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When State Systems Fail: A Qualitative Analysis of Child Protection Services

By

Mary Catherine Harvey

A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of the requirements of the Sally McDonnell Barksdale Honors College.

Oxford
May 2017

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This work is dedicated to the memory of Austin James Watkins, and all of the children who have had their lives cut short by a system that should have protected them.

ABSTRACT

The purpose of this research is to conduct a qualitative study examining cases of abuse in the child welfare system and offer policy recommendations to limit cases of abuse. After chronicling several cases of child abuse within the State of Mississippi's foster care system the following recommendations are offered. First, increased awareness and public knowledge on this issue and its causes is vital for the continuation of improvements in both the state and federal foster care systems. Second, proper funding is key to maintaining a functional state child welfare and protection department. This paper concludes with a recommendation of policy reform as well as the proposition of two new revenue sources that could benefit the increased funding of the MDCPS and the State of Mississippi. This study is significant in that the findings draw attention to the policy changes needed to reform child welfare and protection agencies in the United States and specifically in the State of Mississippi.

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LIST OF ABBREVIATIONS

| | |
|-------|---|
| ACF | Administration for Children and Families |
| CPS | Child Protection Services |
| DFCS | Division of Family and Children Services |
| DHS | (Mississippi) Department of Human Services |
| HHS | (U.S. Department) of Health and Human Services |
| MDCPS | Mississippi Department of Child Protection Services |
| UMC | University of Mississippi Medical Center |

INTRODUCTION

The 2015 study produced by the Children’s Advocacy Institute at the San Diego School of Law entitled “Shame on U.S.” made this observation about children, “America’s abused and neglected children do not have PACs, contribute nothing to campaigns, and are without direct organization or powerful lobbyists. They cannot vote. But they have a claim to priority and attention borne of their status as the legal children of state courts. In a democracy, they are all our children — not in just a rhetorical sense, but as a matter of law. We, the electorate, choose and pay their judicial parents and foster providers. How we perform in that role, one that we have assumed unto ourselves, is ultimately the real measure of our nation’s values” (CAI, 2015).

The purpose of this study is to examine child abuse cases within the child welfare system in order to determine what if any policy revisions are needed. A qualitative analysis utilizing case studies from Mississippi along with a critical analysis of supporting evidence from child welfare experts is used to examine the following questions. First, how prevalent are child abuse cases in the child welfare system? Second, what are the contributing factors for cases of abuse in the child welfare system? It is argued that a lack of funding, lack of transparency within the various agencies involved, as well as multiple issues with caseworkers are all contributing factors for the abuse within the child welfare system. Furthermore, it is argued that specific policy revisions are needed in order to address these aforementioned factors.

In order to address these questions, I will begin Chapter 1 with a discussion of the failures in the child welfare system at both the state and federal level. In this chapter, I will also focus on the underfunding of child welfare programs, the high levels of caseload violations, and finally a controversial federal provision that limits the amount of aid offered to low income children. In Chapter 2, I will highlight the issue of child abuse through an extensive look into the facts of two separate cases of child abuse in Mississippi. In Chapter 3, I will emphasize the need for various reforms within the child welfare system, and I will outline potential sources for increasing revenue in Mississippi that will go towards relieving the burden of underfunding within the child welfare system. Also, I will discuss policy revisions that are needed in order to fully reform the child welfare system. Finally, I will close with a summation of the problems and contributing factors to these problems noted in the previous chapters and recommendations for future research.

CHAPTER I

SYSTEMIC FAILURE OF CHILD WELFARE PROGRAMS

On January 31, 2001, the body of a five-year-old little girl named Logan Lynn Marr was found in the basement of her foster home (USA Today, 2001). Her foster mother, Sally Schofield, admitted to having used over forty feet of duct tape to tie Logan down to a highchair in order to make her be quiet (USA Today, 2001). An Autopsy revealed that the cause of Logan's death was asphyxiation from the tape (Frontline, 2014). Because Schofield had previously worked as a social worker with the DHS in Maine, and had extensive training in the area of child rearing, DHS was much more lenient on home visits and monitoring, as well as following up on allegations of abuse (Frontline, 2014).

Schofield testified the reason that Logan had been forced to stay in the basement was because Logan was repeatedly screaming for her mommy over and over again, and that Schofield didn't want her to wake the other children in the house (Frontline, 2014). Schofield was in the process of adopting Logan, and it was later discovered that the Maine DHS made certain that Logan's mother was not able to regain custody (Frontline, 2014). The mother had lost custody in part, due to the poor relationship that she had with her own mother, and her poor choice in boyfriends (Frontline, 2014).

This case brought up many areas of child welfare and protection that are in need of reform, such as the circumstances whereby the state is allowed to remove children from their parents, as well as the need to actually follow up on allegations of abuse in foster homes. There are many cases similar to this that could have been prevented by the DHS if they had only implemented the federal child protection laws and regulations that exist, such as the regulations outlined in CAPTA (CBS News, 2015).

It often takes a tragic event to get the public's attention. Logan's death was sixteen years ago, and there have been many similar deaths since then, yet our nations child welfare and protection agencies are still underfunded, understaffed, and rife with abuse (CAI, 2015; Lau, 2016).

In this chapter, I discuss the many ways in which the foster care system has failed. I begin by explaining both the federal and state roles in this issue area, what their duties are, and specific ways in which they have failed in those duties. I then discuss the underfunding of child protection programs, as well as the casework overload among social workers in the state child welfare and protection programs. Finally, I discuss the IV-E "look back" provision, that has caused many children in poverty to be ineligible for federal aid. The goal of this chapter is to give a brief but thorough introduction into the child welfare and protection agencies in the United States, with a specific look at the State of Mississippi.

A Federal Problem

The area of child welfare and protection is clearly a state issue. So, why has the federal government become involved? Over the years, the individual states have repeatedly failed to deal with the many problems within their child welfare and protection programs, and the federal government has been forced to intervene on behalf of the citizens of the individual states (CAI, 2015). However, in the forty-odd years that the federal government has become involved in this issue, they have yet to present a workable solution to the problem. In a 2015 study produced by the Children's Advocacy Institute at the San Diego School of Law entitled "Shame on U.S." the failures of the child welfare system in the United States were brought to the forefront (CAI, 2015). In this study, the Children's Advocacy Institute places the blame for these failures on all three branches of the federal government (CAI, 2015).

One of the main criticisms the CAI study emphasizes is the Department of Health and Human Service's lack of oversight over the state's child welfare and protection programs, as well as their failure to make sure that current federal law is implemented within the states (CAI, 2015). Amy Harfeld, the policy director at the Children's Advocacy Institute at the University of San Diego School of Law stated that, "Our laws are weak. We don't invest in solutions. Federal laws aren't enforced. And courts are turning their backs. This creates a trifecta of inertia and neglect" (CBS, 2015). The CAI's study finds that although the U.S. Department of Health and Human Services is responsible for the implementation and enforcement of the federal statutes on child welfare and protection programs throughout the country, for the most part they take a "hands-off approach", which allows many states to self-certify that they are in

compliance with what the requirements of the federal mandates (CAI, 2015). Because states need this federal funding, they often fail to report negative data, or state social workers are made to suppress and conceal the negative data (CBS News, 2015).

Two of the core federal statutes that govern the issue of child welfare in the United States are: the Child Abuse and Prevention Act (1974), and the Adoption Assistance and Child Welfare Act (1980). The CAI study points out that, “These and other major federal child welfare statutes give us a number of sensible federal floors [minimum requirements] that states must maintain in order to be eligible for federal child welfare funds. [However,] most of these floors are commonly violated by states” (CAI, 2015).

According to the Department of Health and Human Services, after the ACF has found the state to be in violation of the federal requirements for child welfare systems, the ACF will then place the state under review in order to determine the level of their violation and if they will have funding cut or taken (ACF, 2002). After the initial review, the ACF will then recommend a program improvement plan or PIP, which the states are required to fulfill or risk having their federal funding cut or removed entirely (ACF, 2002). However, this is not usually what happens. According to the ACF’s handbook on monitoring states child welfare systems, “taking into consideration unique circumstances, ACF and the State may negotiate a level of improvement in the PIP that results in performance less than the applicable standards required for substantial conformity” (ACF, 2002). This suggests that the ACF and the Department of Health and Human services are willing to allow some states to do far less than what the federal minimum requirements demand (ACF, 2002). Many experts suggest that this lenient attitude that

the ACF has had towards state violations, has led to the current level of failure within the state's child welfare systems (CAI, 2015).

The need for federal funding has been an ongoing issue for many years. States have long had a problem with properly funding their child welfare and protection agencies, and have often turned to the federal government for help in funding these programs. Over forty years ago, the first federal statute designed to assist the states in funding and maintaining their child welfare and protection systems was created.

On January 31st, 1974, President Richard Nixon signed into law the Child Abuse Prevention and Treatment Act – otherwise known as CAPTA (Child Welfare, 2013). Among other things, this act established a federal department to oversee the distribution of federal funds to states in order to better protect children in abusive homes (Child Welfare, 2013). CAPTA also defines the role the federal government can have within states child protective services, and gives a “minimum definition of child abuse and neglect” (Child Welfare, 2013). “The Child Abuse Prevention and Treatment Act (CAPTA), (42 U.S.C. §5101), as amended by the CAPTA Reauthorization Act of 2010 (P.L.111–320), retained the existing definition of child abuse and neglect as, at a minimum: Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act, which presents an imminent risk of serious harm” (CAPTA, 2010).

