

THE HEALTH LAW AND POLICY INSTITUTE

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Conference on

“FAMILY VIOLENCE AND THE CARE SYSTEM”

Comments by Randy Burton  
President, Justice for Children

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**THE HEALTH LAW AND POLICY INSTITUTE OF THE**  
**UNIVERSITY OF HOUSTON CONFERENCE ON "FAMILY**  
**VIOLENCE AND THE CARE SYSTEM"**

Comments by Randy Burton President, Justice for Children

My name is Randy Burton. I am an attorney, a former prosecutor, and the founder of the national child advocacy organization known as Justice for Children. I currently serve on two state commissions concerned with the effects of child abuse: the Children's Trust Fund of Texas and the State Child Fatality Review Team. The focus of my comments today will be on the failure of our government to treat child abuse primarily as a crime and the results of this failure.

According to the National Committee to Prevent Child Abuse, three million new reports of child abuse or neglect were made in 1993, one report every ten seconds. 1993 records from Children's Protective Services, or "CPS," show that almost half of all children who were confirmed as abused or neglected did not receive any follow-up assistance from CPS. Of those cases reported, an estimated 1,299 children died of abuse or neglect. 90 % of

those children were age five or younger. 40 % to 50 % of the children who died had been previously reported to CPS for being in danger.

A highly critical Texas Senate report in 1989 revealed that in 70% of the confirmed cases of abuse and neglect in Texas, or roughly 20,000 cases, children were left in their homes without receiving protective services. One-third of all child abuse reports involved families whom CPS had previously investigated. Not surprisingly, one caseworker told the Committee that this massive closure of cases without providing protective services was the reason families constantly recycle through the system.

On an annual basis, there are hundreds of preventable child abuse deaths and hundreds of thousands of cases of preventable non-fatal abuse nationally. The failure to protect these known victims of abuse and neglect is not the result of incompetency or excessive caseloads at CPS; rather, it is the direct and predictable consequence of a social service delivery system that places a higher priority on preservation of the family unit and rehabilitation of the offender than on protection of the child.

My first encounter with family preservation was at the Harris County District Attorney's Office. It was there, as a young prosecutor, that I saw the results of children left with their abusive parents as part of CPS's plan for the family. Besides the intimidation that led to the child's refusal to testify, I learned about their re-abuse, and, occasionally, their death, and, I decided to do something about it. I collected evidence of the effects of this policy for over a year and submitted a report of my findings to our District Attorney, Johnny Holmes. As a result of this report, *The Houston Post* investigated the problems at CPS and, in May of 1987, published its findings in a series of articles entitled "Children Who Die: A System Failure."

A few days after this series ended, the Jesse Wheeler story brought home the point of these. His story reads like this:

In 1987, a 2-year-old boy named Jesse was ordered removed from a loving foster family where he had lived since he was five months old. Although he was the youngest of the five Wheeler children in foster care, he alone was returned to his biological mother in accordance with the family preservation policy of CPS, despite knowledge that his mother had started living with a man who had been indicted for the rape of a 4-year-old child.

Shortly after his return to his biological mother, a CPS caseworker observed

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bruises and black eyes on Jesse but decided to "work with family. II The police were not contacted. A few days later, Jesse was life-flighted to Texas Children's Hospital where he died with his foster parents by his side. Police found a hole and hair in wood paneling where Jesse's stepfather swung his little head into the wall

for refusing to eat his pizza. A subsequent autopsy also revealed that Jesse had been sexually assaulted.

Jesse's case, like so many child abuse-related murder cases, involved evidence of ongoing abuse and neglect that was ignored by CPS. His death touched off a firestorm of adverse publicity for the agency and led to the formation of Justice for Children.

Following Jesse's death and a number of high profile child fatalities in the Harris County area, Senator Chet Brooks called for statewide hearings into the problems at CPS. In February of 1989, following a year-long investigation, the Texas Senate Health and Human Services Committee published its report, which described CPS as an agency whose effectiveness and credibility had deteriorated to crisis levels. The Senate report made many specific recommendations to the Texas Department of Human Services (TDHS). It also included the threat that, if TDHS did not substantially improve service delivery to the abused and neglected children of Texas, the Senate would consider removing CPS from the supervision of that Department. Apparently, TDHS failed to take that as a credible threat, and in 1991 the Texas Senate Finance Committee found that "[y]ears of studies costing millions of dollars have been devoted to this program without tangible results. The immense problems and substantial improvements required cannot be achieved realistically in an agency with so many competing priorities."

