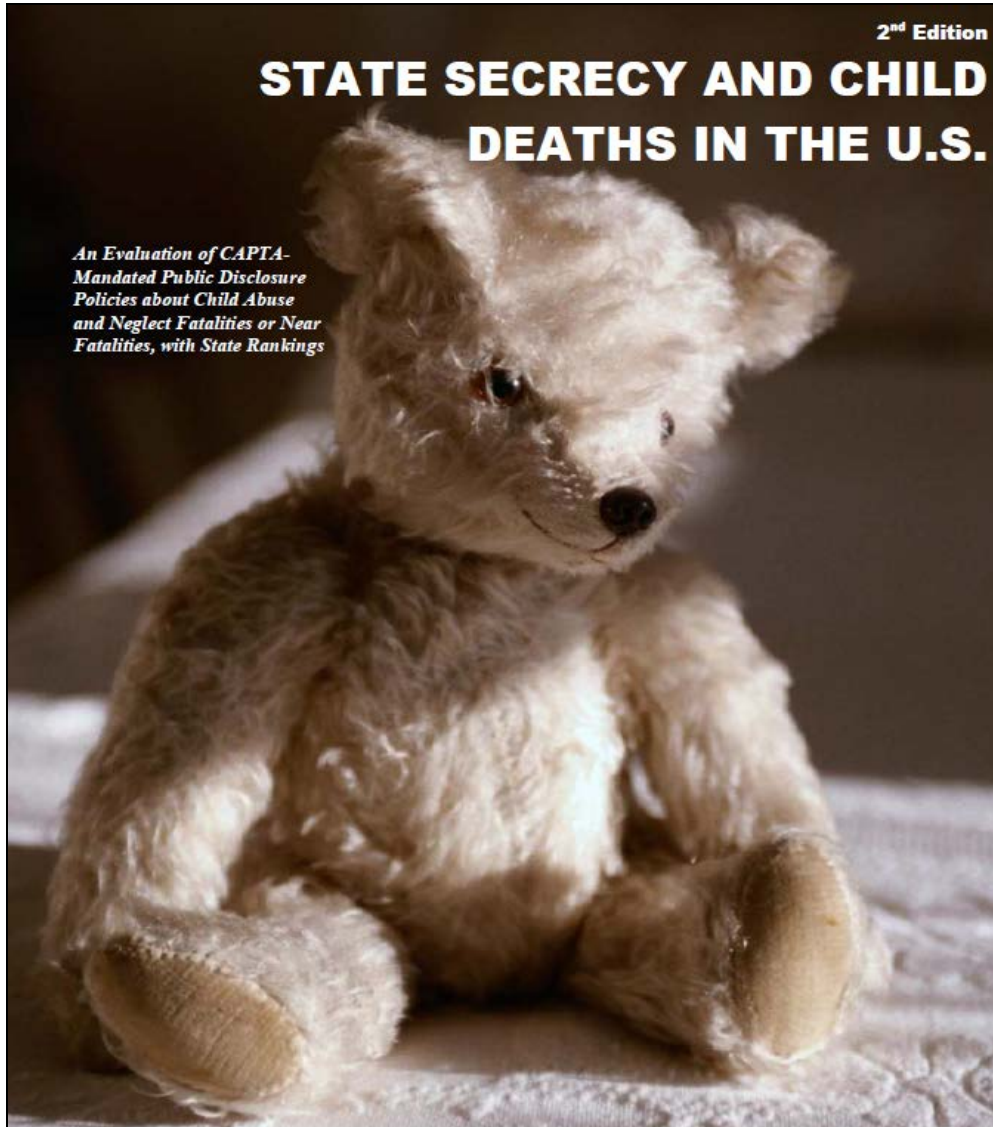
By **GARRETT THEROLF**  
*contact the reporter*



2<sup>nd</sup> Edition

# STATE SECRECY AND CHILD DEATHS IN THE U.S.

*An Evaluation of CAPTA-Mandated Public Disclosure Policies about Child Abuse and Neglect Fatalities or Near Fatalities, with State Rankings*