The National Center on Child Abuse and Neglect (NCCAN) and the National Clearing House on Child Abuse and Neglect Information were both created with the passing of CAPTA (NLIHC, 2014). Also, CAPTA created basic grants that give states

the ability to “support new prevention, assessment, investigation, prosecution and treatment activities,” in an effort to improve child welfare and protection (NLIHC, 2014). The other type of grants created by CAPTA were demonstration grants, which were provided to both public agencies and nonprofit organizations with the purpose of designing and testing new innovative policies, as well as to hire and train new state personnel (NLIHC, 2014).

The following excerpt is taken from a speech given in 1975, by the first director of the NCCAN Douglas J. Besharov. This speech focused on the need for immediate action and reform within the state’s child welfare and protection systems:

“... Although all 50 states had child abuse reporting laws, the legal framework for child protection work was often incomplete and unnecessarily complex. The institutional support necessary to sustain adequate treatment and preventive services was widely lacking. Child protective workers were generally not given the training, skills, and ancillary services necessary to meet their important responsibilities. In almost every community in the nation, there were inadequacies, breakdowns, and a lack of coordination in the child protection protective process. Reports were increasing faster than agencies could handle them, yet detection and reporting remained haphazard and incomplete; protective investigations were often backlogged or poorly performed; and suitable treatment programs were almost nonexistent for the majority of families needing them. . . Studies indicated that as many as three-quarters of the children whose deaths were suspected of being caused by child

abuse or neglect were previously known to the authorities” (NLIHC, 2014).

This speech, which was given over forty years ago in 1975, is still an accurate description of the United States child welfare systems in 2017. Since the enactment of CAPTA and the Adoption Assistance and Child Welfare Act, there have been over 60 federal statutes passed dealing with the issue of child welfare (CAI, 2015). However, many of the fundamental problems in the area of child welfare and protection, that were present when these statutes were first passed, have not been addressed and still exist to this day due in large part to the failures of the federal government to implement federal statutes and to properly govern the dispersion of funds to the states (CAI, 2015).

A State Problem

Ultimately, this is a state issue. Although the federal government does have some level of oversight over these programs, through the implementation of regulations, rules, and guidelines, the day-to-day operations of these programs are left to the states (CAI, 2015). This means that when the states take children out of their homes, and away from their abusive parents, they are responsible when further maltreatment of these children occur (CAI, 2015).

The CAI study thoroughly outlines the duties of the HHS in regards to their role in crafting “regulations, rules, and guidance that provide states with clear and unambiguous parameters for those programs and which are consistent with legislative intent” (CAI, 2015). The CAI study further states that, “when HHS is silent on the regulatory front” this may lead states to take advantage of the lack of specifications that

are given which leads to the states doing only enough to maintain their federal funding, or worst of all they may, “use legislative ambiguity and regulatory omission to contravene what the money is intended for” (CAI, 2015).

The following sections will outline the various ways in which the states have allowed their child welfare systems to break down over time. These issues that are raised in this paper, did not happen overnight, instead they have been a long process of ignoring serious problems by both the state and federal child protective services.

Underfunding

The collective reason states give as to why they are not able to properly run their state foster care agencies is lack of funding. States have smaller budgets that are often not properly managed, so the federal government has stepped in to help states fund these programs. This was one of the main purposes behind many federal statutes on child welfare and protection, beginning with CAPTA in 1975 (CAI, 2015).

According to the Children’s Advocacy Institute study, “Spending on children generally, and in child welfare in particular, has declined abruptly in the last few years. *First Focus* published recently in its Children’s Budget 2014, total federal spending on children between 2010 and 2014 was slashed by 13.6%, which amounts to nearly \$47 million.” (CAI, 2015). These federal cuts come at a time when the number of children in foster care has been on the rise. According to reports released by the ACF, there has been an increase in the national number of children in foster care over the past three years (ACF-Numbers, 2015). Since 2012, there has been an increase of around 35,000 more children in foster care (ACF-Numbers, 2015; Davenport, 2015). The numbers of children

in foster care in 2017 are thought to be much higher than when this data was compiled. However, this is the most current data that the ACF has released on children in foster care (ACF – Numbers, 2015).

Through federal grants and other incentives, the ACF, under the administration of the HHS, allocate over \$12.8 billion annually to the states and territories of the United States (Green Book, 2016). One would think that with such a large amount of money coming to the states, they would be able to maintain a functioning system. Although states do not rely solely on funding from the federal government – this is a large part of their overall budget, and they depend on it for the day-to-day functioning of their departments. Most states are required to ‘match’ these federal funds, in order to receive their full allotment (Green Book, 2016). According to the data compiled by the U.S. Ways and Means Committee, in 2014 the state and local funds accounted for \$16.3 billion of the amount provided to child welfare programs throughout the country. The amount provided by the federal government plus the amount that the states provide, adds up to over \$29.1 billion allocated to child welfare programs in 2014 (Green Book, 2014).

Because each state has its own unique set of problems, they also have the freedom to distribute their funds in their own unique way. For example, the State of Mississippi distributes its state and local funds quite differently than the national pattern (See Figure 1.1). As the chart shows, Mississippi spends a larger proportion on out-of-home placements and a much smaller proportion of its funds on in-home preventive services (See Figure 1.1).

Figure 1.1 Mississippi Uses State and Local Funds Differently (Child Trends, 2016)



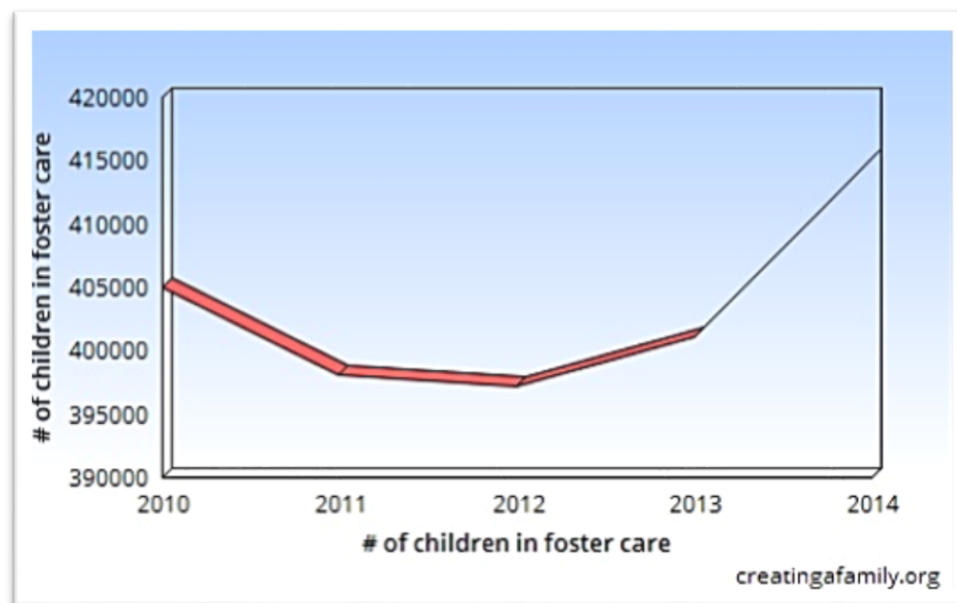
One of the repercussions to not focusing on in-home preventive services is the increased likelihood that children in Mississippi will end up being removed from their homes, rather than having their family’s issues being dealt with inside the home (Goldberg, 2015). The removal of a child is a traumatic occurrence that should be a last resort rather than the most common and often times only tool in the states arsenal (CAI, 2015). Due to funding issues, this is often seen as the cheaper response – instead of seeking to actually help solve a problem, the states only option is to react when a child abuse case gets out of control, and the remedy they most often use is to remove the children from the home (CAI, 2015).

Caseload Violations

The numbers of children entering foster care have been on the rise in recent years (See Figure 1.2). Currently, there are over 428,000 children in the foster care system in the United States (AFC-Numbers, 2015). In 2016, the State of Mississippi reported 8,547 children in their foster care system, which is an increase from the 6,958 children that were reported in the Mississippi State foster care system in 2014 (Kids Count, 2016).

Despite the fact that the numbers have been on the rise the Acting Assistant Secretary for Children and Families, Mark Greenberg, has stated that, “the national number of children in foster care is still far below where it was ten years ago, but any increase is cause for concern, and we’ve now seen increases for the past three years” (ACF-Numbers, 2016). As illustrated in Fig. 1.2 there has been a steady increase in the number of children placed in foster care from 2012 to 2014.

Figure 1.2 Surprising Rise in Number of Kids in Foster Care (Davenport, 2015)



A combination of factors have been offered in an attempt to explain this notable increase in the number of children in foster care. One issue area that is often suggested as a cause for this increase is the rise of drug addiction in the United States. Some experts are even saying that the current opioid crisis is worse than the crack-cocaine epidemic that took place in the 1980’s, which was a major contributing factor to the increase in children being placed in foster care at that time (Birr, 2016). Some states have already

seen a rise in drug related child abuse by as much as 40% in the past few years (Wilts, 2016). In 2016, New Hampshire Gov. Maggie Hassan signed a bill into law that would define a parent's drug use as child neglect, which will make it easier for child welfare and protection agencies to intervene in these instances, and will also make it more likely that these children will be placed into foster care (Wiltz, 2016).

