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NOTES

MAKING A LIST, BUT CHECKING IT TWICE? INDIANA'S FOSTER ROSTER AND THE NEED FOR LICENSING REFORM

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INTRODUCTION

In January 2008, the Indiana Department of Child Services (DCS) granted Kimberly and Everett Coleman a foster care license that allowed them to care for up to two foster children at a time.¹ Shortly thereafter, the number of children the Colemans were licensed to care for was doubled from two to four.² DCS began receiving complaints about the Colemans within three months of granting the license.³ In the beginning of April 2008, the Colemans met with a DCS caseworker to discuss complaints that the children in their care were unbathed and that the Colemans had misused food vouchers.⁴ Nevertheless, DCS maintained the increase in the number of children the Colemans were licensed to serve and continued to place children in their home.⁵ On April 21, 2008, eleven-week-old Destiny Linden was placed with the Colemans, bringing the total number of children in their care at that time to four.⁶ Two days later, on April 23,

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1. Tim Evans, *Baby Placed in Foster Home Despite Warnings*, INDIANAPOLIS STAR, July 27, 2008, at A1.

2. *Id.*

3. *Id.*

4. *Id.* It is unclear whether these allegations were ever substantiated against the Colemans, although their foster care license was later revoked on other grounds. Interview with Regina C. Ashley, Deputy Gen. Counsel, Ind. Dep't of Child Servs., and Vonda Ramsey, Background Check/Foster Care Licensing Unit Supervisor, Ind. Dep't of Child Servs., in Indianapolis, Ind. (Nov. 17, 2009). Vonda Ramsey left the employ of DCS on March 24, 2010. E-mail from Regina C. Ashley, Deputy Gen. Counsel, Ind. Dep't of Child Servs., to author (Sept. 3, 2010) (on file with author).

5. Evans, *supra* note 1.

6. *Id.*

2009, a court appointed special advocate⁷ worried about the well-being of other children in the Colemans' care filed a report advocating for the removal of all children from the home.⁸ The report stated that a ten-year-old girl in the Colemans' care had untreated burn marks on her arms sustained while ironing her clothes and that she was responsible for feeding, bathing, and dressing her one-year-old brother, among other things.⁹ Unsatisfied with DCS's response to the report, the advocate filed a motion in court to remove all children from the Colemans' home.¹⁰ On the morning of the hearing on the motion, and just three days after moving in with the Colemans, Destiny was found unconscious.¹¹ She died five days later.¹² Her death was the result of being placed in an unsafe sleeping position.¹³

Unfortunately, the death of children in foster care from abuse or neglect is not uncommon in Indiana,¹⁴ and the maltreatment of children in foster homes across the country is well-documented.¹⁵ In 2008, there were ninety-nine cases of abuse and neglect of foster children substantiated against licensed foster caregivers in

7. In Indiana, a court appointed special advocate is defined as "a community volunteer who: (1) has completed a training program approved by the court; (2) has been appointed by a court to represent and protect the best interests of a child; and (3) may research, examine, advocate, facilitate, and monitor a child's situation." IND. CODE § 31-9-2-28 (2011). Court appointed special advocates interview the child and others involved in the case and prepare reports for the court recommending what is in the child's best interest. See *About Us*, CHILD ADVOCATES, INC., <http://www.childadvocates.org/what.htm> (last visited Feb. 25, 2011).

8. Evans, *supra* note 1. The report was filed with respect to children in the Colemans' care other than Destiny Linden because the volunteer was not assigned to advocate for her. However, the report did recommend that all children be removed from the Colemans' home. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*; see also Tim Evans, *Mother Blames DCS for Son's Death*, INDIANAPOLIS STAR, Apr. 2, 2009, at A13, available at <http://www.indy.com/posts/mother-blames-dcs-for-son-s-death> (discussing five-month-old Mason Brown, who was found unconscious in his crib at his foster parents' home and pronounced dead at the scene). The Colemans' foster care license was not revoked until six months after Destiny's death. See Letter from Regina C. Ashley, Deputy Gen. Counsel, Ind. Dep't of Child Servs., to Everett and Kimberly Coleman, foster parents (Oct. 31, 2008) (on file with author).

