



**TESTIMONY TO THE COMMISSION TO ELIMINATE CHILD ABUSE AND NEGLECT FATALITIES
BY THE CHILDREN'S ADVOCACY INSTITUTE
MADISON, WISCONSIN
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Good afternoon, Chairman Sanders, Commissioners and staff. After working alongside many dedicated advocates to help get the Protect Our Kids Act passed, it is deeply gratifying and a great honor to have the opportunity to present our testimony here today. You may have gotten used to seeing me as I have closely followed your good work and progress over this last year. I am already preparing myself for the day my now toddler-age children ask me if I was ever a groupie of any cool bands, and will have to confess that the only semi-groupie status I can claim is having followed the Commission to Eliminate Child Abuse and Neglect Fatalities across this great nation. Don't worry-- I'll do my best to make it sound very, very cool.

I, like you, am here today primarily because the safety of children is a driving force in my career. My commitment to this work goes back to 1995 during my first year as a Teach For America corps member in Los Angeles. There, I met Leonard, a 12 year-old scrawny boy who wouldn't look anyone in the eye, couldn't read, never carried a backpack, and wore his L.A. Raiders jacket to school every day, no matter how warm the weather. After failing to reach his parents on the phone, I showed up at his house early one evening. He answered the door in a white tank top, and I immediately saw that one arm was covered in hundreds of cigarette burns from wrist to shoulder. He was a human ashtray. Even more

heart-wrenching was the look of humiliation and shame in his eyes when he looked up at me and saw the horror on my face. That moment transformed me and ignited an enduring spark to help protect children like Leonard. I began my work in child welfare litigating child abuse and neglect cases for the City of New York. In spite of what you might hear during this testimony, let me assure you of my deep understanding and empathy for the heavy burdens placed on local and state agencies.

I am proud to serve now as the National Policy Director and Senior Staff Attorney at the Children's Advocacy Institute, a non-profit based at the University of San Diego School of Law. We conduct advocacy on behalf of vulnerable children in, out, and leaving foster care through research, writing, education, coalition-building, legislative advocacy, litigation, and watchdog work.

A primary area of concentration for us since 2007 has been the issue of child abuse and neglect fatalities. As you may know, we published two editions of a report entitled "***State Secrecy and Child Deaths***," first in 2008 and again in 2012. The third edition is underway. This report came about when we learned that many states were grossly out of compliance with the Child Abuse Prevention and Treatment Act (CAPTA)-mandated public disclosure requirements. With an understanding that we can't fix what we don't know about as advocates, and that systems can't make well-informed changes without good data, we analyzed, and graded each state in the U.S. on how they performed in this capacity, in hopes that the grades would serve to commend those who were doing a great job, publically expose states like, that were grossly out of compliance, and to bring the larger issue to the attention of the public and the federal agency responsible for ensuring that the law is followed.

It is important to acknowledge from the get-go that we know data is neither sexy nor fun. Frankly, I don't love delving deep into data and believe that sometimes we place too much emphasis on it. But as we all know, resources in the child welfare arena are scarce. As such, it is imperative that within this subset of cases, which obviously represent the worst and most tragic outcomes for children, we meticulously collect and analyze the data that can show us where the biggest fault lines are and use that information to direct meaningful reforms most likely to save children's lives. Greater accountability, transparency and full-disclosure serve essentially as a *protective measure* for children. You all have read about too many examples of the knee-jerk firings and haphazard reforms that result from individual fatalities that take over the headlines for a day or two. These sorts of reactions may appease the public, but they really just indicate an ineffective game of whack-a-mole that leaves broken systems intact, and more children dead. Case in point: In California, in 2013, 8-year-old Gabriel was doused with pepper spray, forced to eat his own vomit, locked in a cabinet, and beaten to death. An investigation uncovered that in the months before his death, several agencies had investigated allegations of abuse without removing him from his home and, shortly before his death social workers decided to close his case. The media published widely on this story. The public called for blood. The supervising social worker was fired due to his negligence. That supervisor is now close to getting his job back.¹ Nothing has changed for the children in Los Angeles County.