# 1<sup>st</sup> and 2<sup>nd</sup> Editions

## State Grades



| Jurisdiction         | 1 <sup>st</sup> Edition (April 2008) |    | 2 <sup>nd</sup> Edition (April 2012) |    |
|----------------------|--------------------------------------|----|--------------------------------------|----|
| Alabama              | 82                                   | B- | 85                                   | B  |
| Alaska               | 76                                   | C  | 74                                   | C  |
| Arizona              | 86                                   | B  | 98                                   | A+ |
| Arkansas             | 70                                   | C- | 90                                   | A- |
| California           | 92                                   | A- | 79                                   | C+ |
| Colorado             | 65                                   | D  | 68                                   | D+ |
| Connecticut          | 80                                   | B- | 72                                   | C- |
| Delaware             | 74                                   | C  | 64                                   | D  |
| District of Columbia | 82                                   | B- | 87                                   | B+ |
| Florida              | 89                                   | B+ | 89                                   | B+ |
| Georgia              | 50                                   | F  | 86                                   | B  |
| Hawaii               | 81                                   | B- | 83                                   | B  |
| Idaho                | 82                                   | B- | 83                                   | B  |
| Illinois             | 87                                   | B+ | 87                                   | B+ |
| Indiana              | 90                                   | A- | 97                                   | A+ |
| Iowa                 | 92                                   | A- | 92                                   | A- |
| Kansas               | 86                                   | B  | 83                                   | B  |
| Kentucky             | 70                                   | C- | 73                                   | C  |
| Louisiana            | 70                                   | C- | 75                                   | C  |
| Maine                | 69                                   | D+ | 96                                   | A  |
| Maryland             | 59                                   | F  | 74                                   | C  |
| Massachusetts        | 60                                   | D- | 75                                   | C  |
| Michigan             | 82                                   | B- | 82                                   | B- |
| Minnesota            | 84                                   | B  | 83                                   | B  |
| Mississippi          | 82                                   | B- | 85                                   | B  |
| Missouri             | 80                                   | B- | 80                                   | B- |
| Montana              | 58                                   | F  | 58                                   | F  |
| Nebraska             | 77                                   | C+ | 77                                   | C+ |
| Nevada               | 95                                   | A  | 98                                   | A+ |
| New Hampshire        | 95                                   | A  | 94                                   | A  |
| New Jersey           | 82                                   | B- | 79                                   | C+ |
| New Mexico           | 54                                   | F  | 66                                   | D  |
| New York             | 89                                   | B+ | 77                                   | C+ |
| North Carolina       | 76                                   | C  | 74                                   | C  |
| North Dakota         | 64                                   | D  | 79                                   | C+ |
| Ohio                 | 79                                   | C+ | 82                                   | B- |
| Oklahoma             | 77                                   | C+ | 80                                   | B  |
| Oregon               | 90                                   | A- | 92                                   | A- |
| Pennsylvania         | 10                                   | F  | 97                                   | A+ |
| Rhode Island         | 72                                   | C- | 84                                   | B  |
| South Carolina       | 74                                   | C  | 75                                   | C  |
| South Dakota         | 59                                   | F  | 85                                   | B  |
| Tennessee            | 55                                   | F  | 87                                   | B+ |
| Texas                | 77                                   | C+ | 76                                   | C  |
| Utah                 | 10                                   | F  | 90                                   | A- |
| Vermont              | 54                                   | F  | 72                                   | C- |
| Virginia             | 71                                   | C- | 81                                   | B- |
| Washington           | 83                                   | B  | 83                                   | B  |
| West Virginia        | 80                                   | B- | 80                                   | B- |
| Wisconsin            | 65                                   | D  | 82                                   | B- |
| Wyoming              | 67                                   | D+ | 70                                   | C- |



## **Digest of Federal Fatality Disclosure Advocacy Efforts**



- **CAI comments on ACF's revised policy interpretations of CAPTA's public disclosure mandate (June 26, 2015)**
- **CAI letter to Children's Bureau Associate Commissioner JooYeun Chang re CAPTA (May 14, 2015)**
- **CAI comments on ACF's proposed AFCARS rules (April 10, 2015)**
- **CAI Letter to Acting Assistant Secretary, ACF/Acting Commissioner, ACYF Mark Greenberg regarding CAPTA Mandate that States Provide Public Disclosure of Child Abuse or Neglect Fatality and Near Fatality Findings and Information (May 20, 2014)**
- **CAI Letter to Acting Assistant Secretary, ACF/Acting Commissioner, ACYF Mark Greenberg regarding Introductions, Overview of Ongoing Projects with DHHS, and Request for Meeting (April 7, 2014)**
- **CAI Letter to Acting Assistant Secretary George Sheldon regarding guidance on public disclosure of child abuse or neglect fatalities and near fatalities (December 7, 2012)**
- **CAI Recommendations to DHHS Regarding Issuance of Regulations to States on CAPTA as per HELP Committee Report Directive (February 2012)**
- **Testimony submitted by CAI and First Star to U.S. Senate, Subcommittee on Children and Families, regarding the reauthorization of CAPTA (June 26, 2008)**