14. See Tim Evans, *No Staff. Little Funding. No Mandate. 15 Child Deaths.*, INDIANAPOLIS STAR, Dec. 13, 2009, at A1 (noting that at least fifteen children have died in Indiana while involved an active or recently closed DCS cases since September 2007).

15. See Emily Buss, *Parents' Rights and Parents Wronged*, 57 OHIO ST. L.J. 431, 439 (1996) ("Whether the original decision to place children is justified or not, the children's subsequent treatment in the child welfare system often constitutes abuse and neglect of its own . . ."); Michael B. Mushlin, *Unsafe Havens: The Case for Constitutional Protection of Foster Children from Abuse and Neglect*, 23 HARV. C.R.-C.L. L. REV. 199, 204 (1988) ("[I]t is well-established that . . . [foster children] are at high risk of further maltreatment while in foster care.").

Indiana (seventy-three cases of neglect, nineteen cases of physical abuse, and seven cases of sexual abuse).¹⁶ The Annie E. Casey Foundation, a not-for-profit research and charitable organization, publishes an annual national report detailing the well-being of children in all fifty states.¹⁷ In 2009, the Annie E. Casey Foundation ranked Indiana thirty-first out of all states for overall child well-being and forty-first for child deaths per 100,000 children.¹⁸

State authorities are justified in removing children from their homes and placing them in foster care when foster care placement provides a safer environment than the homes from which the children are removed.¹⁹ However,

16. STATE OF IND., DEP'T OF CHILD SERVS., DEMOGRAPHICS AND TRENDING REPORT STATE FISCAL YEAR 2008 (JULY 1, 2007 TO JUNE 30, 2008), at 125 (2009) [hereinafter DEMOGRAPHICS AND TRENDING REPORT], available at http://www.in.gov/dcs/images/D__T_SFY_2008_Data_Report.pdf.

17. ANNIE E. CASEY FOUND., 2009 KIDS COUNT DATA BOOK 6 (2009), available at http://www.aecf.org/~media/Pubs/Other/123/2009KIDSCOUNTDataBook/AEC186_2009_KC_DB_FINAL_72.pdf. The Annie E. Casey Foundation ranks the states based on a composite score of the underlying statistics. *Id.* at 40. The report looks at ten key indicators of child well-being: (1) percent low-birthweight babies; (2) infant mortality rate; (3) child death rate; (4) teen death rate; (5) teen birth rate; (6) percent of teens who are high school dropouts; (7) percent of teens not attending school and not working; (8) percent of children living in families where no parent has full-time, year-round employment; (9) percent of children in poverty; and (10) percent of children in single-parent families. *Id.* at 34. The child well-being rankings in the report are based on cumulative data for all children in each state, not just children in foster care. *Id.* at 32 (noting that the data assess the "status of America's children"); see also Letter from Regina C. Ashley, Deputy Gen. Counsel, Ind. Dep't of Child Servs., to author (Sept. 17, 2010) (on file with author) (pointing out that the *Kids Count Data Book* analyzes all children in a state, not just foster children, and many of the reported statistics are demographic issues out of DCS's control). Nevertheless, the Annie E. Casey Foundation report was used to determine two states against which to compare Indiana's foster care licensing regime based on data availability, frequency of reporting, and ease of access. The report was solely used to determine comparison states and was not used substantively to evaluate the strength of Indiana's foster care system. DCS suggests that its practice indicator reports and federal child and family service review results provide more relevant data. Letter from Regina C. Ashley, *supra*. For example, in fiscal year 2009, Indiana had a 92.7% rate of absence of repeat maltreatment and a 99.56% rate of absence of child abuse and neglect in foster care. *Id.* These rates fall short of the national standard but surpass the federal goal set for Indiana in its program improvement plan. *Id.* Clearly, Indiana is making strides in improving its child welfare outcomes, and some of these efforts are detailed later in this paper. Assessing other states' child welfare systems is simply another evaluative method for improving Indiana's services to vulnerable children.

18. ANNIE E. CASEY FOUND., *supra* note 17, at 41, 47.

19. See Mushlin, *supra* note 15, at 204 (noting that the purpose of foster care is to provide a safe haven for children); see also Laura A. Harper, Note, *The State's Duty to Children in Foster Care—Bearing the Burden of Protecting Children*, 51 *DRAKE L. REV.* 793, 795 (2003) (discussing how children are removed from their homes when a social service agency finds it unsafe for them to remain there).

