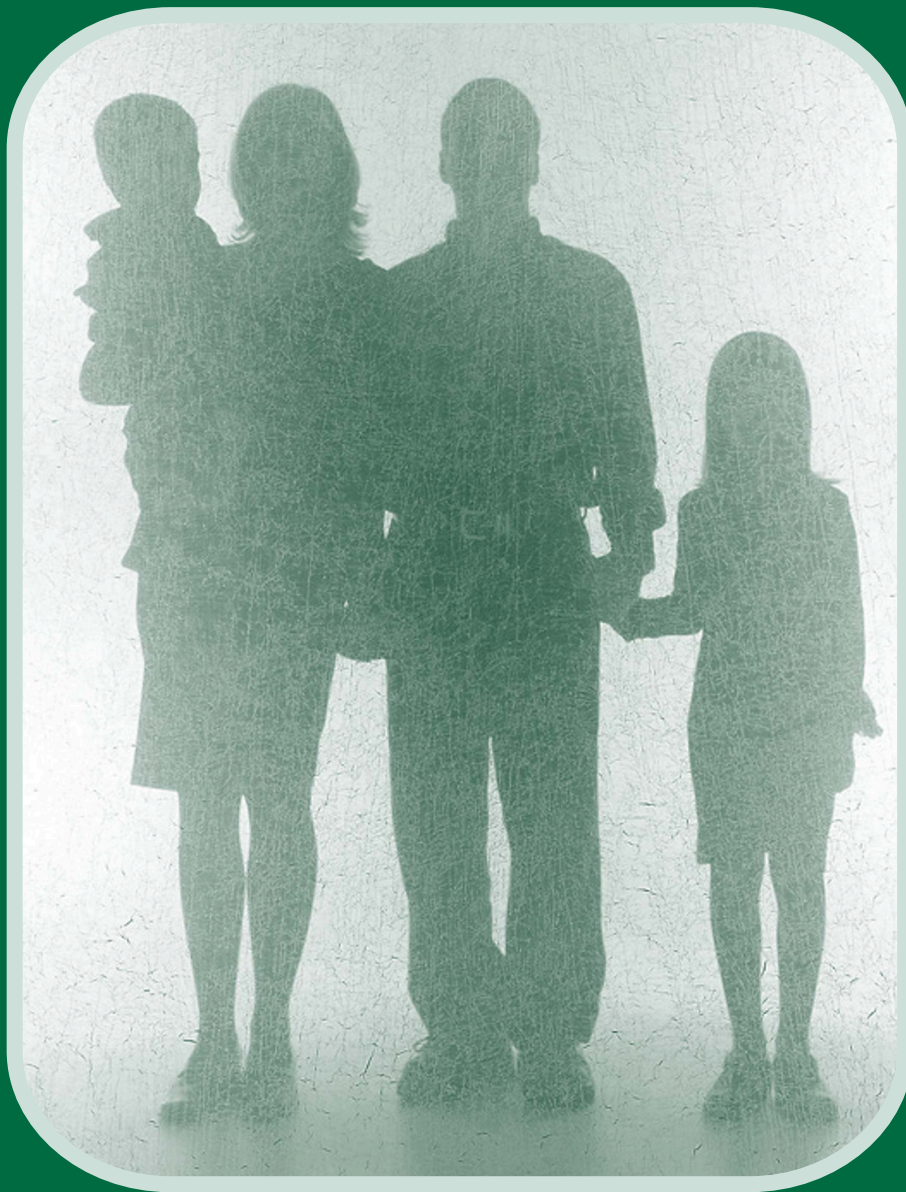


# **MEETING THE NEEDS OF CHILDREN AND PARENTS:**

## **Child Welfare Practices That Preserve New Jersey's Low-Income Families**



**By Legal Services of New Jersey**

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# INTRODUCTION

## *Child welfare practice in New Jersey must focus on strengthening and supporting families*

This report presents analysis and recommendations to make New Jersey's child welfare system more supportive of families in crisis. The new administration in Trenton must address critical shortcomings still existing in state child welfare policies and practices. Numerous recent reports and studies have highlighted these failures amply. The required remedial steps, detailed in this report, are clear and urgent and are the same, regardless of what shifts may be made in the location of responsibility for child welfare services within state government. It bears emphasis that these steps that must be taken on behalf of *both* birth and foster families, to reduce the chance of further tragedy.

The majority of children who come into contact with the child welfare system are from families in poverty, whose incomes are below the federal poverty level and far below the real cost of living in New Jersey<sup>1</sup>. While poverty does not cause child abuse or neglect, it does exacerbate family troubles and complicate their resolution. Many of these families need services or financial assistance to maintain a safe and stable home for their children. The lack of services to address the needs of low-income families in crisis can result in children being removed from their families unnecessarily or left in foster care or other substitute care for too long.

There has been general recognition for many years that New Jersey's child welfare system failed to adequately fund services for families in need.<sup>2</sup> The need for improvement in the system has led to several reform attempts. Most recently, a federal

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<sup>1</sup> *Child Abuse and Neglect in New Jersey: Statistical Report for 2000*, Division of Youth and Family Services, May 2002, p. 7; *The Real Cost of Living in 2005: The Self-Sufficiency Standard for New Jersey*, Pierce, Diana, Prepared for the Legal Services of New Jersey Poverty Research Institute (2005)

<sup>2</sup> See, e.g., Governor's Blue Ribbon Panel on Child Protective Services Final Report (1988) ("An analysis of the DYFS budget for the last seven years indicates that overall funding for DYFS has decreased.").

lawsuit brought by Children’s Rights, Inc., resulted in a detailed child welfare reform plan, *A New Beginning: The Future of Child Welfare in New Jersey* (“CWRP” or “the Plan”). The Department of Human Services (DHS), Office of Children’s Services (OCS), and Division of Youth and Family Services (DYFS) must comply with the intent and mandates of the Plan and make additional adjustments to policy and field practice to effectively support and strengthen low-income families, which will, in turn, (1) prevent child abuse and neglect, (2) avoid child removals, and (3) allow for reunification of families with children in out-of-home placements.

The Plan includes a “Core Commitment” to “Children’s Safety, Permanency & Well-Being.”<sup>3</sup> Regarding permanency, the Plan stresses the importance of keeping families together.

Children have a basic need for stable, reliable relationships with caring adults. Almost all children want this relationship with their birth family, even when they have been neglected or abused. Our first obligation in all but the most extreme cases of severe abuse is to do everything possible to help the child’s birth family stay together or reunite. This is often difficult work, for both the family and the caseworker, but it remains our obligation, both because the law requires it and because in the vast majority of situations it is the best possible result for the children.<sup>4</sup>

The Plan reiterates the need to preserve families in its discussion of child well-being, noting that “anytime a child is removed from his home it is a traumatic experience.”<sup>5</sup>

More than 18 months have passed since the Plan was put into effect. New Jersey has seen several critical deadlines come to pass. DYFS has clearly made some efforts

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<sup>3</sup> CWRP, at 7.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Id.*, at 8.

toward achieving the reform envisioned in the Plan, including the cessation of voluntary child placements and the institution of Flexible Funds, providing discretionary funds to meet the individualized needs of families for which DHS does not have a contracted vendor. Unfortunately, many of the efforts of New Jersey to meet the expectations raised by the Plan have fallen substantially short of their mark.

Families who are or should be receiving services in their homes and those with children in out-of-home placement are not receiving the assistance, services, and other reasonable efforts necessary to preserve or reunify the families. The Department of Prevention and Community Partnership (DPCP) has failed to take on responsibility for community case management. DYFS has not fully met its obligations to children over whom guardianship has been granted or to youth in DYFS care. Moreover, DYFS has avoided community and stakeholder accountability for some of its reform implementation by issuing new or updated written policies without promulgating regulations and subjecting the policies to public scrutiny and comment.

### **Acknowledgements**

The principal author of this report was Mary M. McManus, senior attorney at LSNJ, with contributions, editorial commentary, and research assistance from LSNJ social workers Patricia Myers, Serena Rice, Donna Kochoa, and Heidi Gold and senior attorneys Beatrix Shear and Linda Garibaldi. Additional assistance was provided by Tom Makin and Sue Perger.

*Melville D. Miller, Jr., President  
Legal Services of New Jersey  
Edison, New Jersey  
January 2006*

# **SUMMARY OF RECOMMENDATIONS**

## **Housing Recommendations:**

1. DYFS must provide or secure through other agencies emergency transitional housing to shelter homeless families until they secure more permanent housing.
2. DYFS must have emergency funding to provide housing, rental assistance, payment of back rent and utilities while families wait for rental assistance slots to become available through other agencies.
3. DYFS must coordinate with existing agencies and service providers that assist families in securing housing or other shelter, including DFD and DCA, so that all possible resources are used to secure housing for families.
4. The Department of Human Services must take a lead role in joining with other departments and branches of government, as well as service providers and community-based agencies, to address the serious lack of affordable housing in New Jersey.