Another contributing factor that has led to the increase in the number of children in foster care is due to the high turnover rates among social workers. For example, in Mississippi the turnover rate is at 36% (CWLA, 2006), while in the United States as a whole the turnover rate for social workers is at 25% (Barrett, 2016).

Although the State of Mississippi added 478 new social workers in 2016, the number of children entering the foster care system in the same year increased by over 1,000 children (Gates, 2017). This is not a workable system. The number of children entering the system cannot continue to rise, without either an equivalent increase in social workers or a more effective way in managing the issue of child abuse and or neglect in the home (Gates, 2017). One of the reasons that there is such disparity between the number of social workers and the number of children in the system is due in large part to this high rate of turnover among social workers (CAI, 2015).

Social work is a very difficult profession, in that it is both emotionally and physically straining, with little reimbursement or financial incentives (CAI, 2015). Often their salaries do not take into account the physical danger that they are placed in, or the emotional stress that they endure (GAO, 2003). According to a study conducted by the American Federation of State, County, and Municipal Employees (AFSCME), over 70%

of all social workers encounter some form of violence during the performance of their duties (GAO, 2003). Additionally, this study found that over 90% of social workers had been verbally assaulted, 30% had been physically assaulted, and 13% had been assaulted by a weapon (GAO, 2003).

In addition, social workers have extremely high caseloads (Dvorak, 2008). “According to a 2003 General Accountability Office study, the average tenure of caseworkers nationwide is less than two years, mainly due to low salaries, high caseloads, the risk of violence, and insufficient training” (Dvorak, 2008). For example, the starting salary for caseworkers in the state of Mississippi with at least a four-year degree is \$23,643 (Public Catalyst, 2015). In contrast, the starting salary for a public school teacher in Mississippi with a four-year degree is \$34,390 (Public Catalyst, 2015).

Most researchers agree that the best practice in regards to the number of caseloads that each social worker has at any one time, is between 12 and 15 children per worker (CFRC, 2002). But despite extensive research showing the need for limitations on the number of cases per worker, most states still do not adhere to these limitations (CAI, 2015). According to the Children’s Advocacy Institute at the San Diego School of Law social workers in Mississippi, “had some of the highest caseloads Children’s Rights has seen across the country...[T]he statewide average caseload per worker was 48 children....in some counties, caseloads were found to exceed 100 children per worker” (CAI, 2015). These high numbers are not merely reflective of the dire situation in the Mississippi foster care program, these numbers are analogous to caseloads in states across the country (CAI, 2015).

The problems within the State of Mississippi's foster care program are extensive. During the recent investigation into the many failures of the Mississippi foster care program, it was revealed that, "because of the high caseloads, DFCS admits it was only able to investigate the most severe cases of abuse. At the time of filing, 12% of children in MDHS custody had at least one incident of suspected maltreatment in their foster care placement that was not investigated. The backlog of investigations at the time of litigation [Olivia Y. lawsuit] was nearly 3,000 and the average initial response time was over 76 hours" (Children's Rights, 2013). Other reports noted that, "The suit [Olivia Y] also pointed to dangerously high caseloads for social workers who are supposed to investigate abuse allegations and monitor foster homes. Using state data from 2001, it found that more than 6,200 reports of abuse, neglect and the use of unsafe foster homes were not investigated" (Palmer and Robertson, 2016).

A final possibility that has been suggested that explains the increase in children in foster care, is the shift in state policy away from 'family preservation', and towards 'child safety (Davenport, 2015). The family preservation model, as its title suggests, seeks to preserve the family unit through counseling and constant observation (Davenport, 2015). When a child's safety is the standard that is used, courts often choose to err on the side of caution in order to prevent abuse from occurring (Davenport, 2015). With an increase in child safety policy, it is more likely that a child will be removed from the home (Davenport, 2015). I will address the application of these policies in Mississippi in a later chapter.

Look Back Provision

The Social Security Act authorizes the funding for programs dealing with foster care, family preservation, adoption, and child welfare under the Title IV-E (Stoltzfus, 2016). Also within the IV-E title is a “look back” provision, which calls for states to use the poverty status of a child’s birth family to determine if a child is eligible to receive federal funds (NACAC, 2004). Some experts say this provision needs to be eradicated from future statutes due to the fact that this provision prevents large numbers of children from being eligible to receive federal funding (CAI, 2015).

In order for a child to be eligible for federal foster care maintenance payments, the child’s birth family is required to be at or below the federal poverty limit set at the time the statute was passed in 1996 (CAI, 2015). The child’s birth family’s current income is then measured against the standards on poverty that were determined and set in 1996, without allowing for inflation or even bringing the standard to the current poverty line (CAI, 2015). According to the CAI study, “Congress is slowly but surely relieving the federal government of financial responsibility for foster care maintenance payments, since the percentage of children capable of meeting the 1996 eligibility rules diminishes each year — it dropped from 55% in 1998 to 44% in 2010 (CAI, 2015). This rapid decline in the numbers of eligible children in Mississippi is due to the gradual inflation of the 1996 poverty rate percentage over the years (CAI, 2015; See Figures 1.3 and 1.4).

The current poverty rate in Mississippi is at 22% (Mississippi Census, 2015). Almost a quarter of the State of Mississippi’s population is under the age of eighteen (Mississippi Census, 2015). The poverty rate for children under the age of eighteen is at

Figure 1.3 1996 HHS Poverty Guidelines (ASPE, 1996)

| SIZE OF FAMILY UNIT | 48 CONTIGUOUS STATES AND D.C. |
|---------------------------------|-------------------------------|
| 1 | \$ 7,740 |
| 2 | 10,360 |
| 3 | 12,980 |
| 4 | 15,600 |
| 5 | 18,220 |
| 6 | 20,840 |
| 7 | 23,460 |
| 8 | 26,080 |
| For each additional person, add | 2,620 |

Figure 1.4 2017 HHS Poverty Guidelines (ASPE, 2017)

| For families/households with more than 8 persons, add \$4,180 for each additional person. | |
|---|----------|
| 1 | \$12,060 |
| 2 | \$16,240 |
| 3 | \$20,420 |
| 4 | \$24,600 |
| 5 | \$28,780 |
| 6 | \$32,960 |
| 7 | \$37,140 |
| 8 | \$41,320 |

31.3%, and for children in poverty under the age of five the rate is at 34.8% (Mississippi Census, 2015). The national percentage of people in poverty is 13.5% (U.S. Census, 2015). There is a strong correlation between poverty and child abuse that may lead to children being placed in the foster care system (Dale, 2014). Due to the high poverty rate in Mississippi, it is very likely that the federal government would be forced to pay a much larger amount to children in the state (CAI, 2015). Many experts have stated that the desire to reduce the amount of funding distributed to the states is the driving force behind the federal government's determination to continue with the "look back" provision (CAI, 2015).

Although the federal government does provide a substantial amount of federal assistance for foster care and adoption in order to ease the financial burden of the states, states are still left with a massive burden created by their child welfare and protection programs (NACAC, 2004).

In 2003, the national non-partisan Pew Commission on Children in Foster Care was founded "to expedite the movement of foster children into safe, permanent, nurturing families, and to prevent unnecessary placements in foster care" (NACAC, 2004). According to the commission's findings released in 2004, "the federal government shares in a portion of the cost of foster care for every child whose family income is below the 1996 Aid to Families with Dependent Children (AFDC) income standards. In contrast, states are obligated to provide protection to every abused or neglected child, regardless of family income" (NACAC, 2004). Due to the "look back" provision large percentages of families are ineligible for federal aid (CAI, 2015). In fact the number of children who have become ineligible to receive federal aid has increased rapidly since 1996 (See

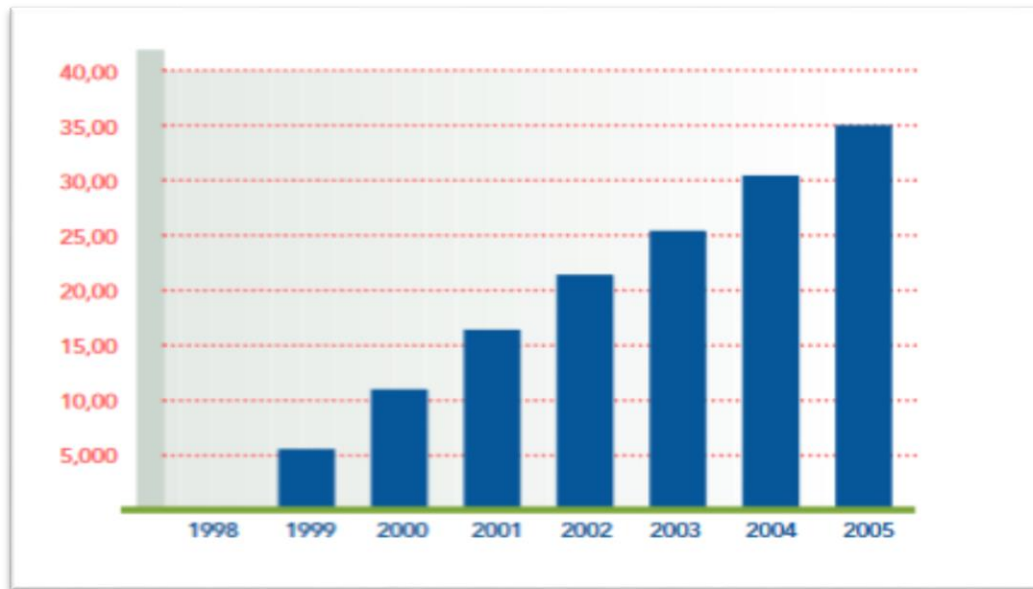
Figure 1.5). This provision forces states with high rates of poverty, like the State of Mississippi, into coming up with cheaper solutions in order to provide the protection that they are required by law to provide (NACAC, 2004).