Destiny's story demonstrates that Indiana children are not always safe in foster care. Simply stated, Indiana needs to do a better job of screening potential foster homes and monitoring current licensees for continued compliance to ensure that Indiana's foster homes are safe and nurturing places for embattled children.

The purpose of this Note is to analyze how the states with the highest rankings in the 2009 Annie E. Casey Foundation report structure their foster care licensing regimes and to propose changes to Indiana law that will better protect children placed in foster homes from inexcusable abuse and neglect. Part I analyzes the current Indiana statutes and administrative regulations pertaining to foster care licensing, focusing on "trigger" events that necessitate denial or revocation of a license. Part II examines the shortcomings of recent reform efforts in Indiana, including Governor Daniels's mandated increase in the number of DCS caseworkers, the requirement that a guardian ad litem or court appointed special advocate be assigned to each child abuse and neglect case, and the creation of an independent third-party ombudsman to oversee DCS. Part III surveys the licensing schemes of New Hampshire and Minnesota, the states ranking first and second, respectively, in the same report that ranked Indiana thirty-first for overall child well-being. Finally, Part IV proposes changes to Indiana's licensing scheme modeled on the strengths discerned in the New Hampshire and Minnesota systems.

I. FOSTER CARE LICENSING IN INDIANA

As of September 30, 2009, Indiana had 5436 children in foster care.²⁰ At that time, there were 2719 foster homes licensed directly by DCS and another 2439 foster homes licensed by state-approved private child placing agencies.²¹ DCS family case managers oversee children in foster care and those who remain in their homes but whose families receive ongoing services.²² Case managers are either initial assessment family case managers (those who handle and investigate initial reports of child abuse or neglect and determine whether to remove children from home) or ongoing family case managers (those who handle the ongoing cases, whether the children remain in the home or are placed in out-of-home care, and are responsible for their permanency plans).²³ Initial assessment workers'

20. IND. DEP'T OF CHILD SERVS., PRACTICE INDICATOR REPORT, CHINS PLACEMENTS BY COUNTY (2009), available at [http://www.in.gov/dcs/images/\(B-D\)Placement_Trendline_-_2009-09.pdf](http://www.in.gov/dcs/images/(B-D)Placement_Trendline_-_2009-09.pdf). It is unclear whether this figure includes children who are placed with licensed relative caregivers. Interview with Regina C. Ashley and Vonda Ramsey, *supra* note 4.

21. IND. DEP'T OF CHILD SERVS., ACTIVE LICENSED FOSTER HOMES FOR DCS AND LCPAS AS OF 9/30/2009 (statistical report on file with author).

22. IND. CODE § 31-25-2-5 (2011).

23. *Id.* A permanency plan is part of the federally mandated case plan that is required in order for states to receive federal foster care maintenance payments. See 42 U.S.C. § 675(1) (2006) (defining "case plan"). The permanency plan describes the ultimate goal for the child's permanent placement and elucidates concrete steps to achieve that goal. See IND. CODE § 31-34-15-4 (mandating that a case plan include "a permanent plan for the child"). Permanent placement

caseloads are statutorily mandated to average no more than twelve cases per worker, and ongoing case managers' caseloads are required to average no more than seventeen cases per worker.²⁴ However, the standard only indicates the target average caseload; variations above the average do exist for individual family case managers. For example, an ongoing DCS family case manager in Marion County stated that although she typically handles between eighteen and twenty-two cases at once, she has had up to thirty-five cases at a time.²⁵

A. Initial Foster Home Licensure

To obtain an initial foster care license in Indiana, applicants must complete a comprehensive application.²⁶ Foster care licensing is performed jointly by DCS and state-approved licensed child placing agencies (LCPAs).²⁷ LCPAs conduct home studies, investigate applicants, and then input the application information into a computer system.²⁸ DCS then approves or denies the license based on the information from the LCPAs.²⁹ DCS also directly licenses homes through its individual county offices.³⁰

Federal law mandates minimum requirements for background checks on foster care applicants.³¹ States wishing to receive federal matching funds for foster care maintenance payments must perform a national fingerprint-based criminal history check and a central registry check on all applicants.³² The central registry check looks for prior child protective services history in the state where the applicant applied for a license and any state in which the applicant lived in the five years prior to applying.³³ States are required to cooperate with equivalent requests from other states regarding background checks for child protective

options include reunification with family, termination of parental rights, or adoption. *See* 45 C.F.R. § 1356.21(g) (2008).