Later that same year, the Texas Performance Review Team recognized the inherent contradiction between the protection of abused children and family preservation. They reported: "The mission of the social worker is to rehabilitate and preserve the family," on the one hand." On the other hand, the mission of an investigator is to determine if the abuse occurred and remove the victim from the situation if necessary," The Texas Performance Review Team also found that "Maintaining the functions in the same agency makes the responsibility of providing social services to a family in need and investigating a report of abuse a nearly impossible situation in which to maintain objectivity and focus." In 1991, the Texas Legislature, at the recommendation of the Performance Review Team, removed CPS from TDHS to the newly created Department of Protective and Regulatory Services. While that effort clearly evidenced the intent of the leadership of this state to produce dramatic reform at CPS, it has not occurred. If you listen to CPS, its problems have always been due to inadequate funding: "Give us more money and we will save more children," they say. Yet, despite the influx of hundreds of millions of dollars in new funding, the problems persist.

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There is also a growing consensus nationally that family preservation is responsible for placing countless children at risk of further abuse and neglect. According to a *USA Today/CNN/Gallup* poll, "The USA overwhelmingly favors removing children from homes where they're abused or neglected." The April 25, 1994, edition of *Newsweek* featured a story entitled, "Why leave children with bad parents" with the lead-in "Last year, 1,300 abused kids died -- though authorities knew that almost half were in danger. Is it time to stop patching up dead-end families?"

Also in 1994, a year-long expose in the *Chicago Tribune* called "Killing our children" sparked policy makers to review Illinois's child welfare laws, particularly those making reunification of families a priority. Consider the case of 3-year-old **Joseph Wallace**, which led to the *Tribune's* commitment to cover this issue.

In hindsight, everyone in Chicago agrees that Joseph Wallace's death was preventable, that he died because the system placed a parent's rights above a child's. Amanda [his mother] could never have been a "normal" parent. She had been a ward of the state since the age of 8, the victim of physical and sexual abuse. Between 1976 and Joseph's birth in 1989, her psychiatrist told [CPS], she swallowed broken glass and batteries; she disemboweled herself, and when she was pregnant with Joseph, she repeatedly stuck soda bottles into her vagina, denying the baby was hers. Yet 11 months after Joseph was born, a [CPS] caseworker and an assistant public defender persuaded a Cook County juvenile court judge to give him back to Amanda, returning him from the one of the six foster homes he would live in. The judge dispatched Amanda with a blessing: "Good luck to you, Mother."

Over the next two years, caseworkers twice removed Joseph after Amanda attempted suicide. But a [CPS] report, dated October 31, 1992, said she had gotten an apartment in Chicago, entered counseling and worked as a volunteer for a community organization. And though the report noted her turbulent history, it recommended she and Joseph be reunited. Joseph Wallace was sent home for the last time 62 days before his death, by a judge who had no measure of Amanda's past.

On the last night of Joseph Wallace's life, no one could calm his mother's demons. Police say that Amanda Wallace was visiting relatives on April 18, 1993 with 3-year-old Joseph and his 1-year-old brother, Joshua, when she began raving that Joseph was nothing but trouble. [quote] "I'm gonna kill this bitch with a knife tonight," Bonnie Wallace later told

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police her daughter threatened. Bonnie offered to keep the boy overnight, but Amanda refused, so Bonnie drove them to their apartment on Chicago's impoverished West Side. It's unclear what forced Amanda's hand, but authorities tell a harrowing tale: at about 1:30 a.m., she stuffed a sock into Joseph's mouth and secured it with medical tape. Then

she went into the kitchen, retrieved a brown extension cord and wrapped it around Joseph's neck several times. She carried her son to the living room, stood him on a chair, then looped the cord around the metal crank arm over the door. In the last act of his life, Joseph waved goodbye.