## **Flexible Funding Recommendations:**

1. DYFS must have more flexible emergency funding to provide for families' basic needs when no other resources are available.
2. The Flexible Funding amount and duration limits should be eliminated or at least reflect the foster care expenses that are saved by keeping children with their families, an average of \$732 monthly per child.
3. For individual families, individualized determinations of DYFS financial assistance and services through the Flexible Funds and other DYFS resources should be made, based upon actual needs of the family.

4. As the Report of the Child Welfare Reform Panel indicates, the procedures for accessing the Flexible Funds do not make the funds sufficiently readily available. The corrective recommendations of the Panel appear to be appropriate to address the concern of access.

**Other Services Recommendation:**

DYFS and the Department of Prevention and Community Partnership (DPCP) must coordinate with existing agencies and service providers that provide food, clothing, health care, and other essentials, so that all possible resources are used to meet families' basic needs.

**Parent-Child Visitation Recommendations:**

1. Visitation between parent and child should not be restricted or reduced due to a change in the case plan to termination of parental rights. (No judicial finding supports such a change, but it interferes with bonding between parent and child.)
2. Policy should require articulated reasons why visitation is less frequent than weekly in all current cases.
3. Policy should have a clearer standard for when it is appropriate to increase frequency of visitation and evening and weekend visits.
4. Telephone and e-mail contact must be articulated in the visitation plan. Although the written DYFS policy indicates that telephone and e-mail contact are important, there is no requirement for addressing them within the visitation plan.
5. Monitoring adherence to policy is critical to success. The DYFS computer system, SACWIS/NJ SPIRIT, must track visitation information and DYFS should provide ongoing reporting of the information to both the Office of Children's Services and the

Office of the Child Advocate for monitoring. Visitation information that should be tracked includes:

- a. Number of days between removal and first parent visit;
  - b. Number of days between removal and completion of visitation plan;
  - c. Whether supervision is required;
  - d. Articulated statement of need for supervision;
  - e. Relationship of Supervisor to child or parent;
  - f. Location of visits;
  - g. Frequency of visits;
  - h. Duration/length of visits;
  - i. Whether holiday visitation is permitted;
  - j. Which, if any, of the above factors are court ordered.
6. Policy should include provisions for internal DYFS monitoring by supervisors to assure that visitation plans are prepared in accordance with policy and regulations.
  7. Court rules should require the court order to include all facets of visitation.
  8. DYFS must pursue more contracts for private supervised visitation programs when supervision is necessary and there are no relatives or friends available to provide the supervision.
  9. DYFS should place some responsibility for transportation to visits upon resource families. Even if DYFS had to pay a mileage charge for the transport, it would be cheaper than using DYFS staff for transportation and would facilitate flexibility in



evening, weekend, and holiday hours, while reducing the visit cancellations that result from caseworkers being called to other responsibilities.

**Domestic Violence Recommendations:**

1. OCS and DYFS must support victims of domestic violence in obtaining restraining orders.
2. DYFS must provide services to victims of domestic violence and their children, including counseling and housing.
3. DYFS must provide batterer intervention services to the perpetrators of domestic violence.
4. Discontinue presumption of injury or imminent danger to a child based on a child witnessing domestic violence. Require individualized determination of harm or risk to the child.
5. Avoid removing children from the care of the domestic violence victims when doing so is not necessary to keep the children safe.
6. In cases that rise to the level of child abuse or neglect, substantiate child abuse or neglect against the batterer rather than substantiating failure to protect against the non-offending parent.

**Relative Care Recommendations:**

1. The language in the modified policy that there is “No absolute requirement” for placement with available relatives should be removed, as it encourages case workers and supervisors to choose to not place a child with available relatives or friends.

2. There should be cross-references to the written policy on placement with relative caregivers in all other sections of the DYFS Policies and Procedures Manual that address placement of children.
3. Board rates to Kinship Legal Guardians (KLG), including those completed prior to July 1, 2004, should be equalized with the rates to resource parents.
4. DYFS must provide written notice of all financial and other resources available to potential relative caregivers.
5. DYFS and OCS should provide flexibility in approval requirements of relative caregiver homes, such as sufficient square feet of living space per child or independent sleeping areas for children of differing genders.
6. In order to increase the likelihood of appropriate, safe placements with relatives, DYFS must have access to sufficient resource homes that will accept children for brief emergency placements, while potential relative caregivers consider the placement and arrange for appropriate accommodations.
7. DYFS should revise its Policy Manual to remove any presumption of ineligibility for convictions outside of the statutory scheme. The Waiver policy should be revised to consider extraordinary circumstances where the best interest of a child would dictate permitting placement with a relative who has a conviction listed in *N.J.S.A. 30:4C-26.8d* or *e*.

**Early Intervention Recommendations:**

1. The allowance for a two-month delay is not acceptable. The child should be referred to the EIS for their evaluation within 24 hours of DYFS' substantiated finding.
2. All staff should refer the child to the EIS when they have even the slightest concern that the child has a developmental delay.

3. Staff must be well-trained in identifying the signs of developmental delays, especially in infants before they are mobile or can speak.

**Post-Termination Recommendations:**

1. Children whose parental rights have been terminated but have yet to be adopted should have active advocates post-termination through adoption and a hearing should be held if an appropriate plan for a child is not in place within six months from TPR.
2. CPRB should have specific criteria used in post-termination cases; criteria should trigger a hearing in cases where there has been an adoption plan disruption or a failure to have a plan within six months post-TPR, or an adoption has not been finalized within a year.
3. DYFS should monitor post-TPR outcomes and post-adoption outcomes with the goal of improving the process and services to children.
4. DYFS needs to increase available services to post-TPR and adopted children. Many of the children have special educational, mental health and medical needs that are not being met, because of the lack of availability of these services.
5. A provision should be inserted into the Guardianship Order making the parental rights termination, if it is based upon “bonding” with foster parents, contingent upon the adoption of the child by those specific foster parents within one year, and further providing that if said adoption does not take place within one year, the judgment terminating parental rights is vacated, and the matter is to be brought before the court for a new trial or a settlement of the matter between the birth parents and DYFS. (Similar to a voluntary “identified” surrender of a child to DYFS, which becomes

void if the anticipated adoption of the child by specific individuals does not take place as planned.)

6. If no adoptive home is identified for a post-termination child within six months or a year after the guardianship is granted, DYFS should reconsider placement with the birth parents, other relatives, or family friends.

#### **Out-of-Home Youth Recommendations:**

1. In accordance with the CWR Plan, DYFS must adopt a presumption of continued housing and services for youth up to their 21st birthday, with an option for the youth to refuse services after 18th birthday. Putting the burden on the youth to request and apply for services is unfair to the youth.
2. Eligibility for housing and services should not be limited to youth with disabilities, pregnant, or working toward specific employment goals. All youth should be presumed eligible for continued housing and services.
3. DYFS must provide services to the infant of a teen parent who is in DYFS care without the need for an accusation or finding of abuse or neglect. The child of a dependent minor is also dependent.
4. DYFS must also acknowledge that the placement of a young parent with her child creates double expenses for the resource family or institutional placement, and provide the necessary financial benefits for both the baby and the teen parent (board & clothing allowance, child care, WIC, etc.).
5. When young parents leave the care of DYFS, they should be permitted to take their children with them and not be subjected to independent litigation over abuse or neglect of the child due to the parent's age.

6. Teen parents in the care of DYFS who are accused of abuse or neglect by DYFS should be provided a parental defense attorney independent of any Law Guardian who may represent the child in a DYFS case against her parent(s).

**APA Recommendation:**

Before any of the new policies are implemented, DYFS must follow the procedures within the *Administrative Procedures Act* (N.J.S.A. §52:14B-4) for rule-making.

## LEGAL BACKGROUND

New Jersey has a duty to provide services and financial assistance and to make all reasonable efforts to prevent the out-of-home placement of a child and to reunify families. A provision of *The Child Placement Bill of Rights* addresses the duties of the state toward the child who is at risk of abuse or neglect. *N.J.S.A 9:6B-4(a)* prohibits the state from removing a child from his or her home before the state “has made every reasonable effort, including the provision or arrangement of financial or other assistance and services as necessary, to enable the child to remain in his home.” This statute recognizes the connection between assisting parents and protecting children.

The Third Circuit Court of Appeals recognized that the child, as well as the parent, has rights to remain within the family setting. “This right encompasses not only the parents' right to remain with and raise their children but the children's right to remain with and be raised by their natural parents.” *Lehman v. Lycoming Cty. Children’s Servs. Agency*, 1980 *U.S. App. LEXIS* 15451 (3d Cir. 1980).

Since 1980, federal law has conditioned federal funding to states on a requirement that they make “reasonable efforts” to avoid the need for placement and, if placement is made, that they make “reasonable efforts” to reunify the family. 42 *U.S.C.* 671(a)(15). See, *N.J.S.A.* 30:4C-11.1.