24. IND. CODE § 31-25-2-5(a). DCS's September 2009 fact sheet states that seventeen out of eighteen total regions are in compliance with the 12:17 staffing level standard. IND. DEP'T OF CHILD SERVS., DCS FACTS (2009), *available at* http://www.in.gov/dcs/images/DCS_Fact_Sheet_2009-09.pdf.

25. E-mail from Andrenesia Gray, Family Case Manager, Marion Cnty. Dep't of Child Servs., to author (Nov. 9, 2009) (on file with author).

26. IND. CODE § 31-27-4-5(a)-(b).

27. *Id.* § 31-27-4-14 (giving DCS the authority to delegate the home study and investigation portions of foster home licensure to LCPAs).

28. Interview with Regina C. Ashley and Vonda Ramsey, *supra* note 4.

29. *Id.*

30. *Id.* Some DCS local county offices currently outsource the home studies to outside contractors, but a majority conduct the home studies themselves. DCS's goal is to cease outsourcing and have "foster care specialists," DCS employees charged with recruiting, licensing, and retaining foster homes, perform these functions. *Id.*

31. 42 U.S.C. § 671(a)(20) (2006).

32. *Id.*

33. *Id.* § 671(a)(20)(B)(i).

services history.³⁴ Reciprocity is accomplished through state laws allowing the release of records to comparable authorities in other states for background checks.³⁵ In compliance with federal requirements, DCS or the LCPA conducts a national fingerprint-based criminal history check on the applicant and all household members ages fourteen and older.³⁶ Licensing authorities then determine whether the applicant or any household members ages fourteen and older have any history with child protective services and whether they are listed on violent or sex offender registries.³⁷

After completing the background check, licensing authorities investigate the home and its residents, interviewing relevant parties and ensuring that the home meets licensure requirements.³⁸ The home must have the following amenities: heat; a dining room large enough for the foster children to eat at the family table; an individual bed with a mattress and bedclothes for each child; closet and drawer space for each child; an area for studying; and “recreational facilities” for play.³⁹ The home must comply with sanitary laws pertaining to water supply and sewage disposal as well.⁴⁰

In addition to passing the background check and meeting the physical environment requirements, Indiana requires that “[f]oster parents . . . be mature individuals who are capable of exercising and do exercise good judgment in the handling of a child.”⁴¹ Certain requirements are enumerated under this “maturity” standard, including that the applicant have income sufficient to support children in his or her care and maintain a reasonable quality of life.⁴² The applicant must also demonstrate that he or she understands the nutritional needs of children.⁴³ However, DCS does not have a policy concerning how licensing authorities should assess an applicant’s knowledge of children’s nutritional needs.⁴⁴ Guidance on proper feeding principles is also absent from the *Foster Family Resource Guide*, a comprehensive manual given to all licensed foster parents.⁴⁵

34. *Id.* § 671(a)(20)(B)(ii).

35. *See, e.g.*, MINN. STAT. ANN. § 626.556(10g) (West, Westlaw through 2011 Reg. Sess.); N.H. REV. STAT. ANN. § 169-C:35(VI) (2002), *amended by* 2010 N.H. Laws 160 (2010) (allowing private adoption agencies the same access to records).

36. IND. CODE § 31-27-4-5(d), (e)(2) (2011).

37. IND. DEP’T OF CHILD SERVS., CHILD WELFARE MANUAL, CH. 12, § 30, <http://www.in.gov/dcs/2354.htm> (last visited Mar. 7, 2011) [hereinafter CHILD WELFARE MANUAL].

38. IND. CODE § 31-27-4-10.

39. 465 IND. ADMIN. CODE 2-1-4 (2011).

40. *Id.* at 2-1-5.