On August 18, 1994, ABC's *PrimeTime Live* featured Justice for Children and its campaign to reform Texas CPS in its lead story entitled, "A state of neglect." And more recently, on December 11, 1995, *TIME* Magazine ran a cover story on the child abuse related murder of 6-year-old Elisa Izquierdo entitled, "A shameful death. Let down by the system, murdered by her mom, a little girl symbolizes America's failure to protect its children."

It is not just the average person on the street who realizes our child welfare system has failed. Dr. Richard J. Gelles, Ph.D., a nationally recognized authority on family violence and, formerly one of the strongest proponents of family preservation, has stated that the evidence is in and the policy of family preservation is a national failure. He states in an article :

Child protection and child advocacy needs to replace family reunification as the guiding policy of child welfare agencies. . . Parents who fracture the skulls or bones of six-month-old-children, who have sexual intercourse with 12-month-old daughters, and whose drug abuse patterns compromise their ability to care for their children are simply not entitled to three strikes before they lose their rights as parents.

Finally, in September of 1996, a study issued by the Department of Health and Human Services stated that the estimated number of children abused and neglected rose to 2.81 million in 1993 - up 98% from 1.42 million in 1986 when the last report was published. While the incidents increased during the seven-year period, the report stated that the number of cases investigated by state agencies remained constant. As a result, the percentage of cases investigated by state children's protective services workers fell from 44% of the total in 1986 to 28% in 1993, suggesting that CPS reached its capacity to respond to the maltreated child population.

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Make no mistake about it, the primary problem with CPS stems not from the lack of money or sufficient foster and emergency care facilities (although there are clearly insufficient resources to handle all the abused and neglected children who should be removed from homes).

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The number one problem at CPS is the agency's overwhelming focus on family preservation. This focus is the result of (1) the historical philosophy at CPS that it is "better to save the home for the child than to save the child from the home" and (2) CPS's concern with ensuring the

flow of matching federal funds under Title IV-B, known as "The Child Welfare and Adoption Assistance Act of 1980, or Public Law 96-272.

The philosophical origins of family preservation derive from CPS's original role in protecting children from neglect. At the turn of the century, the Society for the Prevention of Cruelty to Children was created when individuals decided that children were entitled to at least the same rights as animals. After years of treating neglect, CPS began to receive a trickle of physical and, later, sexual abuse cases, which has since turned into a flood. By 1980, the notion that victims of sexual and physical abuse should be treated the same way as victims of neglect (i.e., with the infusion of resources into the family unit), had become such a widely held belief by the leadership in the child welfare field that family preservation efforts became a prerequisite to the receipt of matching federal funds under PL 96-272. That so-called "reasonable efforts" legislation has been widely recognized as the cornerstone for all child welfare funding (including Title IV(E) and Title XX monies). Because these federal funds constitute roughly half of all funds that state CPS agencies receive, there is a huge financial incentive for CPS to demonstrate its family preservation efforts. Unfortunately, Texas and other states have also codified the "reasonable efforts" focus in state law involving dependency proceedings.

What is amazing is that this policy has been blindly pursued despite the total lack of evidence that family preservation works. It has dismally failed all tests to protect the safety and even marginal welfare of most abused children.

The lack of a properly executed follow-up of the fate of the child, which is absolutely essential for providing dependable evidence on the degree of success in child protection, constitutes one of the major flaws in the family preservation programs. As one author put it, "focusing on the prevention of placement is a far cry from the prevention of child maltreatment." "Success" in family preservation programs is usually measured only on the basis of the lack of further reports to CPS about continuing abuse that CPS would categorize as severe enough to make a foster placement of the child absolutely necessary. The current claim of such success is expressed as "only" one in five children from the program recipient families becoming so dangerously re-abused in the first year following the "services" as to necessitate his or her removal from the home. Such "success" means that as many as 20% of the children from these programs are soon seriously re-abused. Moreover, since attention has been focused on the adults, such limited contact as the caseworker may have with the family later is an insufficient opportunity to determine the quality of life of the 80% of children who have not been reported for re-incident maltreatment.