The Pew Commission also added that, “In 1996, Congress eliminated the AFDC program and replaced it with the Temporary Assistance for Needy Families (TANF) program. In doing so, however, Congress kept in place existing AFDC income standards for providing federal assistance for foster care and adoption—and has not revised them since, not even to keep pace with inflation. Thus, for a child to qualify for federal foster care assistance, his or her family must meet the income test of the AFDC program as it was on July 16, 1996—the day the new welfare law was passed” (Pew, 2007).

Although many experts claim the state should do more to remove children from abusive homes, some also argue it should be the states responsibility to encourage more family preservation programs, rather than focusing on strictly invasive programs. (Wexler, 2016). Some have even argued that the “look back” provision is actually a key tool in preserving families – which they argue should be the goal of states, rather than taking children from their families (Wexler, 2016).

Richard Wexler, who is the Executive Director of the National Coalition for Child Protection Reform, argues that the current foster care system has turned into a business with children as the commodity (Wexler, 2016). He notes that without an increase in children, these ‘businesses’ would fail – thus more children are needed in the system for the state to receive more federally subsidized foster care funds (Wexler, 2016).

Figure 1.5 More children lose federal foster care support (IV-E) each year (Pew, 2007).



Wexler suggests that the current increase of children in the foster care system is due almost entirely to the states and private organizations desire to increase their profits. Wexler is against the removal of the “look back” provision stating that, “If the look back simply ended, funding for the foster-care entitlement would more than double. No matter how many children a state took away, a large part of the expense would be covered for every single child. And while foster care costs more in total dollars, that kind of reimbursement can make it cheaper for a state or county than safe, proven alternatives for which the state must pick up the entire tab” (Wexler, 2016). He argues that the privatized foster care system, requires that more children be in the system in order to continue to flourish. He also suggests that the decrease in federal spending is a good thing, as it will force states to increase their in-home programs rather than rely solely on placing children into foster care (Wexler, 2016).

Although states should be encouraged to increase their efforts in establishing stronger families, rather than merely removing children in order to potentially receive more funding, this does not diminish the need for increased federal funding for child welfare programs (CAI, 2015). Many of the children within the foster care and adoption programs, who are not currently eligible for federal aid, would have received the aid had their birth family's income been adjusted for inflation (CAI, 2015).

As this chapter has shown, the many failures at both the state and federal level, have contributed to the underfunding and understaffing of the child welfare systems. Also, the increased number of children, in tandem with the low number of social workers, have increased the likelihood that abuse may occur. Finally, this chapter discussed the potential problems with continuing the policy of the 'look back' provision. This next chapter will highlight two separate cases of abuse that occurred within the state of Mississippi, due to a lack of resources and accountability. These cases will bring together the various topics and issues discussed in this chapter, and will show the dangers that children face when a governmental agency is not properly managed.

CHAPTER II

CASES OF ABUSE IN MISSISSIPPI

The majority of families who are impacted by the child welfare system are low income, minority members of society (Cooper, 2013). If these people had the means and ability to question the system, we would likely have seen calls for change much sooner (Cooper, 2013). All too often, there has to be a tragedy in order to make the public aware of the problem before things are changed (Palmer and Robertson, 2016).

As citizens in a democracy, we often forget that we have a direct responsibility to help maintain our standard of government (Cooper, 2013). The problems that young children in our state, and around the country, are facing every day should receive far greater attention and awareness than they currently do. If more people were aware of these situations, perhaps we would see greater demands for the reforms that are so desperately needed (Cooper, 2013). The need for policy reform in this issue area are highlighted by the data conducted by the 2010 and 2015 DFCS Child Maltreatment Reports (Maltreatment, 2014). These reports outline the rates of abuse and maltreatment that occurs within each states foster care system, including the State of Mississippi's foster care system (See figure 2.1).

According to a study conducted by a children's rights watchdog, "In 2005, the rate of substantiated abuse and neglect of children while in FCS foster care custody was

over five times the allowable federal standard. According to a 2010 report on Child Maltreatment by the HHS, Mississippi had an Absence of Maltreatment in Foster Care rate of 98.12%, a rate of maltreatment that is 5.8 times the national standard” (Children’s Rights, 2013).¹

In a way, the absence of maltreatment dataset is an example of just how politicized this issue has become. Instead of stating that these states have a certain percentage of abuse occurring, they focus instead on the positive data or how many children have not been abused. Hiding negative data in this way is just one example of the many problems that our government has with admitting that abuse is occurring within these governmental agencies.

Most states have an absence of maltreatment in foster care rate that is 99 to 100% (Children’s Rights, 2013). For example, the 2015 national average of maltreatment of children by nonparents in foster homes, group homes, or by residential or facility staff members of these homes was 0.3% or 1,941 cases of abuse within foster care nationwide (Maltreatment, 2015). While in the State of Mississippi, the 2014 rate of absence of maltreatment in foster care was at 98.93%, or another way to read this data is to state that the rate of maltreatment was at 1.07% (See Figure 2.1). Although this number is an improvement from the 1.88% that Mississippi had in 2010 (Maltreatment, 2014), there is still a significant issue with maltreatment in foster care within the State of Mississippi.

¹ The Absence of Maltreatment in Foster Care is a standard used to determine the percentage of children *not* abused while in state custody. (Children’s Rights, 2013).

In order to put these numbers into perspective, in 2014 the State of Arkansas, which is demographically similar to Mississippi (Mississippi Census, 2015; Arkansas Census, 2015), had an absence of maltreatment in foster care rate of 99.82% in comparison to Mississippi’s 98.93% (See Figure 2.1). These numbers convey just how high the percentage of abuse in the State of Mississippi is in comparison to states with similar demographics as well as with the nation as a whole.

Figure 2.1 Absence of Maltreatment in Foster Care (Maltreatment, 2014)

| CFSR: Absence of Maltreatment in Foster Care, 2010 – 2014 | | | | | |
|---|--------------|--------------|--------------|--------------|--------------|
| State | 2010 | 2011 | 2012 | 2013 | 2014 |
| <i>Numbers in parentheses are the percentages of maltreatment not the absence of maltreatment</i> | | | | | |
| Arkansas | 99.67 (0.33) | 99.81 (0.19) | 99.87 (0.13) | 99.84 (0.16) | 99.82 (0.18) |
| Mississippi | 98.12 (1.88) | 98.41 (1.59) | 98.40 (1.6) | 99.05 (0.95) | 98.93 (1.07) |

As of 2016, 19 states are facing system wide lawsuits (See Figure 2.2) that have been brought in order to institute the reforms the child welfare and protection system has needed for so long (Palmer and Robertson, 2016). The majority of these lawsuits were filed due to the “high rates of abuse and neglect of children and serious foster home shortages” (Palmer and Robertson, 2016). Although this is a national issue, some states have had a longer track record of neglect and abuse than others (Palmer and Robertson). For example, in the State of Mississippi there is such high number of children already in the system, that some social workers have stated that they have recommended leaving children in abusive homes so as to not flood the system any further (Palmer and

Robertson). As noted in a 2016 article in the New York Times, “Mississippi has become a case study in just how long and egregiously a state system meant to protect children can continue with substandard care that is out of compliance with a court order” (Palmer and Robertson, 2016).

Figure 2.2 Where Child Welfare Agencies Face Monitoring and Class-Action Lawsuits (Palmer and Robertson, 2016)



To support these claims, two cases are presented that occurred in Mississippi. The first case highlights the dangers the DHS faces by being understaffed, and without the proper resources (Watkins, 2014). This case would likely have been prevented had proper procedures been followed, had the child welfare and protection agencies of the state and county been properly staffed, funded, and administered (Watkins, 2014).

The second case that will be covered in this chapter is a class action lawsuit brought against the State of Mississippi in 2004, which resulted in a settlement agreement between the two parties in 2008 (Children's Rights, 2013). This lawsuit began as individual cases, but was eventually compiled into a large class action lawsuit that brought together thirteen separate cases (Children's Rights, 2013). However, all of the children currently in state custody were listed as non named, joint members in this lawsuit (Children's Rights, 2013). The stated purpose of this case was not to receive monetary compensation for damages done, instead the goal was to bring about a lasting change to the internal structure of the Mississippi foster care system (Children's Rights, 2013). This case has been the source for many, if not all, of the reforms the Mississippi DFCS and DHS has undergone in the past year (Jackson Free Press, 2017).

Austin James Watkins (2004-2008)

According to the Scott County sheriff's department and the office of the Scott county coroner, Austin Watkins cause of death was extreme malnutrition – they later ruled it a homicide, and stated that he had been starved to death (Meridian Star). At the time of his death, the sheriff's office stated that he weighed only 19 pounds. He was only

six days shy of his fifth birthday, and yet he weighed less than the average weight of a one year old child (Harding, 2014).

According to court files, through their lack of action, the state failed to prevent Austin's death (Watkins, 2014). However, this situation was not entirely the fault of the state, as there were underlying circumstances that the state had little control over. Austin was born into a low-income family that had many issues, including drug problems (Lasseter). His father, Kenneth Watkins was in jail for parole violation after having been convicted of statutory rape, and his mother Tammy Watkins had been deemed unfit due to drug related issues (Meridian Star). On the same day that Austin's mother Tammy was deemed unfit, DHS granted durable legal custody to Austin's grandmother, Janice Mowdy (Meridian Star).