41. *Id.* at 2-1-3(a). License revocations are commonly premised on the licensee’s failure to meet this requirement. Interview with Regina C. Ashley and Vonda Ramsey, *supra* note 4. In fact, the Colemans’ license was revoked on this ground. Letter from Regina C. Ashley to Everett and Kimberly Coleman, *supra* note 13.

42. 465 IND. ADMIN. CODE 2-1-3(c).

43. *Id.* at 2-1-7.

44. Interview with Regina C. Ashley and Vonda Ramsey, *supra* note 4.

45. *See* IND. DEP’T OF CHILD SERVS., INDIANA FOSTER FAMILY RESOURCE GUIDE, *available*

An applicant cannot be licensed if more than eight children (including biological children or children for whom the applicant is a guardian) under age eighteen or more than four children under age six reside in the home at the same time.⁴⁶ Finally, the applicant must complete twenty hours of pre-service training and a first aid course before DCS will issue a license.⁴⁷ Thereafter, the licensee must complete ten hours of in-service training each year and be re-certified in first aid every three years.⁴⁸ Current statutory language indicates that issuance of a license is mandatory in cases where an applicant meets all of the necessary criteria.⁴⁹

Sufficient grounds for denial of a license application exist if the applicant has a criminal conviction for a felony or misdemeanor pertaining to the health or safety of a child, has made false statements in the application, or has previously operated a foster home without a license.⁵⁰ However, if a household member other than the applicant or a person who has “regular and continuous” contact with the children has a criminal conviction for certain enumerated felonies⁵¹ or a misdemeanor pertaining to child health and safety, the applicant can apply for a waiver that allows such a person to remain in the home.⁵² Generally, applicants can file for a waiver of any license requirements by comports with Indiana Code section 31-27-2-8.⁵³

B. Foster Home Monitoring and License Revocation

This section discusses the procedures DCS follows to ensure that foster homes, once licensed, remain compliant with statutory and administrative regulations. It also details the reasons that a foster home license may be revoked. Finally, this section explains the administrative process of revoking a license.

at <http://www.in.gov/dcs/files/1003NewFosterGuide4Web.pdf> (last visited Mar. 7, 2011).

46. IND. CODE § 31-27-4-8(a) (2011). Because these limitations include foster children, they dictate the number of foster children that a licensee can be licensed to care for. *See* CHILD WELFARE MANUAL, *supra* note 37, Ch. 12, § 12.

47. 465 IND. ADMIN. CODE 2-1-16(a)-(b). The administrative code merely specifies the required hours of training to be completed. It does not mandate any specific areas in which training must be conducted. *Id.*

48. *Id.* at 2-1-16(b), (d).

49. IND. CODE § 31-27-4-11 (“The department *shall* issue a license to a person who meets all the license requirements when an investigation shows the applicant to be in compliance under this article.” (emphasis added)).

50. *Id.* § 31-27-4-6(a)(1)-(5).

51. These felonies include, among other things, murder, voluntary manslaughter, kidnapping, battery, felony sex offenses, incest, and neglect. *Id.* § 31-27-4-13.

52. *Id.* § 31-27-4-6(b)(2).

53. *Id.* § 31-27-4-12. To receive a waiver of a rule, the applicant must demonstrate in writing that compliance with the rule would create an undue hardship, that the applicant will otherwise be in substantial compliance with the rules, and that noncompliance will not adversely affect the health or safety of children. *Id.* § 31-27-2-8.

1. *Ongoing Monitoring and Reasons for Revocation.*—Once granted, a foster care license is valid for four years.⁵⁴ Licensees are required to inform DCS if they experience a reduction in income, wish to change residences, or if the composition of people residing in the home changes.⁵⁵ DCS, or the LCPA in the case of foster homes licensed through LCPAs, must visit licensed foster homes at least once annually to ensure continued compliance with licensing requirements.⁵⁶ Notification of licensing violations is most often provided by child protective services investigators who respond to a complaint, case managers who visit the home during monthly visits for the children on their caseload, or in-home service providers such as home-based counselors.⁵⁷