Legislative and judicial policy have dictated that the child’s ‘best interests’ be protected ‘so far as practicable’ by providing welfare services to support and maintain the integrity of the biological family as a living unit.<sup>6</sup>

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<sup>6</sup> *New Jersey Div. of Youth and Family Servs. V. A.W.*, 103 *N.J.* 591, 608-10 (1986).

Reasonable efforts are, therefore, a critical component of the constitutional right to keep one's family together or to reunify one's family after the out-of-home placement of a child.

A federal regulation regarding reasonable efforts to prevent out-of-home placement of children, 45 *CFR* § 1357.15(e)(2) (1991), enumerates several specific services which states may offer.<sup>7</sup> That list includes both emergency shelter and emergency financial assistance.

Despite its substantial obligation, the child welfare system provides insufficient assistance directly related to alleviating the effects of poverty by providing funding for housing assistance and other critical needs. Consequently, poverty may lead to family separation. If a family's basic needs are not met, it is also difficult for them to benefit from other necessary services, such as therapy, substance abuse treatment and parenting education.

The child welfare system in New York, the Administration for Children's Services (ACS), has made substantial progress in reforming its system by prioritizing preventive and reunification services to families and children. The focus on providing services has truly altered the culture of ACS and provided both better outcomes for children and significant costs savings. In New York City, the correlation between providing preventive care services to families and children and the reduction in need for out-of-home placement has been borne out.

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<sup>7</sup>Twenty-four hour emergency caretaker, and homemaker services; day care; crisis counseling; individual and family counseling; emergency shelters; procedures and arrangements for access to available emergency financial assistance; arrangements for the provision of temporary child care to provide respite to the family for a brief period, as part of a plan for preventing children's removal from home; other services which the agency identifies as necessary and appropriate such as home-based family services, self-help groups, services to unmarried parents, provision of, or arrangements for, mental health, drug and alcohol abuse.

The number of children admitted to preventive care programs by ACS has grown from 19,901 in 1996 to 30,368 in 2003<sup>8</sup>. Concurrently, the number of children placed in foster care dropped from 11,866 in 1996 to only 6,227 in 2004. The total spending on foster care and related services declined by \$158 million (adjusted) during the period 1999 to 2004, while the total number of children in foster care dropped from 38,440 to 22,082. This reflects a reduction in new foster care placements as well as a growing percentage of children being discharged from foster care into their reunified families rather than proceeding to termination of parental rights.

The progress that ACS has made in New York City toward providing services to families and children as the primary step in ameliorating risk for children is admirable. It also provides a working model for New Jersey to consider in working toward reforming our child welfare system. The progress in New York City demonstrates that these goals are not overly idealistic and unachievable, but viable objectives that will make the child welfare system better able to serve the children of New Jersey.

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<sup>8</sup> “Pivot Point: Managing the Transformation of Child Welfare in NYC,” *Child Welfare Watch*, Center for New York City Affairs, Milano Graduate School, New School University (Vol. 10, Winter 2004-2005); *NYC Administration for Children’s Services Reports*, Fiscal Year 1999 (July 1998-July 1999) and Fiscal Year 2004 (July 2003 to June 2004).



# I. HOUSING

## *Supporting families' housing needs keeps families together and prevents costly out-of-home placements*

There is an acute shortage of affordable housing in New Jersey. Low-income families who lack adequate housing or become homeless may face temporary separation from their children. Their inability to secure housing can also pose a barrier to family reunification. While housing requires an investment of resources, that investment must be measured against the human and financial costs of removing children from their families.<sup>9</sup>

DYFS needs to be actively engaged in securing housing for families that need it, both those whose children are still at home and those working towards reunification. Sometimes, securing housing will mean helping parents navigate the other agencies and systems that directly provide housing assistance, such as the Division of Family Development (DFD), the Department of Community Affairs (DCA), local public housing authorities, and HUD-funded programs. When families cannot get immediate help from other sources, DYFS must provide direct assistance until the family is able to secure other housing.

Historically, the best housing assistance available through DYFS has been the federal Family Unification Program (FUP), which provides Section 8 rent subsidies when families need housing to avert placement or to reunify. Unfortunately, there are very few subsidies and they are only available in certain counties. The Child Welfare Reform Plan discusses approximately eight funding sources and new programs for housing related to reform implementation. Unfortunately, only about half of those programs are aimed at

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<sup>9</sup> The basic foster care board rate is at least \$406 - \$508 per month, depending on the age of the child, with a supplemental monthly clothing allowance of \$184 - \$238. In addition, medical care and work-related child care are provided.

assisting birth parents, as distinguished from resource or foster parents. Moreover, almost all of the programs that may assist families who are at risk of DYFS involvement or who currently have DYFS involvement are not new or additional funding sources. The Plan merely mentions or earmarks existing inadequate funding sources.<sup>10</sup>

DYFS has obligations, both statutory and Constitutional, to provide assistance to at-risk families to avoid removal of children and to reunite children who have been removed. The recent Appellate Division opinion in *Div. of Youth and Family Servs. v. F.H. and J.T.* (unpublished, April 22, 2005), points to the need for individualized determinations of necessary services. In that case, cash assistance or rental payments could have brought about reunification, as lack of housing for eight children was the only obstacle to reunification. The caseworker, who argued that DYFS has no rental assistance program, chose, with the approval of her supervisors and the DAG, to pursue termination of parental rights. Fortunately, the Appellate Division was able to step in and prevent the termination in that case.

While providing financial assistance and support services to low-income families is not consistently a politically popular use of state resources, the alternative is spending substantially more on the care and upkeep of the children in foster care. In this example, rent on a five-bedroom home might have cost DYFS \$2,000 monthly. Instead of providing rental assistance for a few months, until TANF resources could be utilized, DYFS kept the children in foster care for 3½ years.<sup>11</sup> The average per capita cost for resource family care for a DYFS child in FY2005 was \$732 monthly.<sup>12</sup> A resource family

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<sup>10</sup> A laudable addition to the housing resources provided through the CWRP is housing for youth who are aging-out of the child welfare system.

<sup>11</sup> The Appellate Division noted that the caseworker acknowledged that, beginning at some point 2001, the only obstacle to reunifying the family was lack of appropriate housing for all eight children. *F.H.*, at 18.

<sup>12</sup> *FY2006 New Jersey Legislative Budget Book*. The cost is significantly more if the child is placed in any other type of setting, such as a group home (\$5,543 monthly) or a shelter (\$2,976 monthly).

is entitled to a board stipend plus clothing allowance that currently range from \$509 to \$1,457 monthly, as well as any medical expenses necessary for the children, and possibly even child care expenses for the children.<sup>13</sup> Based upon the average cost, DYFS spent roughly \$5,858 monthly for the board and clothing of the eight children for at least three and a half years, which totals approximately \$250,000. Instead, DYFS could have spent about \$2,000 monthly for up to a year, until other foreseeable resources, namely TANF or Section 8 housing assistance, became available. This approach would have cost DYFS only \$24,000, 10% of what it spent for foster care of the children. This simple economic cost-benefit analysis demonstrates that expanded services and financial assistance are cheaper than the cost of foster care for a child. This will become more obvious as the board rate for foster care increases sharply over the next few years, in accordance with the Plan's goal of equalization with the United States Department of Agriculture estimated cost of raising a child.

Additionally, each family that remains intact or is reunited due to DYFS providing financial assistance or services represents a savings in adoption subsidies, which are available for the great majority of foster children who are adopted, and continue until at least the child's 18th birthday. Just 12 years of adoption subsidies for one child at \$850 monthly is \$122,400.

### **Housing Recommendations:**

1. DYFS must provide or secure through other agencies emergency transitional housing to shelter homeless families until they secure more permanent housing.

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<sup>13</sup> DYFS Field Operations Casework Policy and Procedures Manual, II (D) 2506 – Levels of Care Rate Table.

2. DYFS must have emergency funding to provide housing, rental assistance, payment of back rent and utilities while families wait for rental assistance slots to become available through other agencies.
3. DYFS must coordinate with existing agencies and service providers that assist families in securing housing or other shelter, including DFD and DCA, so that all possible resources are used to secure housing for families.
4. The Department of Human Services must take a lead role in joining with other departments and branches of government, as well as service providers and community-based agencies, to address the serious lack of affordable housing in New Jersey.

## II. FLEXIBLE FUNDS

### *Meeting the individual needs of families requires adequate flexible spending*

The new DYFS policy on Flexible Funds, located at II 1701 of the DYFS Policy and Procedures Manual, appropriately provides for funds to be available for parents, relative caregivers, and resource families. The policy clearly states that the funds may be utilized for expenditures that are not permitted with other funds, such as the PRS Emergency Funds (II 2200) and the Foster Care Crisis Funds (II 2100). Of primary importance to low-income parents and relative caregivers is the ability to use the funds to address housing issues. The policy notes, as appropriate example expenditures, rent payment to avoid eviction, payment of security deposits for apartments (first and last month's rent), and utility bills.