DHS conducted a routine home study of Mowdy's residence and determined that it was sufficient for the children (she was also granted custody of Austin's two siblings' as well) (Case Law, 2014). DHS conducted their final home study on April 27th 2007 and closed the case on May 10th 2007 (Case Law, 2014). Just one month later on June 10th 2007, Mowdy brought Austin to UMC due to "extreme swelling" (Case Law, 2014). The doctors later determined that Austin was suffering from extreme dehydration and malnutrition, and that these were not due to any "organic causes" (Case Law, 2014). The medical staff suspected Mowdy of neglect and/or abuse, and subsequently contacted the DHS office in Scott county in order to make them aware of this potential abuse (Case Law, 2014).

On June 25th 2007, a UMC social worker was contacted by Austin's doctor, as Mowdy was attempting to take Austin home without his doctor's approval (Case Law, 2014). Later that day, both the doctor and social worker called the DHS social worker in Scott county, who had closed Austin's case, and spoke with her on their suspicion that Austin was being severely abused at home (Case Law, 2014).

The doctors suspected that Mowdy either did not know how, or refused to feed Austin properly (Case Law, 2014). The Scott County social worker later stated that because they had originally conducted home studies of Mowdy's residence, and concluded that it was safe, that there was nothing more her office could do (Case Law, 2014). She also later said that these phone calls, despite the fact that they were reporting abuse, were not *official* reports and so she made the decision to not pursue the case further (Case Law, 2014).

In July 2007, Austin was released from the hospital after he had gained four pounds, and his condition seemed to have improved slightly (Case Law, 2014). At his follow-up appointment, he was found to be a bit more improved (Case Law, 2014). "He had another follow-up appointment in August of 2007, which he missed. He missed all subsequent follow-up appointments, as well" (Case Law, 2014).

On November 9, 2008 Austin James Watkins passed away due to starvation.

In 2012, Austin's mother Tammy Watkins filed suit against the DHS. She alleged the departments lack of action in regards to her son's case, resulted in his untimely death.

According to the case file, the original “trial court granted DHS's motion for summary judgment, determining that DHS enjoyed sovereign immunity from liability for the acts alleged in the complaint” (MC Law, 2017). However, on appeal the Mississippi Supreme Court reversed and remanded the decision of the trial court. Based on their determination that the DHS, and specifically the Scott County social worker in charge of Austin’s case, *did not* enjoy sovereign immunity from liability for either their actions or lack of actions in this case.

According to Miss. Code Ann. § 11-46-9 (1) (d) (2013), “A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim: Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused” (Justia, 2017).

Had a “report” been made in regards to the abuse of Austin? This was the pivotal question in this case. The trial court had granted summary judgment due to their determination that an official report had *not* been made – thus leaving the decision to open an investigation up to the “discretion” of the DHS employee. This, the trial court argued, was a clear case of sovereign immunity from liability in this case.

However, the Mississippi supreme court found that due to the fact that the abuse had been orally reported to the DHS by the UMC doctors, nurses, and social worker, there was more than enough to suggest that a ‘report’ of abuse had been submitted to the DHS. This should have triggered a non-discretionary investigation into Austin’s alleged abuse, but it did not.

The Mississippi supreme court concluded that, “If a claim of liability is based on the performance of a discretionary duty, the government has sovereign immunity; however, if a claim is based on the performance of a ministerial duty, sovereign immunity does not apply. In considering whether immunity for a discretionary function is available, a court must determine whether the activity involved an element of choice or judgment, and, if so, whether the choice involved social, economic, or political policy” (MC Law, 2017).

Both the DHS and UMC agreed that *if* a report had been filed, that it should have automatically triggered an investigation into Austin’s case (MC Law, 2017). However, the DHS maintained that no ‘report’ had been filed, which means that it was left to the discretion of the DHS personnel to determine whether to pursue a further investigation into the matter (MC Law, 2017).

The court determined that since UMC officials testified that they had indeed placed multiple calls to the DHS about Austin’s case, that this should have triggered an investigation as a ministerial duty, not a discretionary duty (Mc Law, 2017).

The court held that the trial court had erred by granting summary judgment in this case, they reversed and remanded the trial court’s decision (MC Law, 2017).

According to Miss. Code Ann. § 43–21–353(1) the law, “provides that certain classes of people who work with children and who have reasonable cause to suspect that a child is [neglected or abused] shall **cause an oral report to be made immediately** by telephone or otherwise and followed as soon thereafter as possible by a report in writing to the Department of Human Services. Thereafter, **DHS shall immediately make a**

referral to the youth court intake unit, which shall investigate the report” [emphasis is mine] (Case Law, 2014).

This did not happen in Austin’s case. Despite the fact that UMC medical officials, as well as a UMC social worker did get in contact with the DHS social worker in Scott County, the DHS maintained that an official “report” had not been filed with their office therefore they had no obligation to begin a new investigation (Case Law, 2014).

Although a *written* report from UMC never followed the oral report, this should not have prevented the DHS from opening an investigation into Austin’s situation. This speaks yet again to the understaffing and underfunding of our child welfare and protection system (Case Law, 2014; CAI, 2015; Lau, 2016).

It is difficult to criticize the social worker in this instance. She is likely a very hard working individual, with a daily mountain of obstacles to overcome. There were simply not enough resources in her department to investigate every allegation of abuse. She had to decide if this case merited further investigation. So, she made a decision, and unfortunately, because of this poor judgement call – a child’s life fell through the cracks.

Olivia Y., et al. v. Barbour, et al.

This case has been ongoing for the past thirteen years. It has gone on for so long, the name itself has changed – it is now *Olivia Y., et al. v. Bryant, et al.* In 2003, a young girl of four-years-old identified as Olivia Y, was admitted to an emergency shelter in Waveland, Mississippi (Palmer and Robertson, 2016). She had suffered from “profound malnourishment and possibly sexual abuse,” and weighed a mere 20 pounds (Palmer and

Robertson, 2016). Olivia's case is sadly not an isolated incident within the child protection services, there have been many cases of abuse just as severe as Olivia's. Many of these children's cases of abuse would be combined to form the class action lawsuit that came to be known as Olivia Y, et al. v. Barbour, et al (Class Action, 2004).

“Using state data from 2001, it [the Olivia Y. lawsuit] found that more than 6,200 reports of abuse, neglect and the use of unsafe foster homes were not investigated” (Palmer and Robertson, 2016). The DFCS also admitted in 2002 that their agency opened only 47% of confirmed cases of child abuse and or neglect (Children's Rights, 2013). “Thus, DFCS left more than half of the children it found to be maltreated with no oversight or services to ensure their safety, a trend that continued as of the date the suit [Olivia Y] was filed” (Children's Rights, 2013).

According to the MDHS, “Olivia Y. was filed in March 2004 in the United States District Court for the Southern District of Mississippi, Jackson Division, against the Governor of Mississippi, the Executive Director of the Department of Human Services, and the Director of the MDHS, Division of Family and Children's Services, all in their official capacities. This case alleged that Mississippi's foster care system was failing to adequately protect children in its custody and provide necessary services in violation of their federal constitutional rights. This lawsuit sought only court-ordered changes in the system; money damages were never at issue” (MDHS, 2016).

Due to Hurricane Katrina, the trial was pushed back to January 1, 2006 (Children's Rights, 2013). Both sides seemed to come to an agreement that there was a problem, and a solution (Children's Rights, 2013). The court postponed the trial while

they deliberated on both parties' motions for summary judgment (Children's Rights, 2013). The court then denied summary judgment to both sides and the trial date was reset for May 7, 2007 (Children's Rights, 2013).

After mediation, the Mississippi Settlement and Agreement and Reform Plan was approved by the court on January 4, 2008. This agreement was "intended to ensure the safety and wellbeing of children in defendants' custody and their timely placement in permanent and nurturing homes" (Lopes, 2014). In order to fulfill the requirements in the settlement the defendants were "ordered to implement four annual implementation plans, a corrective action plan, and a remedial order related to data accuracy validation and production" (Lopes, 2014).

On October 5th 2010, the first motion for contempt and appointment of a receiver was filed against the State of Mississippi. Due to the State of Mississippi's failure to meet any of the deadlines required by the settlement. The plaintiffs were forced to request for a receivership to be created in order to make sure that the deadlines and requirements were being taken seriously and fully met by the state.

In their response to the motion for contempt, the state argued that the plaintiffs were determined to malign them, and to paint the state in the worst possible light (MDCPS, 2010). They also argued that there had been multiple areas (required by the settlement) that had already been addressed and improved. Finally, the state argued that due in large part to Hurricane Katrina, which had devastated the coastal counties, including the county of Hancock (which has one of the worst records for violations, and is where the Olivia Y. case originated) that efforts to improve the state's child protection

agencies had been hampered. The defense noted in their opposition to the motion for contempt that the federal monitors report was deceptive when it suggested that DHS officials were working out of trailers (MDCPS, 2010). They went on to state that the only county that was working out of trailers was Hancock county. They note that after Hurricane Katrina, Hancock County had been “practically wiped off the earth.” They suggested this “demonstrates that Plaintiffs are intent on painting Defendants in a bad light and not painting the whole picture” (MDCPS, 2010).