Currently, Indiana provides that the following are grounds for revocation of a foster home license: a licensee's criminal conviction for a felony or misdemeanor involving child health or safety; substantiated abuse or neglect, whether committed by the licensee, someone who resides in the home, or someone who has "regular and continuous" contact with the children; a discovery that the licensee made false statements in the license application or other required records; or a finding that the licensee previously operated a foster home without a license.⁵⁸ However, the Indiana Court of Appeals has held that these enumerated reasons for revocation are not exhaustive.⁵⁹ The most common reason for initiating revocation proceedings is that a complaint regarding abuse or neglect of a child by a foster parent has been substantiated.⁶⁰ Another common reason for revocation is when a licensee has committed a violation of licensing rules, combined with a refusal to cooperate with DCS in remedying the violation.⁶¹

The decision to revoke a license is discretionary in all cases unless the licensee has committed certain enumerated felonies,⁶² in which case revocation is mandatory.⁶³ Statutorily, children do not have to be removed from a foster home until after the license has been revoked,⁶⁴ although in practice, children are

54. IND. CODE § 31-27-4-16(a).

55. 465 IND. ADMIN. CODE 2-1-3(e) (2011).

56. IND. CODE § 31-27-2-5(a)(2).

57. Interview with Regina C. Ashley and Vonda Ramsey, *supra* note 4.

58. IND. CODE § 31-27-4-32.

59. *Taylor v. Ind. Family & Soc. Servs. Admin.*, 699 N.E.2d 1186, 1191 (Ind. Ct. App. 1998).

60. Interview with Regina C. Ashley and Vonda Ramsey, *supra* note 4.

61. *Id.*

62. The enumerated felonies include murder, causing or assisting suicide, voluntary manslaughter, reckless homicide, battery, kidnapping, criminal confinement, carjacking, arson, incest, neglect of a dependent, child-selling, felony sex offenses, felonies involving a weapon, felonies related to controlled substances, and offenses pertaining to material that is obscene or harmful to minors. IND. CODE 31-27-4-13(a).

63. *See id.* § 31-27-4-33(b) (stating that the department "shall" revoke the license of a licensee convicted of certain enumerated felonies but "may" revoke the license for other violations).

64. *Id.* § 31-27-4-30(a) ("After the license of a foster family home is revoked, the department

almost always removed prior to revocation.⁶⁵ According to DCS policy, a licensing worker must recommend revocation when there is a substantiated complaint of abuse or neglect against a licensee.⁶⁶ However, a licensing worker can, at his or her discretion, refer a waiver request to a background check waiver review team that reviews the request and may issue a waiver that allows the licensee to remain in good standing.⁶⁷ Thus, substantiated abuse or neglect at the hands of a foster parent might, in the discretion of the investigating background check waiver review team, lead to the issuance of a plan of correction rather than a request for revocation.⁶⁸ Foster parents are typically given two to three months to comply with a plan of correction.⁶⁹ If the licensee fails to comply with the plan of correction, the case manager may recommend revocation.⁷⁰ A foster parent may still care for foster children while under a plan of correction, notwithstanding the fact that the allegations may later be substantiated.⁷¹

2. *The Revocation Process.*—In order to revoke a license, DCS must first notify the licensee in writing of the enforcement action, after which the licensee has ten business days to request an informal meeting with DCS.⁷² The notice also informs the licensee that he or she has thirty days to request an administrative hearing.⁷³ Administrative hearings are evidentiary in nature and are presided over by administrative law judges.⁷⁴ DCS must issue its final decision within sixty days of the hearing,⁷⁵ and the final decision is subject to judicial review.⁷⁶

II. SHORTCOMINGS OF RECENT REFORM EFFORTS

Indiana Governor Mitch Daniels made child welfare reform an integral part of his campaign platform in the 2004 gubernatorial election.⁷⁷ Since being elected, Governor Daniels has made great strides in the area of child welfare. This Part details various initiatives that Governor Daniels has implemented during his tenure. First, it discusses the executive order that separated DCS from

shall notify in writing each person responsible for each child in care, to ensure that the children are removed from the foster family home.”).