Unfortunately, the policy limits the amount and duration of expenditures that may be made without obtaining consent for an exception to the rule. Specifically, no more than \$1,500 annually may be spent for a parent and \$1,000 annually for a resource family, including relative caregivers. Additionally, payments made on behalf of parents or resource families may not be made for a period exceeding three months. These limits are arbitrary and unreasonably restrictive. As an example, the amount of \$1,500 will not cover a security deposit of two months' rent for most low-rent two-bedroom apartments in Central or Northern New Jersey. In order to effectively meet the individualized needs of families, the limitations on amount and duration of Flexible Funds spending should either be eliminated or at least raised to the level of the foster care expenses that will be saved by assisting the birth family (currently \$732 monthly per child).

### **Flexible Funding Recommendations:**

1. DYFS must have more flexible emergency funding to provide for families' basic needs when no other resources are available.
2. The Flexible Funding amount and duration limits should be eliminated or at least reflect the foster care expenses that are saved by keeping children with their families, an average of \$732 monthly per child.
3. For individual families, individualized determinations of DYFS financial assistance and services through the Flexible Funds and other DYFS resources should be made, based upon actual needs of the family.
4. As the Report of the Child Welfare Reform Panel indicates, the procedures for accessing the Flexible Funds do not make the funds sufficiently readily available. The corrective recommendations of the Panel appear to be appropriate to address the concern of access.

### III. OTHER FAMILY SERVICES

*New Jersey must provide the array of quality individualized services needed by at-risk families*

Families have distinct and quite varied needs. Some may require only a few months' back payment on a utility bill to prevent the gas or electricity from being shut off. Others may need intensive case management with in-home services. The Plan recognizes five major factors that contribute to or are associated with child abuse or neglect cases: substance abuse, mental health, domestic violence, physical health, and homelessness. This office has continuing concerns about the availability and accessibility of mental health and substance abuse treatment. DYFS has been unwilling in some cases to pay for services, even after referring parents for treatment. Accessibility issues may revolve around language barriers, transportation, and physical building layout. The state must ensure access to services, not just provide referrals. A more detailed analysis of the need for services is available in *Protecting and Preserving Families: A New Vision for Child Welfare Services*, Legal Services of New Jersey, April 2003 (available at [www.lsnj.org/PDFs/protect.pdf](http://www.lsnj.org/PDFs/protect.pdf)).

In accordance with the Child Welfare Reform Plan, the newly formed Division of Prevention and Community Partnership (DPCP) was expected to work at the county and neighborhood level to assess the need for an array of resources and services within each community and assess the availability of these resources. Additionally, when the available resources and services in a community were insufficient to meet the need in that community, the DPCP was expected to provide encouragement for the development of the lacking resources and services. To date, no community assessments have been

completed and no standards for minimum countywide community resources have been formulated.

Additionally, the DPCP was expected, in accordance with the Plan, to provide the services, assistance, and other efforts for families who are at risk of DYFS involvement. The responsibility for case management of what were historically called “family problems” under DYFS supervision was expected to be taken up by DPCP. Unfortunately, that division is not yet structurally prepared to take on that obligation. In the meantime, DYFS has modified its internal structure, including centralized screening, and modified case opening practices, to focus on investigation of allegations of child abuse or neglect, leaving the family problem supervision cases outside of the focus of the newly restructured DYFS and much less likely to receive prevention services.

**Other Services Recommendation:**

DYFS and DPCP must coordinate with existing agencies and service providers that provide food, clothing, health care and other essentials, so that all possible resources are used to meet families’ basic needs.



## IV. PARENT-CHILD VISITATION

*DYFS must provide children in out-of-home placement and their parents with visitation of the type, duration, and frequency outlined in the Administrative Code and written policy*

It is traumatic for children to be removed from their families. Everything in their world changes: their caretakers, the house they live in, the bed they sleep in, playmates, school, community, and place of worship. Contact with their families in familiar settings is important to reassure them. Visitation is also essential so that parents and children can maintain their relationship while the children are in foster care. Research studies show that adequate visitation is the single best indicator of whether children will return home.

New Jersey's own visitation regulations recognize that frequent and lengthy family visits are "beneficial for most children" and help facilitate family reunification when that is the case goal.<sup>14</sup> They establish guidelines to ensure adequate visitation for families consistent with any safety concerns. Among other things, the regulations establish a goal of lengthy weekly visits and require that they take place in the most comfortable setting possible and be unsupervised unless DYFS determines that supervision is necessary in a specific case. When supervision is necessary, it is to be provided by family, friends or others familiar to the family, not DYFS workers, except in limited situations.

Pursuant to the Child Welfare Reform Plan, DYFS adopted policies on Parent-Child Visitation. The new policies are substantially similar to the prior policy, which largely follows the statutory and regulatory requirements for visitation. The primary cause of the systematic breakdown of frequent visitation in the least restrictive manner

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<sup>14</sup> N.J.A.C. 10:122D-1.1.

and environment does not appear to be the written policy regarding visitation, but the practice that has developed which substantially deviates from the written procedure.

Caseworkers and Deputy Attorneys General routinely make visitation plans and request visitation orders that are contrary to both the written policy of DYFS and the regulations. Such actions are beyond the authority of the caseworker or DAG. Both DYFS and the Office of the Attorney General must affirmatively require compliance.

DYFS frequently limits family visits to only one hour every other week, as it did prior to the Plan. If no visits are cancelled, a rare occurrence, children see their parents a mere 26 hours every year, which is approximately equal to one day per year. DYFS claims that it does not have enough resources to do more. Plainly, this deprives families of a meaningful opportunity to relate to one another, without any regard for the particular family's needs. Often no "special consideration" is given to more frequent visits for infants and toddlers, as required.<sup>15</sup> Although children are entitled to visit with their parents immediately after placement,<sup>16</sup> many families in the child welfare system wait several weeks to see each other after separation, or longer. Visits do not often accommodate parents' work schedules, and parents are not always provided with necessary means for transportation, as required.<sup>17</sup>

Instead of being held in the most comfortable setting possible, visits are held routinely in the DYFS office. Visits are virtually always supervised by a DYFS caseworker or a program under contract with DYFS, regardless of whether supervision is actually necessary. As the CWRP acknowledges, DYFS routinely arranges for and recommends supervised visitation of children to occur in the DYFS office with a

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<sup>15</sup> *N.J.A.C.* 10:122D-1.14(a) 3 (young children's "sense of time is different than that for older children or adults").

<sup>16</sup> *N.J.S.A.* 9:6B-4(e); *N.J.A.C.* 10:122D1.14(a)1.

<sup>17</sup> *N.J.A.C.* 10:122D-1.13 (b).

frequency of no more than one hour weekly, and often one hour every two weeks. Some of the important provisions of the written visitation policy and regulations include (a) a minimum of weekly visits, (b) increased visitation to spur reunification, (c) holiday, evening, and weekend visits, and (d) routine telephone contact.

DYFS must not restrict or terminate visits merely because children have negative reactions. Family visits can be upsetting to children due to the trauma of separation and the children's desire to go home. Moreover, children may be at risk of emotional trauma from exposure to parents whom they have not seen for long periods of time or with whom they may have had difficult relationships in the past. Visits should never be stopped due to the child's upset without a careful assessment of the situation, consistent with established reasons for limiting them.<sup>18</sup>

In order to avoid rampant, ongoing disregard for the policy and regulations on visitation, the policy must incorporate provisions for monitoring the visitation plans and visitation orders.

#### **Parent-Child Visitation Recommendations:**

1. Visitation between parent and child should not be restricted or reduced due to a change in the case plan to termination of parental rights. (No judicial finding supports such a change, but it interferes with bonding between parent and child.)
2. Policy should require articulated reasons why visitation is less frequent than weekly in all current cases.
3. Policy should have a clearer standard for when it is appropriate to increase frequency of visitation and evening and weekend visits.

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<sup>18</sup> *N.J.A.C. 10:122D-1.15.*

4. Telephone and e-mail contact must be articulated in the visitation plan. Although the written DYFS policy indicates that telephone and e-mail contact are important, there is no requirement for addressing them within the visitation plan.
5. Monitoring adherence to policy is critical to success. The DYFS computer system, SACWIS/NJ SPIRIT, must track visitation information and DYFS should provide ongoing reporting of the information to both the Office of Children's Services and the Office of the Child Advocate for monitoring. Visitation information that should be tracked includes:
  - a. Number of days between removal and first parent visit;
  - b. Number of days between removal and completion of visitation plan;
  - c. Whether supervision is required;
  - d. Articulated statement of need for supervision;
  - e. Relationship of Supervisor to child or parent;
  - f. Location of visits;
  - g. Frequency of visits;
  - h. Duration/length of visits;
  - i. Whether holiday visitation is permitted;
  - j. Which, if any, of the above factors are court ordered.
6. Policy should include provisions for internal DYFS monitoring by supervisors to assure that visitation plans are prepared in accordance with policy and regulations.
7. Court rules should require the court order to include all facets of visitation.
8. DYFS must pursue more contracts for private supervised visitation programs when supervision is necessary and there are no relatives or friends available to provide the supervision.