On the 17th of May 2011, the court found in favor of the defense. Despite the fact the court did agree with the plaintiff that the state had failed in many areas, they denied the plaintiffs motion for contempt as well as the creation of a receivership for the State of Mississippi’s foster care system. “The court found that plaintiffs had made a *prima facie* showing of contempt, recognizing that the defendants had not complied with most of the Period 1 and Period 2 requirements” (Lopes, 2014). The court stated that they felt that the creation of a receivership would serve no real purpose, and that the state, who would likely be forced to foot the bill, could not afford it even if the court did create one. The court instead ordered both sides to continue to work together, and to come back in thirty days with a new agreement.

In June 2012, the U.S. District court monitor assigned to this case, Grace Lopes, finalized her reports on the state’s efforts up to that date. She concluded that, “[the defendants] have the opportunity to address these fundamental systemic challenges now and must ensure that the resources are available to do so. As described in this report, defendants are making *promising efforts* to implement the practice model on a statewide basis. However, these efforts are unlikely to accomplish the core objectives of the

Settlement Agreement if the *systemic barriers* that have undercut reform initiatives are not addressed in an effective and enduring way” [emphasis mine] (Lopes, 2012).

Unfortunately, these systemic challenges were not addressed. In her 2014 report, Lopes noted that the, “defendants have been unable to satisfy MSA requirements that date back to Period 1” (Lopes, 2014). In response to this report, on March 9, 2015 the plaintiffs filed a renewed motion for contempt against the state. On July 23, 2015, in response to the renewed motion for contempt, the court found that the State of Mississippi was woefully behind schedule in fulfillment of the modified agreement. The court ordered the state to retain the services of Public Catalyst, which is a child protective service watchdog organization, effective immediately (Public Catalyst, 2015). This organization would take over the state’s efforts to fulfill their obligations in regard to the settlement. Including the creation of a new, cabinet-level position for the head of this new child protection agency (Public Catalyst 2015).

Although Mississippi has been mandated by the U.S. district court to follow the guidelines set out in the 2008 settlement of the Olivia Y. case, the progress has been very slow (Palmer and Robertson, 2016). According to an expose on the abuses in the Mississippi foster care system that was published in the New York Times, “in July [2015], after the plaintiffs filed a contempt motion Mississippi publicly acknowledged for the first time that it had failed to comply with the agreement in the seven years since the original settlement” (Palmer and Robertson, 2016). This was the second contempt motion filed against the state in regards to their failure to comply with the settlement. This failure to act has been the status quo in Mississippi for decades. Mississippi, like many other states, depends on Federal aid to continue their child welfare and protection programs.

Instead of ‘fixing’ the problems, or looking for more viable options, these states continue to do the bare minimum (CAI, 2015).

On Monday, February 29th, 2016, the Mississippi House of Representatives passed a bipartisan bill with a vote of 115-3, that would create the Mississippi Department of Child Protection Services (MDCPS) (Daily Journal, 2016). In May 2016, Governor Phil Bryant signed into law Mississippi Senate Bill 2179, which established the MDCPS (MDCPS, 2016). This new department would replace the current Division of Family and Children Services, and would be independent of the Mississippi DHS (MDCPS, 2016). The MDCPS would answer directly to the governor’s office, as well as have its own independent budget and funding separate from the DHS (MDCPS, 2016).

Despite the progress that has come from the Olivia Y. settlement, there is still a long road ahead for Mississippi (Public Catalyst, 2015). The state has begun this year on a high note (Gates, 2017). Because the state is finally starting to comply with the settlement agreement, and progress within the MDCPS is finally being made, the federal court monitor assigned to the case, Grace Lopes, was able to be dismissed (Gates, 2017). Now that a new child protection department has been created, there will hopefully be more accountability and supervision over children and families within the MDCPS (Gates, 2017).

The cases in this chapter bring to light the many reasons that reform in Mississippi has been so desperately needed. No child should suffer through the things that these children were forced to endure. Due almost entirely to the Olivia Y. lawsuit, Mississippi has finally begun to show some signs of reforming its child protection

services. In the next chapter I will describe many of these changes. As I stated in previous chapters, proper funding is going to be key in creating a fully functioning child welfare system in Mississippi. In order to do this, the state must find ways to increase its overall budget, in the next chapter I will detail two recommendations for accomplishing this goal. Also, I give a policy recommendation for furthering reforms in Mississippi.

CHAPTER III

LOOKING FORWARD: PROGRESS IN MISSISSIPPI

As I have discussed in previous chapters, the child welfare and protection agencies throughout the country, and specifically in the State of Mississippi have been rife with abuse for many years. These child welfare and protection programs have been underfunded, understaffed, and mismanaged to such an extent that too often these children, whom these agencies were designed to protect, are instead placed in harm's way and in some extreme cases even killed by the very people who are authorized by the state to protect these children from harm.

In this chapter, I will highlight the ways that the State of Mississippi has begun to slowly improve its child welfare and protection agency, specifically through the formation and development of the MDCPS (MDCPS, 2016). I will then discuss the issue of fully funding the MDCPS, and more specifically how the MDCPS has seen its budget more than doubled since 2012 (Jackson Free Press, 2017). I will also review a new policy that the MDCPS has begun, which will encourage more in-home services in order to reduce the amount of abuse and neglect that occurs in the State of Mississippi (Jackson Free Press, 2017) Finally, I will recommend a policy revision and proposal that will encourage a move towards transparency and openness in regards to the Mississippi state

youth courts. Also, I will discuss two potential new policies that may improve the funding capabilities of the State of Mississippi.

Mississippi Department of Child Protection Services

Since the original settlement agreement in 2008, the U.S. District Court has repeatedly found the State of Mississippi to be in non-compliance with many of the terms of their Olivia Y. settlement agreements (Public Catalyst, 2015). This non-compliance by the state, forced the court into ordering a federal monitor (Grace Lopes) to oversee the state's actions (Public Catalyst, 2015).

In 2015, the DFCS was once again facing the threat of being placed under a receivership (Palmer and Robertson, 2016). Governor Phil Bryant chose to avert this court action, by removing the Child Services division from under the umbrella of the Mississippi DHS, and creating a new independent agency within the DHS which became the Mississippi Department of Child Protection Services (Public Catalyst, 2015). In December of 2015, Governor Bryant appointed former Mississippi Supreme Court Justice, Dr. David Chandler, as Executive Director of the MDCPS (MDCPS, 2016).

While the new agency was in transition, it was considered an "in-but-not-of" agency within the DHS (Public Catalyst, 2017). This simply meant that despite the fact that the MDCPS was still housed within the DHS, it now had autonomy from the operational direction and funding of the DHS. In May of 2016, Governor Bryant signed Mississippi Senate Bill 2179, which officially established the MDCPS within Mississippi statutes (MDCPS, 2016). With the establishment of the new agency complete, Governor Bryant named Dr. David Chandler as Commissioner of the MDCPS (MDCPS, 2016).

The creation of this new agency has been a key factor in the court's decision to not create a receivership, which would have transferred the state's control over its child welfare and protection programs into federal control (Palmer and Robertson, 2016). Also, these continued improvements that the state was undergoing, influenced the court's decision to remove the court monitor Grace Lopes (Gates, 2017). In January of 2017, Ms. Lopes was informed by the court, because the state was making rapid improvements, Mississippi would no longer require a federal monitor for the MDCPS (Gates, 2017).

Throughout the course of the many settlement agreements in the Olivia Y. case, the court also mandated that the State of Mississippi contract with an agency known as Public Catalyst, which specializes in helping their "clients diagnose barriers to a myriad of challenges to create effective solutions for better outcomes" (Public Catalyst, 2017). The official description and scope of service for the Public Catalyst Group stated that this agency, "collaborates with private and public agencies across the country that, provide child welfare, juvenile justice, and other human services to achieve the desired goals and results in helping the lives of children and families" (MDCPS Contract, 2017).

On March 7, 2017, MDCPS Commissioner Dr. David Chandler signed a court mandated contract with Public Catalyst Group that became effective April 1, 2017 (MDCPS Contract, 2017). Public Catalyst's scope of practice within the MDCPS is very extensive (MDCPS, 2017). Public Catalyst is mandated to see that the MDCPS meets all of its obligations that have yet to be performed as set out by the various Olivia Y. settlements (MDCPS, 2017). Including the "Agreed Order, the Interim Remedial Order and the Second Stipulated Remedial Order and with respect to implementation of all applicable dates in the recruitment, hiring, and retention plan and the resourcing field

operations plan” (MDCPS Contract, 2017). This contract with Public catalyst became effective on April 1, 2017, and will remain effective until December 31, 2017 (MDCPS, 2017).

Within MDCPS’s contract with Public Catalyst Group Corp., there is a clause that states, “the obligation of the MDCPS to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds” (MDCPS Contract, 2017). The clause goes on to state that if these funds are not provided, by either the federal or the state governments, and that the State of Mississippi has the right to terminate the contract with no “damage, penalty, cost or expenses to the MDCPS of any kind whatsoever” (MDCPS Contract, 2017). Although Public Catalyst may not be able to seek monetary damages should the State of Mississippi have to terminate the contract due to lack of funding, the cost to the state would likely be a court ordered federal receivership being formed to govern the MDCPS (Palmer and Robertson, 2017).