## 2010 Senate Committee Report Accompanying Reauthorization of CAPTA

### DISCLOSURE OF INFORMATION ON CHILD FATALITIES AND NEAR FATALITIES

The committee believes that the duty of child protective services, required in CAPTA Sec. 106(b)(2)(x), to provide for the mandatory public disclosure of information about a case of child abuse or neglect which has resulted in a child fatality or near fatality ensures improved accountability of protective services and can drive appropriate and effective systemic reform. However, the committee is aware that not all States are in compliance with these CAPTA requirements. The committee calls upon the Secretary of Health and Human Services to develop clear guidelines in the form of regulations instructing the States of the responsibilities under CAPTA to release public information in cases of child maltreatment fatalities and near fatalities, and to provide technical assistance to States in developing the appropriate procedures for full disclosure of information and findings in these cases.



# **REGULATIONS**

CWPM "Policy Interpretations"





## Child Welfare Policy Manual

### 2.1A.4 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Public disclosure

**#8. Question:** Section 106(b)(2)(B)(x) of CAPTA requires states to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. Under this provision, is there information that a state must disclose to the public?

**Answer:** Yes. States must develop procedures for the release of information including, but not limited to: the cause of and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality; the result of any such investigations; and the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

State policies must ensure compliance with any other relevant federal confidentiality laws, including the confidentiality requirements applicable to titles IV-B and IV-E of the Social Security Act. **States may allow exceptions to the release of information in order to ensure the safety and well-being of the child, parents and family** or when releasing the information would jeopardize a criminal investigation, interfere with the protection of those who report child abuse or neglect or **harm the child or the child's family.**





# SHAME ON U.S.

Failings by All Three Branches of Our Federal Government  
Leave Abused and Neglected Children Vulnerable to Further Harm





# SHAME ON U.S.

## **Failings by All Three Branches of Our Federal Government Leave Abused and Neglected Children Vulnerable to Further Harm**

### Synopsis

*Shame on U.S.*, a report by the Children's Advocacy Institute (CAI) of the University of San Diego School of Law, in cooperation with First Star, discusses how the federal government is failing to properly enact, monitor, interpret, and enforce federal child welfare laws — and in so doing is allowing states to fall below minimum floors with regard to appropriately detecting and protecting children from child abuse and neglect and complying with minimum federal child welfare requirements and outcomes.

Each branch of our federal government plays an integral role in the child welfare system, and when even one fails to perform its role in an appropriate manner, children are put at risk of harm. Because all three branches must be performing optimally to ensure a well-functioning child welfare system, this report discusses the performance of each branch in this arena. Specifically, the report:

- ✓ provides an overview of the scope and purpose of major child welfare laws as enacted by Congress, and to what extent current laws meet the needs of children;
- ✓ examines how the judicial branch has interpreted those laws;
- ✓ discusses to what extent the executive branch implements and enforces those laws;
- ✓ comments on the potential efficacy of each branch's scope and reach;
- ✓ provides examples of shortcomings in all three branches with regard to their respective roles *vis-à-vis* the child welfare system;
- ✓ discusses issues where the purpose or intent of child welfare laws are being openly violated by some states; and
- ✓ calls for more robust activity from all three branches — and particularly enforcement by the executive branch charged with enforcing Congressional intent and, when necessary, withholding federal funding or imposing penalties where states are clearly not meeting minimum standards.



## *Shame on U.S.* Selected Recommendations



1. HHS' oversight and enforcement activities must independently and actively evaluate states' conformity with all federal child welfare standards and state plan requirements, including active, independent oversight to ensure that each state operates its child welfare programs in a manner that is consistent with federal law and the approved state plan and the imposition of fair but serious consequences where states' implementation falls below minimum federal standards.
2. Congress must fund child welfare programs at levels that ensure a robust and effective child welfare system, and it must enact comprehensive child welfare finance reform to address a wide range of problems — such as a complex mix of mandatory and discretionary funding that results in haphazard payments to states; the widely condemned arcane and nonsensical look back provision to determine Title IV eligibility; swaths of uncoordinated funding from disparate sources with inconsistent mandates; a host of unfunded mandates; and a dearth of accountability for the money spent on the part of the states.
3. Congress must provide clear private remedies for children within *all* federal child welfare statutes, to enable private litigants to seek judicial recourse when violations occur.