9. DYFS should place some responsibility for transportation to visits upon resource families. Even if DYFS had to pay a mileage charge for the transport, it would be cheaper than using DYFS staff for transportation and would facilitate flexibility in evening, weekend, and holiday hours, while reducing the visit cancellations that result from caseworkers being called to other responsibilities.

## V. DOMESTIC VIOLENCE

*New Jersey must provide services, including housing and counseling, to domestic violence victims with children and focus child welfare allegations on the batterer*

New Jersey's child welfare system has put victims of domestic violence in a terrible double-bind. On the one hand, DYFS frequently fails to provide services to domestic violence victims that will enable them to separate from their abusers. On the other hand, DYFS frequently blames the victimized parent for any adverse effects that the domestic violence has on her children.

Because domestic violence involves control and isolation, victims frequently are emotionally and financially dependent upon the person who abuses them. Many women face the terrible choice of remaining in the violent situation or embarking on a new life with no home, no financial support, and no friends or relatives. Moreover, victims are at heightened risk of serious violence from the abuser upon leaving. Studies indicate and our courts have recognized that women are at the highest risk of violence and at risk of the most serious violence or death at the time that they leave their abusers. (*State v. Reyes*, 172 N.J. 154, 163 (N.J. 2002))

In order to enable victims of domestic violence to safely leave their abusers, they must have access to legal protections, housing, financial support, and domestic violence counseling.

Some victims of domestic violence remain hopeful that their batterer will change. In order to facilitate this possibility both for the victim at issue and for the protection of future partners to the abuser, DYFS must assist the perpetrators of domestic violence with batterer intervention services. This is more than traditional anger management, but

counseling focused specifically on the dynamics of domestic violence. It has proven to be much more effective than anger management.

In New Jersey, battered mothers are frequently held responsible for abusing or neglecting their children when domestic violence is perpetrated against them in the presence of their children.<sup>19</sup> DYFS has pursued a policy of assuming harm to every child who witnesses domestic violence and blaming the victim of domestic violence as equally culpable as the batterer or more culpable.<sup>20</sup>

The Child Welfare Reform Plan requires DYFS to determine individually whether a child suffered harm or imminent harm rising to the level of abuse or neglect and to discontinue the practice of pursuing failure to protect allegations against domestic violence victims based solely on a child witnessing the domestic violence. “In cases [involving domestic violence] that rise to the level of child abuse or neglect, substantiating...abuse and/or neglect (when appropriate) against the batterer...rather than failure to protect against the non-offending parent.”<sup>21</sup>

Subsequent to the Plan, DYFS continued to pursue the presumption of harm and failure to protect in two appealed cases of children witnessing domestic violence: *New Jersey Div. of Youth & Family Servs. v. S. S.*, 372 N.J. Super. 13 (App. Div. 2004) (DYFS sought Certification to appeal the Appellate Division opinion of July 1, 2004, but was denied); and *New Jersey Div. of Youth & Family Servs. v. D.F.* (the Appellate Division reiterated the legal holdings of *S.S.*, denying the legitimacy of pursuing

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<sup>19</sup> New Jersey Advisory Council on Domestic Violence, *Report: Children and Domestic Violence*, (February 1998), (16a-22a) (hereinafter “*Advisory Council Report*”). It is not uncommon in these matters for DYFS to place the children either with the batterer himself or with his parents, so long as the batterer no longer lives with his domestic violence victim.

<sup>20</sup> *Advisory Council Report*, (21a-22a).

<sup>21</sup> *A New Beginning: The Future of Child Welfare in New Jersey* (June 2004).

domestic violence victims for failing to protect children who witness the domestic violence).

On July 1, 2004, DYFS adopted a new internal policy concerning the definition of abuse and neglect which states that neglect should be deemed substantiated in the circumstance of “[d]omestic violence in the home when the child’s health or safety has been threatened, as evidenced by a past history of violence or uncontrolled behavior.”<sup>22</sup> The new policy appears to reflect the longstanding presumption that an act of domestic violence makes the victim responsible for any consequences of future acts of domestic violence by that batterer. Such a presumption flies in the face of the Child Welfare Reform Plan as well as the growing consensus on effective methods for addressing domestic violence by child welfare agencies. Such a presumption cannot be maintained.

DYFS recently adopted additional policies regarding domestic violence. The policy reflects some of the language of the national models for addressing families with the co-occurrence of child maltreatment and domestic violence. Specifically, the new policy notes the philosophy that enhancing the safety of the adult victim will enhance the level of safety for the child. The policy includes provisions for services and referrals to adult victims of domestic violence and their children. The policy includes individual needs and strengths assessment for domestic violence victims.

However, the policy includes procedures for a caseworker to take when there is a report of risk of harm “or does not specify extent of harm,” which further suggests that all reports of a child witnessing domestic violence are presumed to have caused harm or imminent harm. The policies DYFS has adopted regarding domestic violence do not even hint that case workers should avoid pursuing abuse and neglect claims against an abused

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<sup>22</sup> Initial Response Manual, Volume II B of the DYFS Field Operations Casework Policy and Procedures Manual, Allegation-Based System; Allegations of Harm #10 & #60, “Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare” (updated July 1, 2004).



parent for failure to protect, but focus on the batterer. They fail to address some of the primary standards laid out in the Child Welfare Reform Plan.

**Domestic Violence Recommendations:**

1. OCS and DYFS must support victims of domestic violence in obtaining restraining orders.
2. DYFS must provide services to victims of domestic violence and their children, including counseling and housing.
3. DYFS must provide batterer intervention services to the perpetrators of domestic violence.
4. Discontinue presumption of injury or imminent danger to a child based on a child witnessing domestic violence. Require individualized determination of harm or risk to the child.
5. Avoid removing children from the care of the domestic violence victims when doing so is not necessary to keep the children safe.
6. In cases that rise to the level of child abuse or neglect, substantiate child abuse or neglect against the batterer rather than substantiating failure to protect against the non-offending parent.

## VI. RELATIVE CARE PLACEMENT

*DYFS must take additional steps toward ensuring the priority of placing children with relatives and family friends*

When a child has to be removed from his or her home due to evidence of abuse or neglect, there are substantial benefits to placing a child with a relative or close family friend. Such a placement reduces the difficulties that a child encounters in moving in with strangers or to an institutional setting. An existing relationship and level of trust is very important to a child who is undergoing the significant life changes that are presented by removal from one's parents.

A relative caregiver has more invested in making the child comfortable and making choices in the best interest of the child because, whether the child reunifies with his or her parents or not, the relative caregiver expects to maintain a long-term relationship with the child. Additionally, the relative or family friend is more likely to feel invested in assisting the parent to reunify than a stranger or institutional caregiver. Children who are placed with relatives or family friends are more likely to reunify with their parents than those placed in other settings. In accordance with the Plan, family reunification is the initial and primary goal for children who are removed in most cases. Therefore, placement with relatives must be a priority.

The preference for placement of a child with a relative or family friend has been codified in both statutes and regulations, which require that a child be placed in the least restrictive setting. This requirement is best satisfied by placement with a relative or family friend in most instances. Moreover, *the Child Placement Bill of Rights* requires the state to make reasonable efforts to place the child with a relative or family friend.<sup>23</sup>

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<sup>23</sup> N.J.S.A. 9:6B-4.

DYFS has adopted a written policy on placement with relative caregivers. The policy incorporates most of plan requirements. However, it specifically states that relative placement is not required by law:

**No absolute requirement—The bottom line in determining a placement for a child is the “child’s best interest.”** Always consider relatives and family friends as the first placement option. However, there is no absolute requirement that a child be placed with a relative or family friend if, in the professional judgment of the Worker, Supervisor and Casework Supervisor, a different placement is in the child’s best interest. Use family team meetings to help guide and drive the decision-making process.

This language treats placement with a relative as less important than the statutory right. *N.J.S.A. 9:6B-4(A)(b)* includes the child’s right “to the best efforts [of DYFS] to place the child with a relative.” While this is not an absolute right to relative placement, it is a substantial duty on DYFS to make a relative placement, which cannot be shirked and requires documentation of substantial and diligent efforts. The current policy language leaves substantial room for case workers and supervisors to choose to not place a child with available relatives or friends, especially ones who are located after the child has been placed and possibly bonded with foster parents.

Additionally, the Plan has prompted change in divergent areas of policy and law. The policies and newly promulgated regulations regarding DYFS investigations fail to reference the priority of placement with a relative when instructing caseworkers on removal of a child. Such a lack of cross-reference may limit the effectiveness of the policy of prioritizing relative care placements, as caseworkers who are making urgent

decisions are less likely to be diligent about reviewing all appropriate sections of the Policy and Procedures Manual. Cross-references could prompt such action.