The aftermath of our reports has been mixed. Some states, such as Utah, Georgia, and Tennessee, improved their grades dramatically between the two editions of the report. Many other states made more modest positive changes to their statutes during that time.

¹ [Garrett Therolf, *Social Worker Fired over Child's Beating Death About to Get Job Back*](#), L.A. Now, April 9, 2015.

We had hoped that this exhaustive documentation of such an important issue would also be of great interest and concern to the Children's Bureau at the Administration on Children and Families. After all, they do sometimes rely on advocacy groups such as ours to bring these issues to their attention. We provided copies of these reports and met on numerous occasions with all relevant top officials at DHHS and ACF. I have submitted a packet of our various communications and submissions to ACF for your review and for the record.

Unfortunately, we have gotten nowhere with them. Actually, we have gotten worse than nowhere. After meeting regarding the results of these reports, we were politely told that ACF does not wish to enforce any punitive measures on states that are out of compliance. No sanctions. No public censure.

It would be bad enough to simply ignore the exposure of states running amok with federal dollars on such a critical child welfare issue, but they also seemed inclined to ignore unambiguous directions from the U.S. Congress on this. In the 2010 reauthorization of CAPTA, the report issued by Congress instructed ACF to, "develop clear guidelines ***in the form of regulations*** [emphasis added] instructing the States of the responsibilities under CAPTA to release public information in cases of child maltreatment fatalities and near fatalities." We provided ACF with suggested language to accomplish this. But they steadfastly refused to issue regulations. They said it was too time-consuming. They said it was too complicated. They said they needed further input from the states before acting. Well, that's not what Congress told them to do, and last time I checked, ACF does not have the authority to determine which Congressional directives to follow and which to flout. It is now 2015, and we still have no regulations. Furthermore, the current Acting Commissioner

of the Children's Bureau has made it abundantly clear that no regulations will be forthcoming. Why, you may ask, are regulations so important? They are important because they are **binding** and **enforceable**. So, if states are out of compliance, they can be sued and forced to get in line.

Since 2012, ACF has made half-hearted motions to amend the non-binding Child Welfare Policy Manual to address some of these concerns. I wish I could tell you that at least the guidance in this document was consistent with the legislative intent of CAPTA and the Congressional directives of 2010, but it is not. In fact, the current guidance pertaining to the disclosure provision is so permissive that it allows states to withhold disclosure of any information about these cases just on the basis that it could cause any harm, even just embarrassment, to any person in the family, including the perpetrator of the abuse. That's right. Not the child victim or surviving siblings, but the PERPETRATOR. The question of who does have a reasonable expectation of privacy in these very limited types of cases is an important one for you to discuss. Is it the victim? Survivors? Siblings? Other family members? Caseworkers? Casework supervisors? We agree with several Commissioners that meaningful disclosure that leads to data-driven and effective systemic change can be accomplished without interference in ongoing criminal proceedings and without embarrassment to survivors or their siblings. But certainly confidentiality provisions were not intended to be so broad as to protect the feelings of the person who killed or nearly killed a child over the safety of surviving children or siblings.

Recently, ACF solicited public feedback and comments on the Manual's guidance around this issue. We duly submitted ours and have provided them to you. But let's not be

fooled. ACF is still on the hook to enact binding regulations on this, not optional guidance in the CWPM that states are free to, and as we have seen repeatedly, do, ignore.

Our frustration with this pattern of insolence, and apathy by ACF spurred further research through a wider lens. Early this year, we published another report entitled, ***“Shame on U.S.- Failings by All Three Branches of Our Federal Government Leave Abused and Neglected Children Vulnerable to Further Harm.”*** The report has been brought up several times by this Commission. In it, we outline how the array of federal child welfare laws that are on the books that are weak and inadequately funded, detail the nearly invisible role that ACF has played in oversight and enforcement of these laws, and discuss the disturbing trend within the judiciary to decline standing to petitioners seeking to enforce their rights under these laws. Although the report does reflect a grim state of affairs, it concludes with a list of concrete recommendations for each branch of government to remedy some of the worst problems and get us on the right track to really protect and care for abused and neglected children as if they were our own children.