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The proponents of family preservation programs admit that the goal of these projects is preventing the removal of the abused child, **not** eliminating the abuse! It has been said that "no  
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effort" is all the "reasonable effort" that needs to be made to preserve families where there is evidence of chronic neglect or physical abuse, or any history of sexual abuse.

The family preservation policy is fundamentally flawed because it is predicated on the assumption that all child abuse is a treatable illness, not a crime, and that the best place for treatment is in the home. The CPS Risk Management Handbook clearly sets forth the CPS rehabilitative philosophy [quote]:

The following philosophical principles represent the social work orientation to CPS. These principles are consistent with the traditional mission and purpose of public CPS agencies. These principles are fundamental to the social work discipline and may not apply to other disciplines or agencies.

1. Inadequate parenting and child maltreatment are ecological phenomenon (sic) influenced by personal, social, and societal factors. Most often they represent examples of failure and despair, rather than willful premeditated behaviors. Therefore, child abuse and neglect are principally social rather than legal problems.
2. Punishing parents will do little to resolve the causes of the problem and such action is not the responsibility of CPS staff.
3. Effective intervention requires that CPS respond in a non-punitive, non-critical manner and offer help in the least intrusive manner possible.
- ...
6. Most CPS clients can change their behavior if provided sufficient help to empower them.

The problem is that the "illness" theory of abuse ignores that child abuse is an illness for which there is no known cure. While some efforts to rehabilitate parents who neglect or abuse their children are successful, the results are never predictable, and the overwhelming statistical and clinical evidence indicates that most child abusers will continue to abuse. A 1992 study of 767 rapists and child molesters in Minnesota found that those who completed psychiatric treatment were arrested more often for new sex crimes than those who had not been treated at all. A Canadian survey that tracked released child molesters for twenty years revealed a 43% recidivism rate regardless of the therapy.

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Under the highly sentimental "illness" model, the *intentionality* of the perpetrator's actions is removed. Therefore, the perpetrator's responsibility for his illness does not exist.  
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Under family preservation, CPS forces children to live with their abuse, rather than protect them from their parents' uncontrollable behavior. CPS justifies this approach because it claims that removing a child from an abusive home is harmful to the child. This attitude takes advantage of the fact that children love their parents unconditionally. This is like forcing an adult victim of domestic violence to stay with her abuser because she "loves" him, except that it is even more difficult for child to escape their dangerous environment.

Evaluations of huge national parent rehabilitation programs reveal that, according to the parents' own psychotherapists, at best less than 50% of abusive families may be expected to stop physical maltreatment. This prediction is nearly perfectly matched by the results of a survey on various studies of re-incident abuse. This survey showed that somewhere between 50% and 60% of abusive parents are, indeed, incurable; i.e., they continue to abuse their children despite having received rehabilitative treatment. Moreover, none of the "successfully" rehabilitated perpetrators were found to have a potential for becoming even a marginally nurturing parent. When child abuse is viewed solely as an illness, children are likely to be re-abused.

Although child abuse may be an illness, and certainly a social problem, it is also a crime, but our criminal justice system does not treat it as such. Only for crimes against children do we allow a civil agency (i.e., CPS) lacking law enforcement training, experience, authority, and priorities to dictate the inception and conduct of the criminal investigation. Whereas police agencies measure their response time to the scene of adult crimes in minutes (and child abuse cases invariably involve first degree felonies where the child is literally being held hostage by the perpetrator), CPS measures acceptable response time in terms of days. A "priority one" or life-threatening report of child abuse means CPS is required under its own guidelines to make the crime scene in 24 hours! Because CPS controls the intake and investigation of the child abuse case, when a "criminal investigation" is neglected or damaged by CPS, the interests of all other downstream entities concerned with the child's protection (namely, the police, the district attorney's office, and the courts), and the child, suffer.