***A. Equalizing board rates to Kinship Legal Guardians (KLG)***

While the new policies of DYFS, adopted pursuant to the Child Welfare Reform Plan, raise the board and clothing allowances for Kinship Legal Guardians to the rate provided to foster or adoptive parents, this raise is only prospective. It only applies to Kinship Legal Guardianships (KLG) that were completed on or after July 1, 2004. This policy is very important. Equalizing rates of pay for KLGs and other resource families promotes permanency with kin. It allows some relatives who could not afford to be caregivers to continue in that role, preventing a child from placement with strangers.

Making the increased payment only available to kin who complete their KLGs after July 1, 2004, leaves the pre-July 1, 2004, KLG arrangements in jeopardy due to the substantial financial burden of rearing a child. Moreover, there appear to be fewer than 250 children who entered KLGs between the inception of the program in January 2002 and June 30, 2004.<sup>24</sup> Therefore, the actual cost to equalize the payments for all children in Kinship Legal Guardianships with payments to other resource families would be only a minimal increase in the cost of the current plan for only equalizing payments for children in KLGs that were finalized after July 1, 2004.

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<sup>24</sup> We have been unable to find the specific number of Kinship Legal Guardianships (KLGs) that were completed prior to July 1, 2004. However, reviewing other figures produced by DYFS and OCS may approximate an estimate. According to the information provided by the OCS and published within the Panel's Period I Monitoring Report, about the permanency goal of children in out-of-home placements, 1.8% of such children are expected to have Kinship Legal Guardianships and 28.9% of such children are expected to have adoptions. That is 0.62 KLGs for every 100 adoptions. By utilizing the .62 KLGs/100 adoptions ratio, one can estimate the number of completed KLGs for each period; based on the number of adoptions reported in the New Jersey Child and Family Services Review of May 21, 2004, and in the New Jersey Child Welfare Panel's first report, an estimate of 250 children in Kinship Legal Guardianships from the inception of the program until July 1, 2004, appears to be a substantial over-estimation.

### ***B. Relative's readiness for child placement***

Many relatives who are contacted by DYFS are not expecting an urgent request for placement of a child in their homes. A decision to take in one or more children is difficult and requires consideration of the many responsibilities and practical issues of such an act. Some relatives are not financially prepared to take on the responsibility. Others may not have the appropriate space or furnishings to accommodate one or more children. Over the past few years, and in part due to prompting from the Plan, DYFS has expanded the financial assistance available to relatives, especially those who qualify as certified resource parents. Education about the resources available to potential relative caregivers should be mandatory, to effectively allay some of the financial concerns. Potential relative caregivers should be advised in writing of the availability of an initial clothing allowance, and monthly foster care board subsidies, monthly clothing allowances, child care subsidies, medical coverage, and even federal programs such as WIC and Head Start.

Additionally, caseworkers must consider the financial resources available, such as Flexible Funding and Foster Care Crisis Funding, to assist with purchase of furniture or even home adjustments to accommodate the child or children.

Some potential relative caregivers, who represent the best placement for the child, have accommodations for the child that do not meet all of the requirements of a certified foster home, such as sufficient square feet of living space per child or independent sleeping areas for children of opposite genders. Due to the familial nature of the relationship and the previously discussed benefits of such a placement, DYFS and OCS should provide flexibility in approval of relative caregiver homes for placement.

Unlike pre-certified resource families, most potential relative caregivers are not expecting a request for placement and may require a period of days to consider all of the consequences of a decision to accept the placement and to make the necessary accommodations available. If a specific stranger resource family were not prepared to accept a placement, generally the caseworker would redirect his or her attention to another family or facility for immediate placement. However, relative caregivers provide a unique and particularly valued placement, which is worth waiting for. DYFS must be prepared to address the short delays in placement with relative caregivers due to their special nature and the unlikelihood of immediate availability of placement.

In order to accommodate short delays in arrangements for relative placements, DYFS must have pre-certified urgent short-term placements consistently available. DYFS has long had a policy of Emergency Foster Care, wherein a child may be placed for a few hours up to a week or so with a foster parent, with the full expectation that the child will only be there for a very brief duration. Some current foster parents have agreed to act in this capacity. However, some counties are much better than other counties at securing sufficient Emergency or Temporary placements. Counties, such as Essex, that exercise greater flexibility toward Emergency placements have had better recruiting success.

Resource parents who can maintain their work schedule are substantially more likely to agree to brief placements. DYFS must take steps to support emergency brief placements including dropping off and picking up children at times convenient to the emergency placement and providing a full list of child care providers in the area who will accept new children with little notice and without medical history (usually in-home providers) and will accept the DYFS stipend as payment. According to the information provided to the New Jersey Child Welfare Panel and included in the Panel's report,

approximately 37% of children coming into DYFS care are 0-5 years of age. Similarly, for school-aged children, before- and/or after-school child care may be necessary. Child care is necessary for emergency foster parents to be able to maintain employment commitments.

### ***C. Criminal background checks***

Potentially, the greatest barriers to placement with relatives are the policies DYFS has adopted regarding criminal histories of adults in the placement home. DYFS has created an unauthorized presumption of ineligibility for relatives and other resource parent applicants who have any criminal conviction. The federal *Adoption and Safe Families Act* of 1997 (*ASFA*) requires criminal background checks for foster parent applicants. *ASFA* has a short list of crimes for which a conviction should bar foster parenting. 42 *U.S.C.* 671 (a)(20)(A)(i) *ASFA* has an additional list of secondary crimes for which a conviction should bar foster parenting for a period of five years from the date upon which the crime was committed. 42 *U.S.C.* 671 (a)(20)(A)(ii) *ASFA* does not limit eligibility for foster parenting for any crimes other than those enumerated in those sections.

The New Jersey Legislature incorporated the criminal background check into legislation in 1999. *N.J.S.A.* 30:4C-26.8d requires denial of foster parent applications when the applicant or any adult in the household has been convicted of any of the enumerated crimes within this section. The list of crimes detailed in this section is substantially more extensive than those required by the federal *ASFA*. *N.J.S.A.* 30:4C-26.8e requires denial of foster parent applications when the applicant or any adult in the household has been convicted of any of the enumerated secondary crimes and has been either incarcerated, under parole, or probation supervision within the past five years.

Again, the list of crimes with a five-year lookback period is more extensive than those required by the federal *ASFA*. Additionally, the five-year lookback period in the New Jersey statute is defined by the date of release from incarceration, parole, or probation, whereas the lookback period in the federal *ASFA* is defined by the date of the crime.

The Administrative Code regarding criminal background checks essentially duplicates the language of the statute. Unfortunately, the policy adopted by DYFS to address criminal history checks goes far beyond the scope of the federal and state statutory authority to deny applicants based upon criminal history. The policies instituted by DYFS create an unauthorized presumption of ineligibility for any applicant who has any criminal conviction or has another adult in the home with a criminal conviction.

Section II D 1810.4 of DYFS Field Operations Casework Policy and Procedures Manual adopted on March 4, 2002, describes denials of foster parent licensing on the basis of Criminal History (CHRI). Section 1810.4c indicates a presumption of ineligibility for applicants who have a criminal conviction of any sort. That section states that, for criminal convictions not enumerated in the *N.J.S.A. 30:4c-26.8d & e*, an application may be approved only after careful review of the facts and with the consent of specific DYFS personnel.

Section II A 2100 of the DYFS Field Operations Casework Policy and Procedures Manual provides the procedure to apply for a Waiver when a resource family or relative care family applicant has a criminal conviction. This section also specifies that a waiver is not available for any criminal conviction outlined in *N.J.S.A. 30:4C-26.8d & e*, but that a “waiver” may be obtained for other criminal convictions, to avoid applicant rejection. The procedure for waiver requires in some cases the consent of high-ranking officials such as the DYFS Assistant Commissioner, or DO/ARC Manager. This mere institution



and continuation of the “waiver” policy and procedure acts as a presumption that, without such a “waiver,” applicants or household members with any criminal conviction will make a resource home ineligible for licensure.

There is neither statutory nor regulatory basis for such a presumption. Caseworkers are authorized to conduct family and personal history investigations of specific applicants and their household members, which may reveal facts surrounding specific criminal convictions that give rise to concerns about the safety of a child in that home. This is distinct from a presumption of ineligibility due to any criminal conviction, no matter the nature of the crime and no matter the length of time that has passed, or the corrective actions, treatments, or therapies that may have been undertaken.

It is difficult to understand why, for example, a partner at the accounting firm Arthur Andersen, who may have been convicted in relation to actions around the Enron business dealings, should be presumed to be ineligible to take care of her niece seven years later. Many crimes are non-violent, victimless, and/or unlikely to recur. Both Congress and the New Jersey Legislature addressed the types of crimes that should give rise to a presumption of ineligibility. The presumption may not be expanded. Moreover, the Legislature has made a determination that a person convicted of a violent or drug-related crime listed in *N.J.S.A. 30:4C-26.8e* who has completed incarceration, parole, and/or probation and refrained from subsequent similar criminal activity does not pose the level of risk that requires a presumption of ineligibility.