Which brings me to our requests to you. At the end of your work on this Commission, you will submit a report with recommendations you deem most critical to the charge of this group, to eliminate child abuse and neglect fatalities and near fatalities. As you know, the opportunity for an independent, non-partisan, high-profile Commission like this to weigh in on such a weighty issue comes along but once in a generation or less, so your task is truly awesome.

We would like to distill our findings and concerns into three recommendations for you to consider including in your report. First, amend CAPTA. Second, specify mechanisms

to ensure greater accountability throughout the system. Third, align your recommendations with the funding necessary to implement them.

I. Amend CAPTA

Frankly, all the debate about regulations and the Child Welfare Policy Manual is irrelevant if CAPTA itself were simply amended to reflect Congressional intent. During the next reauthorization of CAPTA, which should happen in the next year, the language related to public disclosure of child abuse and neglect fatalities and near fatalities needs to be clarified and strengthened significantly, and adequate funding provided so states can fully execute the changes.

II. Specify More Robust Oversight, Evaluation & Enforcement

We need to ensure that the various players responsible for public disclosure of these most tragic cases of child abuse and neglect are held accountable for their actions and inactions. It is quite clear from various Congressional sources that these cases are in a different category than others and require an elevated degree of attention, transparency, and scrutiny.

- A. *Congressional Oversight of ACF*- The relevant Congressional committees with jurisdiction over CAPTA should get publically available quarterly check-ins.
- B. *ACF Oversight of States*- Amendments to CAPTA must include clear provisions regarding consequences to states who fail to comply with more robust reporting requirements on a clear timeline. States will do better once they believe non-compliance will cost them.
- C. *CFSR Reviews*- The Child and Family Service Review process used to evaluate compliance with Title IVB & E must be conducted more frequently, evaluate

more measures related to fatal and near-fatal child abuse, with meaningful consequences applied to failing states. Program Improvement Plans (PIP's) required of failing states must require actual compliance with the law and not a relaxed set of benchmarks.

- D. *NCANDS*- As has already been proposed to this Commission, NCANDS must be made mandatory, with standardized definitions and penalties for non-reporting.
- E. *Private Right of Action*- CAPTA and IVB & E must explicitly recognize a private right of action, which would ensure that the courts continue to serve as a critical avenue to pursue justice for aggrieved parties when states fail to comply with the law.

III. Align Funding with Commission's Recommendations

Eliminating child abuse and neglect fatalities in the United States is not a revenue-neutral proposition. I am all too aware that we live in an era of scant resources, continuing federal divestment from foster care, and decreased spending on children generally. But what is the status quo costing us? Well, we know that it amounts to an (under)reported count of about 1,600 dead children a year. We have research showing that the total lifetime economic burden of one year of new cases of maltreatment is estimated to be as much as **\$585 BILLION** dollars. And we know that in 2013, we spent a scant **\$25 MILLION** on CAPTA. You don't need to be a financing guru to see that this doesn't make sense.

Although this Commission's charge is not to weigh in on the larger child welfare finance reform debate, we believe it is imperative to recognize that implementing the recommendations that you make will cost money. It is your difficult task to let it be known what, after all these months of testimony, debate, and endless sifting through materials,

needs to happen to eliminate child abuse fatalities and near-fatalities, and how much will it cost to do so. If Congress or others balk and choose to implement only selected recommendations or to scale back what has been proposed, that is their prerogative, and will be on their conscience.

A system with greater accountability and transparency will better serve the interest of the public, the child welfare community, and most importantly, the children at stake. Once our evaluation tools are better, our data accurate and consistent, and the respective federal and state agencies are performing their roles conscientiously, it will inevitably lead to safer children and fewer fatalities.

Once again, thank you for hearing this testimony, and for your hard work and commitment while serving on this Commission. Make no doubt that with a strong set of recommendations in your report, children's lives will be saved. As an advocate deeply engaged in and committed to this work for the long haul, I know I look forward to helping advance some of your recommendations in the coming years. Thank you.