Strong leadership at the top, will determine the success of this new agency (Palmer and Robertson, 2016). MDCPS commissioner David Chandler stated that building this new leadership will be, “kind of like eating an elephant, we have to start one bite at a time. I think the first step is putting together a plan to attract more certified, educated, credentialed social workers” (Palmer and Robertson, 2016). The number one priority that the agency must focus on is recruiting the best and the brightest social workers, executives, and support staff (Palmer and Robertson, 2016). In order to do this, the state must have the means to properly pay these new workers a competitive income (Jackson Free Press, 2017).

In-Home Services

In their 2017 “budget implications” the MDCPS announced the formation of a new program designed to prevent the removal of children from the homes of their birth families (MDCPS, 2017; Jackson Free Press, 2017). The stated intent in implementing this statewide program is to “prevent the unnecessary placement of children away from their families. Services will be aimed at assisting families in crisis to prevent removal of children from their homes. By reducing the number of children entering custody and increasing the number of children exiting custody to permanency, MDCPS will provide better services to the families and children of Mississippi while reducing the growing number of foster care caseloads” (Jackson Free Press, 2017).

This program will likely be very beneficial to Mississippians, as the state is currently spending far below the national average on in-home preventative services (Child Trends, 2016). Currently, Mississippi only spends about 1% of its budget on in-home preventative service, while the national in-home preventative services average is 17% (Child Trends, 2016).

Funding

Due in large part to the less than estimated tax revenues for the 2017 fiscal year, the State of Mississippi is undergoing massive budget cuts (Pender, March 2017). In the 2017-2018 budget that is currently being approved by the Mississippi Legislature, the MDCPS (along with many other state agencies) did not receive the total amount that it had requested (Pender, March 2017). However, in comparison to funding from previous

years, the MDCPS's funds have been almost doubled since 2012 (Jackson Free Press, 2017).

In 2012, the DFCS received only \$65,984,000.00 (Jackson Free Press, 2017), while in 2017 the (new) MDCPS's estimated budget is \$112,295,499.00 (See Figure 3.1). Once the federal funds are included with the state funds, the total estimated funds for the MDCPS 2017 fiscal year are well over \$300 million (See Figure 3.1). This is an increase in over \$140 million from 2016's budget (Budget Book FY18). This dramatic increase in funding is due to the states continued involvement in the Olivia Y. settlement process, as the state is eager to be rid of the national spotlight that this negative case has placed on the state (Budget Book, FY18)

There is hope the additional funding the MDCPS requested in the 2017 fiscal year will possibly be available in the upcoming fiscal year of 2018 (See Figure 3.1). The Revenue Estimating Group predicts that there will be a 4.1% increase in the GDP of the state in the fiscal year 2018 (Budget Book, FY18). The Revenue Estimating Group consists of five members – the State Economist, the State Fiscal Officer, the State Treasurer, the Commissioner of Revenue, and the Director of the Legislative Budget Office (Budget Book, FY18).

Despite the increase in revenue that is predicted for the 2018 fiscal year, it is not likely to be enough to fully fund all of the state's programs and departments including the MDCPS (Pender, March 2017). One of the main concerns is the issue of being able to fully staff the MDCPS (Bryant, 2017). Currently, Mississippi is seeking to implement its new policy on the number of cases that are allowed per case worker, but in order to fully

Figure 3.1 2017-2018 Mississippi Legislative Budget Recommendation Report (Budget Book, FY18)

| EXPENDITURE BY OBJECT | 2016 ACTUAL | 2017 ESTIMATED | 2018 REQUESTED | 2018 RECOMMENDED |
|--|----------------|-------------------|-------------------|---------------------|
| ----- | | | | |
| | \$ | \$ | \$ | \$ |
| SALARIES & FRINGE BENEFITS | 63,199,527 | 91,945,533 | 94,830,756 | 95,680,760 |
| TRAVEL | 6,840,710 | 7,557,100 | 7,899,693 | 7,081,219 |
| CONTRACTUAL SERVICES | 48,135,405 | 61,848,968 | 61,990,682 | 61,848,968 |
| COMMODITIES | 1,569,459 | 1,110,300 | 1,110,300 | 1,110,300 |
| CAPITAL OUTLAY - EQUIPMENT | 2,312,562 | 3,988,350 | 3,988,350 | 3,988,350 |
| CAPITAL OUTLAY - VEHICLES | 0 | 85,277 | 0 | 0 |
| CAPITAL OUTLAY - WIRELESS COMM DEVICES | 0 | 5,000 | 5,000 | 5,000 |
| SUBSIDIES, LOANS & GRANTS | 48,837,930 | 147,405,069 | 147,405,069 | 133,968,970 |
| | ----- | ----- | ----- | ----- |
| TOTAL EXPENDITURES | 170,895,593 | 313,945,597 | 317,229,850 | 303,683,567 |
| TO BE FUNDED AS FOLLOWS: | | | | |
| STATE APPROPRIATIONS | 79,418,151 | 98,859,400 | 100,545,038 | 97,969,323 |
| STATE SUPPORT SPECIAL FUNDS | 0 | 13,436,099 | 13,436,099 | 0 |
| FEDERAL FUNDS | 89,403,444 | 197,022,661 | 198,621,276 | 201,086,807 |
| OTHER SPECIAL FUNDS | 1,870,451 | 4,173,289 | 4,173,289 | 4,505,503 |
| CASEY FOUNDATION | 54,650 | 121,934 | 121,934 | 121,934 |
| CHILDREN TRUST | 148,897 | 332,214 | 332,214 | 0 |
| | ----- | ----- | ----- | ----- |
| TOTAL FUNDS | 170,895,593 | 313,945,597 | 317,229,850 | 303,683,567 |

staff this new department with the most qualified individuals, additional funds are necessary (Bryant, 2017; MSCPS, 2017). In order to raise enough revenue to fully fund the Mississippi State agencies and programs, the state will have to either raise taxes, and/or look towards creating some new form of revenue (Bryant, 2017).

Creating a Mississippi State Lottery

One way in which the states revenue could possibly be increased would be the creation of a lottery in the State of Mississippi (Pender, April 2017). Mississippi is currently one of only six states in the country without a lottery (Gagliano, 2017). In his 2017 State of the State address, Governor Phil Bryant made the suggestion that it was time that the State of Mississippi join the rest of the nation and create a lottery (Pettus, 2017).

Many lottery supporters point out the fact that there are many benefits to a state having a lottery (Gagliano, 2017). Most states have a stipulation in their laws relating to the creation of their lotteries, that specify that a certain percentage of the revenue will go towards the states “general fund” (Jrank, 2017). Many states also require that the revenue from the lottery will go towards a specified special interest (Jrank, 2017). For example, in the state of Maine the revenue from their state lottery is distributed between their general fund and the, “Maine Outdoor Heritage Fund” (State Lottery Fund, 2017). Another example of this form of revenue distribution is in the state of Pennsylvania, which specifies that their lottery revenue (after expenses are taken care of) will go to “provide property tax relief to the elderly and to provide free or reduced fare transit to service for the elderly” (State Lottery, 2017).

In the State of Georgia, the revenue from their lottery is used to create scholarships, including the HOPE scholarship which has distributed over \$8 billion to students in Georgia seeking to go to college (Gagliano, 2017). The State of Tennessee has also used the revenue from their lottery to fund other form of education, through both grants and scholarships (Gagliano, 2017). One thing that sets Georgia apart from other states, is that their law does not only provide that the revenue from the lottery will go towards their educational system, it specifies exactly how it will be added to the current budget (Lottery for Education, 2017). Within the Georgia statute that created their lottery, it specifies that the revenue created due to the lottery will “supplement, not supplant, existing resources for educational purposes and programs” (Lottery for Education, 2017). This is a very important feature to their lottery statute, as it stipulates that the current funding for education will not be supplanted by this new form of revenue, but it will be added to the education departments current budget. This is likely the reason that the HOPE scholarship program has been such a success in Georgia.

Currently, there are no states that have stipulations that their lottery revenue will go towards funding child protection programs. If Mississippi were to create a lottery, that would aid in funding programs such as the MDCPS, they should follow the example set by the State of Georgia and include language in the statute that specifies that the revenue generated from the lottery will supplement, not supplant the MDCPS’s current funding.

As I mentioned above, there has recently been an increased desire in the State of Mississippi to create a lottery. Rep. Alyce Clark (D-Jackson), recently mentioned the great financial loss that the state experiences because we do not have a lottery (Gagliano, 2017). Rep. Clark stated in her address on the House floor that, “Mississippians have

been paying into Tennessee's lottery for years. A state lottery would directly benefit both children and students in Mississippi" (Gagliano, 2017). Rep. Clark sought earlier this year to include the creation of a lottery into an amendment to the Gaming Commission's Appropriation Bill (Gagliano, 2017). Her bill was not passed and later died in committee.

Even former opponents of the lottery, like Mississippi House Speaker Philip Gunn, are now open to the idea of creating a lottery (Pender, April 2017). Gunn, a long-time opponent of the lottery, is currently putting together an exploratory committee to research the data on Mississippi's financial losses, due to the state's citizens going to neighboring states to purchase lottery tickets (Pender, April 2017). However, Gunn has stated that he does not think that a lottery will be the "golden goose" that everyone thinks it will be, but he is open to discovering a potential new source of increasing the states revenue - outside of raising taxes (Pender, April 2017).