This issue is of particular concern in the context of relative care placements. As has been acknowledged repeatedly by DYFS and others concerned with child welfare issues, there is a strong correlation between poverty and child welfare. Many of the issues most closely associated with child welfare concerns, such as inadequate housing, mental

health issues, substance abuse, and domestic violence, are also closely related to poverty. Many of the families with whom DYFS becomes involved may have a higher likelihood of prior criminal convictions than the general public or the general pool of foster parent applicants. While Arthur Andersen partners are not likely to represent the typical relative placement option, a more common scenario is a low-income relative with a ten-year-old conviction for shoplifting or writing bad checks.

DYFS should revise its Policy Manual to remove any presumption of ineligibility for convictions outside of the statutory scheme. The Waiver policy should be revised to consider extraordinary circumstances where the best interest of a child would dictate permitting placement with a relative who has a conviction listed in *N.J.S.A. 30:4C-26.8d* or e.

#### **Relative Care Recommendations:**

1. The language in the modified policy that there is “No absolute requirement” for placement with available relatives should be removed, as it encourages case workers and supervisors to choose to not place a child with available relatives or friends.
2. There should be cross-references to the written policy on placement with relative caregivers in all other sections of the DYFS Policies and Procedures Manual that address placement of children.
3. Board rates to Kinship Legal Guardians (KLG), including those completed prior to July 1, 2004, should be equalized with the rates to resource parents.
4. DYFS must provide written notice of all financial and other resources available to potential relative caregivers.

5. DYFS and OCS should provide flexibility in approval requirements of relative caregiver homes, such as sufficient square feet of living space per child or independent sleeping areas for children of differing genders.
6. In order to increase the likelihood of appropriate, safe placements with relatives, DYFS must have access to sufficient resource homes that will accept children for brief emergency placements, while potential relative caregivers consider the placement and arrange for appropriate accommodations.
7. DYFS should revise its Policy Manual to remove any presumption of ineligibility for convictions outside of the statutory scheme. The Waiver policy should be revised to consider extraordinary circumstances where the best interest of a child would dictate permitting placement with a relative who has a conviction listed in *N.J.S.A. 30:4C-26.8d* or *e*.

## VII. EARLY INTERVENTION SERVICES

### *Investigator training and immediate evaluations are needed*

It appears that *CAPTA* requires child welfare agencies to refer children under the age of three who have a substantiated case of abuse or neglect to the state's Early Intervention program. In New Jersey, DYFS is supposed to refer each child less than three years of age who has a substantiated case of neglect or abuse to the state's Early Intervention System (EIS), which is administered by the Department of Health and Senior Services. DYFS makes the referral at the conclusion of their Child Protective Service (CPS) investigation, within 60 days of the receipt of the report.

This allowance for a two-month delay is not acceptable. The child should be referred to the EIS for their evaluation within 24 hours of DYFS' substantiated finding. Because medical and social services can often make a critical impact on a child's development the earlier that they are provided, the Early Intervention program is based on the goal of prompt evaluation and integrated delivery of services. Time has already passed while the DYFS investigation was conducted and the report prepared. No more time should be allowed to pass before the child is evaluated for developmental delays and necessary services can be provided. As an example, the Kansas state child welfare agency is required to send the referral to their state's Early Intervention agency the same day or within one working day of the neglect or abuse finding.

DYFS policy requires the referral of a child under the age of three to the EIS at the conclusion of the CPS investigation when no neglect or abuse is found and the worker has concerns about the child's development.

Because the EIS requires more than subtle symptoms of developmental delay for eligibility for integrated services, this policy appears to be adequate. However, all staff

should refer the child to the EIS when they have even the slightest concern that the child has a developmental delay. The EIS evaluation is an important tool for identifying the need for medical and support services before the child is three, and access to the evaluation is the critical first step.

DYFS policy also requires that all children under the age of three be referred to the EIS as part of the Child Welfare Service Needs Assessment when the worker has concerns about the child's development.

Again, this policy would appear to be adequate but the DYFS staff must be well-trained in identifying the signs of developmental delays, especially in infants before they are mobile or can speak.

#### **Early Intervention Recommendations:**

1. The allowance for a two-month delay is not acceptable. The child should be referred to the EIS for their evaluation within 24 hours of DYFS' substantiated finding.
2. All staff should refer the child to the EIS when they have even the slightest concern that the child has a developmental delay.
3. Staff must be well-trained in identifying the signs of developmental delays, especially in infants before they are mobile or can speak.

#### 4. **VIII. CHILDREN POST-TERMINATION**

*Services, representation, and family reunification efforts must continue when children are not adopted shortly after termination of parental rights*

In theory, for every child over whom the state is granted guardianship there will be an adoptive home readily available. However, this is clearly not the case. The priority instilled by ASFA in rushing to guardianship as a means to avoid children lingering in foster care has resulted in many children who are not adopted within a year of the guardianship and termination of their parents' rights. These children do not currently have the same protections from judicial review as children with pending legal cases.

Children should have active advocates post-termination through adoption. These advocates should be responsible for requesting a hearing, if an appropriate plan for the child is not in place within six months or a year. The advocates should ensure that the wishes of the children are heard, contact with siblings maintained and all options for placement of the children are pursued. At hearing, the court should require DYFS to revisit the option of return to the parents and placement with relatives. The Court should reinstitute the Guardianship (FG) proceedings and assess whether termination of parental rights (TPR) should be vacated, due to changed circumstances.

The CPRB should have specific criteria used in post-termination cases; criteria should trigger a hearing in cases where there has been an adoption plan disruption or a failure to have a plan within six months post-TPR, or an adoption has not been finalized within a year.

DYFS should monitor post-TPR outcomes and post-adoption outcomes with the goal of improving the process and services to children. DYFS needs to increase available services to post-TPR and adopted children. Many of the children have special

educational, mental health and medical needs that are not being met, because of the lack of availability of these services.

When the judgment of the court at the close of a DYFS guardianship trial is for termination of parental rights based on “bonding” of the subject child with specific foster parents who wish to adopt the child, a provision should be inserted into the final order making the parental rights termination contingent on the adoption of the child by those specific foster parents within one year, and further providing that, if said adoption does not take place within one year, the judgment terminating parental rights is vacated, and the matter is to be brought before the court for a new trial or a settlement of the matter between the birth parents and DYFS. Such a system would make a judgment for termination of parental rights based on bonding in a DYFS guardianship case similar to a voluntary “identified” surrender of a child to DYFS, which is void if the anticipated adoption of the child by specific individuals does not take place as planned. In light of the nonoccurrence of the anticipated adoption, consideration could be given to returning the child to the birth parents or to placing the child with birth relatives who could provide a permanent home.

#### **Post-Termination Recommendations:**

1. Children whose parental rights have been terminated but have yet to be adopted should have active advocates post-termination through adoption and a hearing should be held if an appropriate plan for a child is not in place within six months from TPR.
2. CPRB should have specific criteria used in post-termination cases; criteria should trigger a hearing in cases where there has been an adoption plan disruption or a failure to have a plan within six months post-TPR, or an adoption has not been finalized within a year.

3. DYFS should monitor post-TPR outcomes and post-adoption outcomes with the goal of improving the process and services to children.
4. DYFS needs to increase available services to post-TPR and adopted children. Many of the children have special educational, mental health and medical needs that are not being met, because of the lack of availability of these services.
5. A provision should be inserted into the Guardianship Order making the parental rights termination, if it is based upon “bonding” with foster parents, contingent upon the adoption of the child by those specific foster parents within one year, and further providing that if said adoption does not take place within one year, the judgment terminating parental rights is vacated, and the matter is to be brought before the court for a new trial or a settlement of the matter between the birth parents and DYFS. (Similar to a voluntary “identified” surrender of a child to DYFS, which becomes void if the anticipated adoption of the child by specific individuals does not take place as planned.)
6. If no adoptive home is identified for a post-termination child within six months or a year after the guardianship is granted, DYFS should reconsider placement with the birth parents, other relatives, or family friends.



## **IX. DYFS OUT-OF-HOME YOUTH**

*New Jersey must provide adequate services to on aging-out youth and teen parents in DYFS care*

### ***A. Aging-out***

The CWRP extensively addresses the deficiencies in the services that DYFS has been providing to children in its care who are approaching or have reached the age of majority. Studies show an alarming rate of children being removed by DYFS from parents who were themselves as children in the care of DYFS, especially those who came of age while in the care of the state.

The CWRP requires DYFS to provide services to children prior to reaching the age 18 to assist in preparation for living on their own, for true emancipation. The Plan also calls for continued placement and services to youth between the ages of 18 and 21 unless the youth chooses to opt out of the placement or services. The current policy on services for children 18 to 21 indicates limited circumstances under which ongoing services may be provided to such youth. The policy also dictates the manner in which a youth may request and be deemed eligible for ongoing services beyond his or her 18th birthday.