65. Interview with Regina C. Ashley and Vonda Ramsey, *supra* note 4.

66. CHILD WELFARE MANUAL, *supra* note 37, CH. 12, § 21.

67. *Id.*

68. Interview with Regina C. Ashley and Vonda Ramsey, *supra* note 4.

69. *Id.*

70. CHILD WELFARE MANUAL, *supra* note 37, CH. 12, § 17.

71. Interview with Regina C. Ashley and Vonda Ramsey, *supra* note 4.

72. IND. CODE § 31-27-4-22 (2011).

73. *Id.* § 31-27-4-23. The hearing must be conducted within sixty days of receipt of the request. *Id.*

74. *Id.* § 4-21.5-3-5.

75. *Id.* § 31-27-4-25.

76. *Id.* § 31-27-4-31.

77. See MITCH DANIELS, AIMING HIGHER: 2004 LEGISLATIVE AGENDA (2004) (providing statistics on child welfare) (PDF on file with author).

the larger family services bureaucracy and called for the hiring of additional case managers. Next, it explores the mandate that an independent court appointed special advocate be assigned to every child abuse and neglect case. Finally, it examines legislation creating an independent third-party ombudsman to oversee Indiana's child welfare system.

A. Reduction of Caseloads

By executive order in January 2005, Governor Daniels created DCS as a freestanding agency separate from the Indiana Family and Social Services Administration.⁷⁸ Governor Daniels's professed goal in making DCS a separate entity and hiring new caseworkers was to "better protect[] endangered children."⁷⁹ In an attempt to reduce caseloads and better provide for the safety of Indiana's children, the Indiana legislature has allocated funding to hire additional family case managers.⁸⁰ As of April 2008, the state had hired 882 caseworkers since Governor Daniels took office, more than doubling the total number of caseworkers from 708 to 1590.⁸¹ Additional regulations require DCS caseworkers to have a college degree in social work or another parallel field.⁸² Moreover, new hires are now required to undergo twelve weeks of training and shadowing prior to handling their own cases.⁸³

It is indisputable that lowering average caseloads by hiring additional caseworkers allows DCS family case managers to spend more time on each case. Indeed, the improvements made by Governor Daniels have already resulted in more favorable statistics for child deaths due to abuse and neglect throughout the state.⁸⁴ However, the majority of case managers hired under Governor Daniels's directive do not handle foster care licensing; they investigate abuse and neglect complaints and oversee existing cases.⁸⁵ Although these case managers visit the children on their caseloads and have the authority to request a move from one

78. *About DCS*, IND. DEP'T OF CHILD SERVS., <http://www.in.gov/dcs/2370.htm> (last visited Mar. 7, 2011) (declaring the need to "provid[e] more direct . . . oversight in . . . [the] protection of children").

79. Governor Mitch Daniels, 2005 State of the State Address (Jan. 18, 2005) (transcript available at <http://www.in.gov/gov/2530.htm>).

80. *About DCS*, *supra* note 78.

81. *State Marks Hiring of 800-Plus New Child Welfare Workers*, INDIANAPOLIS STAR, Apr. 1, 2008, at A4 (on file with author).

82. *Id.*

83. *Id.*; see also *Do You Want to Make a Difference? Consider a Career with Us!*, IND. DEP'T OF CHILD SERVS., JOB OPPORTUNITIES, <http://www.in.gov/dcs/2367.htm> (last visited Mar. 10, 2011).

84. See *State Marks Hiring of 800-Plus New Child Welfare Workers*, *supra* note 81 (comparing statistics from 2007 to those from 2006).

85. See *id.* (noting that the additional caseworkers allow Indiana to meet federal caseload guidelines for initial and ongoing case managers).

foster home to another, they cannot directly affect a licensee's status.⁸⁶ Instead, they must refer the foster home to the licensing division for possible investigation.⁸⁷ Family case managers sometimes continue to place children in problematic foster homes rather than contact the licensing authorities and request that they initiate revocation proceedings.⁸⁸ The problem with this approach is that information regarding unsatisfactory foster homes may not be aptly communicated from one family case manager to another, placing children in potentially dangerous situations.⁸⁹ Therefore, lowering caseloads for case managers does not directly improve the quality of available foster care homes.