In his 2017 State of the State address in Jackson, Governor Bryant stated that, "As you know, voters cleared the legal pathway for a lottery in 1992 when they chose to remove the constitutional prohibition and allow the Legislature to provide authorization and control" (Bryant, 2017). Governor Bryant continued, "Arkansas - the state closest to us in population and demographics - received \$80 million from its lottery last fiscal year. That kind of data demands attention. When we see traffic crowded on the Mississippi River bridge taking revenue to our neighboring state, it may be time to face a new reality. We can no longer contain the people's desire for a lottery, we can only force them to travel" (Bryant, 2017).

Specialty License Plates

Many important careers and causes have been honored with specialty license plates in the State of Mississippi (Specialty Tags, 2017). However, there is currently not a specialty license plate that represents or brings awareness to the many social workers, child welfare providers, foster children, and/or victims of child abuse in Mississippi (Specialty Tags, 2017).

Specialty license plates are an excellent resource for raising awareness for specific issues (Prevent Child Abuse, 2017). Mississippi should follow the lead of states like North Carolina and Texas, which have already created specialty license plates designed to bring awareness to children in foster care, as well as license plates that demand for an end to child abuse (See Figures 3.2 and 3.3). It is likely that specialty license plates would promote the health and safety of children within the MDCPS as it has in both North Carolina and Texas (Prevent Child Abuse, 2017; Stop Child Abuse, 2017). Also, specialty license plates that bring awareness to the careers of social workers and child welfare professionals in the State of Mississippi could encourage more entry into this field.

Currently, when a specialty license plate is created, the funds are divided between the Mississippi Department of Revenue and the organization that the plate is bringing awareness to (Specialty Tags, 2017).

Figure 3.2 North Carolina “Kids First” License Plate (Prevent Child Abuse, 2017)



Figure 3.3 Texas “Stop Child Abuse” License Plate (Stop Child Abuse, 2017)



Although, the revenue generated from specialty license plates is relatively small (Mississippi FY2017), the amount of awareness that these plates could bring to this issue is immeasurable. Public awareness is one area that is sorely lacking on the issue of child welfare (Simms, 2000). Anything that can be done to improve the knowledge deficit that the public has, in regards to foster care and child abuse and the importance of the social work and child welfare professions, would be an improvement (Simms, 2000).

Policy Recommendation

Many of the policy recommendations for the State of Mississippi that this paper would likely have recommended, have already been proposed and many are in the process of being implemented. For example, the MDCPS has already seen a large increase in their overall funding, which has led to the increased ability of the MDCPS to fulfill the policies mandated by the Olivia Y. settlement agreements (MDCPS, 2016).

There are now court ordered mandates that regulate the number of cases per social worker, which has led to lower overall caseloads for social workers in Mississippi (Jackson Free Press, 2017). Also, the MDCPS now has increased oversight by the executive (Daily Journal, 2016), as well as the separation and independence of MDCPS from the DHS (Daily Journal, 2016). Most of these new policies have already begun to be implemented due in large part to the Olivia Y. settlement (Jackson Free Press, 2017). However, one policy area that has not been improved is the issue of transparency and accountability within the State of Mississippi's youth courts.

To fully reform the Mississippi foster care system, the youth court system, which is an integral part of the foster care system in the state, must be made more transparent. There must be accountability at all levels. The reforms authorized by the Olivia Y. lawsuit, were largely in relation to improvements of the MDCPS. The next step in the reform process for the Mississippi state foster care system must be with the youth courts. In many ways, the MDCPS and youth courts are comparable to different sides of the same coin. In order to have a fully functioning system, both sides of this 'coin' must institute reforms.

Currently, the youth courts have little oversight, and many of their decisions are done in secrecy and behind closed doors (Muller, 2017). In fact, most of the youth court proceedings are not recorded by any method, including by a stenographer (Muller, 2017). Due to the fact that these proceedings involve minors, the courts are very protective over the release of their information, which is understandable. Protecting the identities of a youth is paramount to the courts, however, this is belied by the fact that the only cases that these youth courts are protecting are cases that typically only involve protection

orders, custody and or other negligible issues (Muller, 2017). If a youth court is presented with a case that involves any form of critical abuse of a physical and or sexual nature, this case would then be removed to criminal court and the information would be open to the public with names and identifying details redacted, yet a youth court does not allow any form of information to be made public (Muller, 2017). This level of privacy and lack of accountability invites potential wrong doing.

Currently, there are attempts by the Mississippi legislature to remedy some of the damages that are occurring due to the hidden nature of the youth courts in Mississippi (Muller, 2017). In the 2017 Mississippi state legislative session, there have been over 20 bills proposed in relation to the reformation of the Mississippi youth court system (Miss. Legislature, 2017). On February 8th, 2017, the Mississippi House unanimously passed a bipartisan supported bill entitled, H.B. 1210.² This bill was an act to amend Miss. Code Ann. § 43-21-261, in order to “clarify that parents may review the youth court records of the parent's child; and for related purposes” (H.B. 1210). This bill was an attempt to provide parents with the ability to obtain redacted copies of their own youth court case files. Currently, parents or their attorneys are only allowed to view these files in person, they are not allowed to copy these files (Muller, 2017). According to an article in the Sun Herald, reporter Wesley Muller states that, “The authors and supporters [of H.B. 1210] have spearheaded the effort as a “common sense” reform approach that would create a

² H.B. 1210, was authored by Rep. Richard Bennett (R- Long Beach), and co-sponsored by Reps. Timmy Ladner, (R-Poplarville); Deborah Dixon, (D-Raymond); David Baria, (D-Bay St. Louis); and Greg Haney, (R-Gulfport).

fair, more-transparent court system for child abuse and neglect cases and doesn't require funding" (Muller, 2017).

Despite this "common sense" approach, the bill received negative reviews from the Mississippi youth courts. The Council of Youth Court Judges sent a memo, opposing the legislation stating that, "Children's privacy must be kept paramount". The memo went further by stating that the potential release of information by the parents, could cause lasting harm on the children (Muller, 2017). However, this memo does not take into account the fact that this bill would have required the courts to only provide the families of children with *redacted* case files, which would prevent any names of anonymous informants, or foster families involved in the case from being revealed (Muller, 2017). Despite the bill having passed the House unanimously, Rep. Mark Baker (R-Brandon) halted the bill by filing a "motion to reconsider", which created a situation in which the bill was suspended from passage to the Senate, and was given a deadline in which it must be re-voted on in order to move forward (Muller, 2017). H.B. 1210 was allowed to die on the calendar on February 13, 2017 (H.B.1210).

One area that the youth courts rejection of H.B. 1210 does not take into account is the fact that parents and their attorneys can already view these case files. According to Sen. Sean Tindell (R-Gulfport), "not allowing copies of the record doesn't protect anyone's identity. Right now, I can go to youth court and look for someone's name and simply write it down on my notepad" (Muller, 2017). The one thing that the current system does prevent, is copying of these files (Muller, 2017). According to the investigation conducted by the Sun Herald, Mississippi is the only state that still has youth courts that refuse to allow their case files to be copied (Muller, 2017).

I recommend that the current policy on the secrecy of youth court records and case files be revised in order to allow parents of children in the youth court system as well as the parents' attorneys to have the authority to both view and make copies of the redacted youth case files in regards to the parents' case. These case files would have all names, informants and persons in charge of the case redacted in order to protect their identity. There should also be a stipulation that in extreme circumstances, the level and or amount of openness of a particular case file would be left to the discretion of the court. This proposed bill would be similar in wording and style to H.B. 1210, however it would include the stipulations listed above. By enacting such revisions greater transparency within youth courts could be achieved.

CONCLUSION

This research found that an increased awareness and public knowledge on the issue of abuse within the child welfare system is paramount for the continuation of improvements in both the state and federal foster care systems. Also, this research highlighted the fact that proper funding is key to maintaining a functional and properly staffed foster care system. This paper concludes with two propositions relating to increasing funding capabilities for the MDCPS and the State of Mississippi. Finally, this paper put forward a policy recommendation that calls for reforms to also take place within the youth court system in Mississippi as it has within the MDCPS.

In the past year, Mississippi's child welfare and protection agency has undergone a rapid transformation. Due to the Olivia Y. lawsuit settlement agreements, the MDCPS is now an independent agency, with cabinet-level access and support from the governor. The budget for the MDCPS has almost doubled since last year alone, and many of the new improvements that are scheduled to take place over the next few years will likely bring about even more positive change. According to the MDCPS Commissioner Dr. David Chandler, protecting the most vulnerable of our citizens is the sole purpose of the MDCPS, "That's why we are here; that is our purpose. Our success is paramount, and failure is not an option" (MDCPS, 2016).

In spite of the many positive changes that have finally begun to take place in the State of Mississippi, there is still much work to be done. The court ordered improvements

in Mississippi speak to the public's need for more knowledge on this issue. This is one of the main purposes of this paper, to bring an increased awareness on this issue area to the forefront.

An area for future study would be the connection between the breakdown of the family unit and the increase in child abuse. What are the long-term consequences to this breakdown? What impact does drug use and addiction have on the family unit? Do weakened families exhibit more violent and abusive behavior, and how will this negative behavior impact the likelihood of children entering into foster care?

For even further research on the topic of family breakdown, studies should be conducted on the cause for the rapid increase in children entering foster care. Many experts have suggested that one of the main contributors to the rise in abuse and neglect among children is due to the rise of the drug crisis in the United States (Child Welfare, 2014). This would be an area of study that would be important to fully understand. If the roots of the problems were removed, the number of children being cared for by the state would likely be greatly diminished.

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