# Recommendations for CECANF Consideration

- I. Amend CAPTA
- II. Specify More Robust Oversight, Evaluation  
& Enforcement
- III. Align Funding Request with Commission  
Recommendations



# I. Amend CAPTA

- clarify and strengthen CAPTA's public disclosure mandate, prohibit states from exercising discretion to withhold information, and explicitly direct HHS to engage in active monitoring, regulatory and enforcement activities that ensure state compliance with congressional intent;
- fund CAPTA at a level that ensures meaningful efforts to protect children from abuse;
- expressly mandate HHS to engage in enforcement and rulemaking activities with regard to all CAPTA provisions, and impose consequences on HHS for failing to follow through with such oversight and enforcement;
- statutorily mandate that HHS adopt regulations to implement all of CAPTA's provisions, set a deadline for such adoption, and provide a private enforcement mechanism in the event HHS does not meet the deadline;
- establish a formal process for members of the public to request that HHS initiate a Partial Review regarding a specific area of suspected state non-conformity with CAPTA;
- revise CAPTA's definition of near fatality to include situations where a social services or law enforcement agency determines that a child was at imminent risk of death or serious bodily harm by the actions of a parent or caretaker.
- provide clear private remedies for children with regard to all CAPTA mandates;
- tie each state's receipt of any child welfare funding contingent on its substantial compliance with CAPTA provisions.





## II. More Robust Oversight, Evaluation & Enforcement



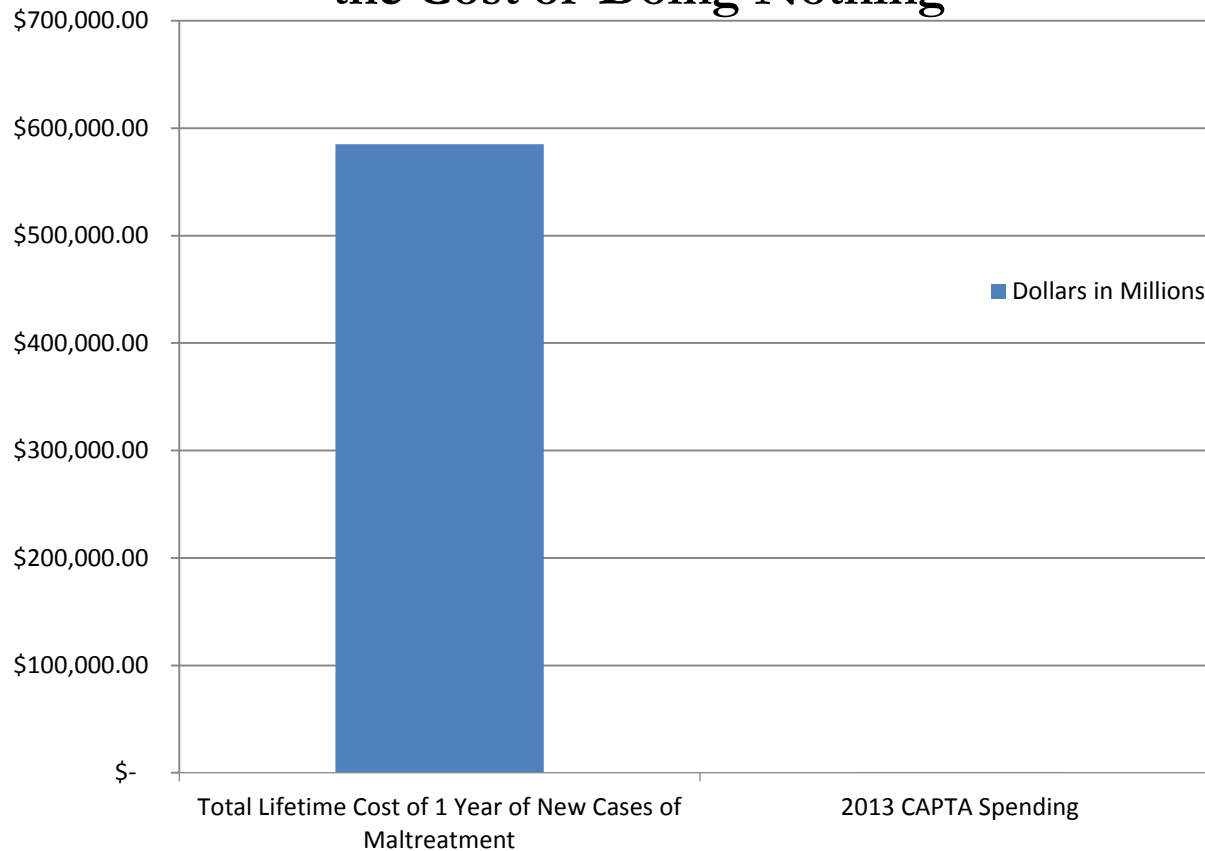
- Congressional Oversight of ACF
- ACF Oversight of States
- CFSR Reviews
- Make NCANDS Mandatory
- Private Right of Action



### III. Align Funding Request with Commission Recommendations



#### Increased Investment and the Cost of Doing Nothing







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