The current policy clearly conflicts with the agreement reached in the CWRP and must be modified to comply with the Plan.

### ***B. Teen parents***

DYFS policies have failed to address directly the issue of youth who become parents while in the care of DYFS. There has been considerable confusion around the rights and obligations of both DYFS and the young parent. Because of this confusion, there has been inconsistency in the manner in which caseworkers and DAsG address the issues that arise.

The law does not clearly state that the child of a youth in the care of DYFS is also a dependent of the state. Therefore, caseworkers are unclear about the ability or obligation of DYFS to provide additional funding for the resource family or institutional placement of the young parent.

In several cases known to LSNJ, DYFS has responded to this uncertainty by seeking a finding of abuse or neglect against the young parent so that DYFS will receive federal funding (Title IV-E) for the placement of the child. However, such a legal finding has substantial consequences for the young parent and the infant. When a finding of abuse or neglect is made, in some instances, the infant is removed from the care of the young parent. In cases where the parent and child are permitted to remain in the same placement after such a finding, the parent is not free to take the child with her when she reaches the age of majority and chooses to leave the placement. She must return to court for an order reunifying her with the child.

The obligation for legal representation of a young parent accused of abuse or neglect has also been treated inconsistently. In some cases, the Law Guardian who represents the youth in the case against her parent represents her in the case in which she is the parent defendant as well. This is inappropriate. Any parent defendant is entitled to an attorney who represents her interests as a defendant, which may differ substantially from her interest as a child relative to her parent(s). Moreover, Law Guardians are generally experienced in representing the interests of a parent defendant. Permitting such representation is a disservice to the young parent defendant.

#### **Out-of-Home Youth Recommendations:**

1. In accordance with the CWR Plan, DYFS must adopt a presumption of continued housing and services for youth up to their 21st birthday, with an option for the youth

to refuse services after 18th birthday. Putting the burden on the youth to request and apply for services is unfair to the youth.

2. Eligibility for housing and services should not be limited to youth with disabilities, pregnant, or working toward specific employment goals. All youth should be presumed eligible for continued housing and services.
3. DYFS must provide services to the infant of a teen parent who is in DYFS care without the need for an accusation or finding of abuse or neglect. The child of a dependent minor is also dependent.
4. DYFS must also acknowledge that the placement of a young parent with her child creates double expenses for the resource family or institutional placement, and provide the necessary financial benefits for both the baby and the teen parent (board & clothing allowance, child care, WIC, etc.).
5. When young parents leave the care of DYFS, they should be permitted to take their children with them and not be subjected to independent litigation over abuse or neglect of the child due to the parent's age.
6. Teen parents in the care of DYFS who are accused of abuse or neglect by DYFS should be provided a parental defense attorney independent of any Law Guardian who may represent the child in a DYFS case against her parent(s).

## X. ADMINISTRATIVE PROCEDURES ACT

### *DYFS must subject itself to public accountability with a public notice of policy changes and a public comment period*

It appears that many if not most of the new policies adopted by DYFS pursuant to the Child Welfare Reform Plan fall under the provisions of the *Administrative Procedures Act* (N.J.S.A. §52:14B-4) (“APA”), and therefore they should have been published in the New Jersey Register and the public given the opportunity to comment. It appears that DYFS has appropriately followed the APA when modifying portions of the Administrative Code to comply with the Child Welfare Reform Plan, but has not done so with modifications, amendments, and additions to the DYFS Policy Manual. It is somewhat paradoxical that DYFS has moved forward unilaterally in implementing the Child Welfare Reform Plan with new policies, when one of the “Essential Principles” of the Plan states that “4. New Jersey’s child welfare system should be accountable to the public; to other stakeholders; and to communities throughout the state.”<sup>25</sup>

The APA prescribes procedures which must be followed when an agency promulgates or modifies rules. The procedures include the requirement that all proposed rules be published in the New Jersey Register and that the public have the opportunity to comment on the proposed rule at least in writing. “The purpose of the notice requirement is to give those affected by the proposed rule an opportunity to participate in the rule-making process not just as a matter of fairness, but also as a means of informing regulators of possibly unanticipated dimensions of a contemplated rule.”<sup>26</sup> Without the protections of the APA, individuals subject to the rules “may be denied fair notice or a reasonable opportunity to anticipate and prepare to address the policies that will govern

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<sup>25</sup> CWRP, at 18.

<sup>26</sup> *Coalition for Quality Health Care v. N.J. Dep’t of Banking & Ins.*, 348 N.J. Super. 272, 295 (App. Div. 2002) (citations omitted).

the proceedings. In addition, persons who are not before the agency may have substantial interests at stake that can be affected by the adjudication but that are not adequately expressed or presented by the actual parties or fully considered by the agency.”<sup>27</sup>

Case law has distinguished between informal intra-agency policy-making and rule-making, which must include the protections of the *APA*. The Supreme Court, in *Metromedia, Inc. v. Dir. Div. of Tax.*, 97 N.J. 313 (1984), instructed that a determination of whether an agency action constitutes rule-making and is subject to the *APA* requires consideration of several factors. An action that would constitute rule-making

(1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy.

*Id.* at 331-32.

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<sup>27</sup> *Bd. of Ed. of City of Plainfield v. Cooperman*, 209 N.J. Super. 174, 208 (App. Div. 1986) aff’d but mvd. 105 N.J. 587 (1987) (citations omitted).

New Jersey courts have previously found policy manuals,<sup>28</sup> policy statements,<sup>29</sup> guidelines,<sup>30</sup> fee payment schedules,<sup>31</sup> and pronouncements<sup>32</sup> to be administrative rules requiring the protections of the *APA*.

The new policies that DYFS has recently adopted regarding Domestic Violence, Relative Care Placements, Parent-child visitation, and Flexible Funds meet most of the criteria outlined in *Multimedia* for actions that require the *APA* protections. (1) The policies are all intended to apply to any parent, child, or member of the public who interacts with DYFS about these issues. (2) These policies have been drafted under the new guiding principle of “structured decision making” which has been implemented to ensure more uniform application of policies to all similarly situated clients. (3) It appears that all of these policies are prospective from the date of their adoption. (4) The level of detail in these policies is beyond that in the enabling statutes and even the Child Welfare Reform Plan. (5) (i) Some of the policies, such as that on Flexible Funds, are new, and do not reflect any prior regulation or policy other than the Child Welfare Reform Plan. (ii) Other policies, such as that regarding Domestic Violence, represent a clear departure from the prior position of the agency. (6) All of these policies represent administrative decisions or interpretation of the statutes and are general policies.

These policies do not fall within the limited exception to the *APA* for rules that govern only internal management or discipline issues. “Because of the fact that these

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<sup>28</sup> *State v. Klemmer*, 237 N.J. Super. 32 (Law Div. 1989) (Intoxicated Driver Resource Center).

<sup>29</sup> *Woodland Private Study Group v. State, Dep’t of Environmental Protection*, 209 N.J. Super. 261 (N.J. Super). Ct. 1986), aff’d by 109 N.J. 62 (1987).

<sup>30</sup> *In re William Carroll*, 339 N.J. Super. 429 (App. Div. 2001) (Attorney General Guidelines); (*Bd. of Ed. of City of Plainfield v. Cooperman*, 209 N.J. Super. 174 (App. Div. 1986) (Department of Education Guidelines).

<sup>31</sup> *In re Commissioner’s Failure to Adopt 861 Cpt Codes*, 358 N.J. Super. 135 (App. Div. 2003) (N.J. Dep’t of Banking and Ins.).

<sup>32</sup> *Disapproval of Commercial Ins. Policy Forms*, 264 N.J. Super. 228 (App. Div. 1993) (N.J. Dep’t of Ins.).

guidelines will have an impact on members of the public they ... cannot be viewed solely as an [internal] directives.”<sup>33</sup>

Before any of the new policies are implemented, DYFS must follow the procedures within the *APA* for rule-making. Rules that are promulgated without the protections of the *APA* procedures are void, which may cause substantial hardship and confusion within DYFS as well as for the general public.<sup>34</sup> An agency taking actions without valid rules of procedure in force has no valid due process, and may be reversed on any decision that is based upon invalid rules.<sup>35</sup> In order to avoid such a situation, DYFS should immediately take steps to complete the *APA* procedure for each of its policies that affect defendant parents, children, or the general public.

**APA Recommendation:**

Before any of the new policies are implemented, DYFS must follow the procedures within the *Administrative Procedures Act* (*N.J.S.A.* §52:14B-4) for rule-making.

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<sup>33</sup> *Doe v. Poritz*, 283 *N.J. Super.* 372 (Law Div. 1995).

<sup>34</sup> *State v. Klemmer*, *Supra* at 37.

<sup>35</sup> *Ibid.*