I can testify as a former prosecutor that no subsequent criminal investigation by the police can rehabilitate improperly collected evidence or a botched investigation by another agency. The failure of CPS to demonstrate a sound evidentiary basis for removal and the failure of the prosecution to convict in child abuse cases leaves children at unacceptable risk. The results of viewing child abuse solely as a treatable illness, without criminal justice intervention, is found in the growing population of sexual predators, sociopaths, drug addicts, prostitutes, and the mentally ill.

the proper training, experience, and authority to investigate child abuse and their only priority is to protect the victim, who is the "complaining witness" in their case. We believe that the current system of dual reporting and investigation of child abuse cases has resulted in duplicated efforts, lost evidence, conflicting evidence, and the failure of the state to prove child abuse in both the criminal and civil court systems. Again, this counterproductive and wasteful system only exists for child abuse cases. There are no other crimes where we entrust social workers to receive the initial report of the crime and to perform the initial investigation of the case independent of law enforcement. This identity crisis is clearly evidenced in the numerous expensive and unnecessary structures that we have created to deal with this problem. For example, children's assessment centers would be largely unnecessary but for the fact that you have competing investigations between the police and CPS that have resulted in so many problems that, in urban areas, the police, CPS, and other agencies have come together to evaluate child abuse cases and achieve a consensus. On the state Child Fatality Review Team we see, in trying to develop model protocols, that the police and CPS have parallel yet different methods of investigating child abuse cases. Trying to reconcile these has become a major issue.

Therefore, it has been Justice for Children's proposal, since our formation in 1987, that all reports of crimes against children must be reported directly to local law enforcement agencies for their review, prioritization, and investigation. There should be only one investigation of the child abuse case, and the people who are best trained for that function should perform it. The results of that investigation should then be forwarded to CPS. Using the information gathered from the police, CPS may pursue its civil removal petition in the family or juvenile court. By doing this, we would eliminate repetitious investigations of child abuse at local child welfare agencies, save money, and CPS would be able to focus on its unique functions, which are the investigation of neglect, the placement of children in safe homes or facilities, and the provision of meaningful support to these children and the protective members of their families.

Tragedies in Connecticut and New York forced those states to "reverse basic child welfare philosophy, which places preeminence on holding families together, replacing it with an approach more oriented toward criminal justice and the protection of children." (*New York Times*, January 12, 1996).

The death of 3-month-old Cassandra Garcia in El Paso provides Texans with an object lesson on the urgency for reform in our state. Cassandra's case involved a 3-month-old child who was left with her abusive parents despite a skull fracture under suspicious circumstances. Rather than immediately remove the child during the pending of its investigation, CPS chose to place the family in a family preservation unit where,

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allegedly, a caseworker would check on the family and the child two to three times a week. This was deemed to be in Cassandra's best interest according to CPS because of  
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Cassandra's need to bond with her parents. Unfortunately, this defenseless baby died two months after her return to her home as a result of blows to her chest, stomach, a karate-style chop to her nose, and severe trauma to the brain from violent shaking. Although the caseworker claimed to have found no evidence of new injuries, this belies the evidence. According to Lt. Paul Saucedo, "the baby had been a punching bag for the past two months." The autopsy revealed multiple other injuries, including broken ribs, another skull fracture, and possibly a broken collar bone, some as old as two months.

We can no longer afford to leave the advocacy for children's rights to an agency that maintains the repressive and scientifically unproven view that it is more harmful for an abused or neglected child to be removed from the family than for that child to be left in the abusive home. This policy is a throwback to the notion that family violence is a "family problem," not a criminal matter.

If we are truly interested in fixing the problem of child abuse, we must choose between family preservation and child protection. Although it is merely a philosophical issue for some, the policy of family preservation has all too real consequences for abused and neglected children. Despite all the studies, investigations, horror stories, and the creation of the Department of Protective and Regulatory Services, the problems at CPS have remained a constant. This system must be changed. Yet, we cannot expect CPS to repair itself. To do so would involve admitting guilt for a failed policy and accepting responsibility for untold suffering by children. We must superimpose change on the system ourselves. In the process, we must address our priorities for our state. If we truly place children first, we must place their protection and physical and mental well-being over all other concerns.

I personally have no doubt that this system can and, ultimately, will be reformed. Our collective consciousness about this issue has been raised dramatically over the last ten years. It is also important to realize that each of us can make a difference. I am a firm believer in the quotation from Margaret Mead, which reads:

"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has."

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