B. Mandatory Advocates for Children

In addition to creating DCS as a separate entity and authorizing additional case managers, the Indiana legislature also passed legislation in 2005 requiring a guardian ad litem or court appointed special advocate for every child involved in an abuse or neglect case in the state.⁹⁰ Prior to this legislation, Indiana was the only state that did not require children involved in abuse or neglect cases to be represented by an attorney, a guardian ad litem, or a court appointed special advocate.⁹¹ By independently interviewing the child, all service providers, and

86. See E-mail from Andrenesia Gray, *supra* note 25.

87. See *id.* This situation is not unique to Indiana. See Marcia Lowery, *Foster Care & Adoption Reform Legislation: Implementing the Adoption and Safe Families Act of 1997*, 14 ST. JOHN'S J. LEGAL COMMENT. 447, 452 (2000) (discussing the unaccountability of child welfare systems generally and the fact that insiders who perceive problems are powerless to do anything).

88. See Adam Avrushin, Address at the American Political Science Association Annual Meeting in Washington, DC: Policies, Money, and the Child Welfare Caseworker: What's Guiding Best Interest Decision-Making? 21-22 (2010) (discussing interviews with Illinois case workers and concluding that "agencies knowingly place children in homes where the home is inappropriate for addressing children's needs. Foster parents may not have the financial resources to provide for a child's long-term needs, they may not have the parenting ability, or they may have ulterior motives for fostering."); STATE OF MICH., DEP'T OF HUMAN SERVS., CHILD FATALITY REVIEWS: 4/1/05 TO 3/31/08, QUALITY ASSURANCE REPORT 6, available at http://www.michigan.gov/documents/dhs/QA_Report_of_Fatality_Reviews_-_April_05-March_08_315388_7.pdf (noting that child protective services workers failed to notify licensing department of complaints about foster homes).

89. See, e.g., Evans, *supra* note 1 (noting that DCS had met with the Colemans a few weeks prior to Destiny's death to address licensing violations).

90. IND. CODE § 31-34-10-3 (2011). A guardian ad litem is defined as:

[A]n attorney, a volunteer, or an employee of a county program . . . appointed by a court to: (1) represent and protect the best interests of a child; and (2) provide the child with services requested by the court, including: (A) researching; (B) examining; (C) advocating; (D) facilitating; and (E) monitoring the child's situation.

Id. § 31-9-2-50.

91. Leslie Rogers Dunn & Lilia Judson, *New Law Requires a GAL/CASA for Every Child in Every CHINS Case*, 14 IND. CT. TIMES 9 (2005) (on file with author). The appointment of a GAL

caregivers, court appointed special advocates are in a unique position to determine whether a foster parent should retain his or her license.⁹² Recommendations for revocation can be communicated to the courts through the reports that court appointed special advocates submit on a regular basis.⁹³ Unfortunately, over 4000 children in state custody remain on a waiting list for a court appointed special advocate.⁹⁴ The probable reason for the waitlist is that most child advocates are unpaid volunteers.⁹⁵

Although having a child advocate on every abuse and neglect case may improve outcomes for individual children,⁹⁶ reducing the waitlist for children in need of advocates does no more to improve the quality of care in licensed foster homes than hiring additional case managers. Child advocates visit children in their foster homes about as frequently as DCS case managers, who see the children on their caseloads every thirty days.⁹⁷ However, because their primary role is to make written recommendations to the judge based on the best interests of the children on their caseloads,⁹⁸ they have even less authority to influence licensing decisions than DCS case managers. A child advocate could recommend to a child's caseworker that the child be removed from a foster home, but the advocate's supervisor and DCS would have to concur before DCS would make any change in the child's placement.⁹⁹ Otherwise, an advocate's only recourse

or CASA to all abuse and neglect cases is a condition precedent to receiving federal funds for child abuse and neglect prevention and treatment programs. 42 U.S.C. § 5106a(b)(2)(A)(xiii) (2006).

92. See *Volunteer Commitment Top Ten List*, COURT APPOINTED SPECIAL ADVOCATES, <http://www.nationalcasa.org/volunteer/10list.html> (last visited Mar. 11, 2011).

93. See *id.* (listing duties of a CASA volunteer, including compiling written reports and making recommendations).

94. Rebecca Berfanger, *Helping Children: More Cases, More Volunteers for GAL/CASA*, IND. LAW., Apr. 15, 2009 (on file with author).

95. See *About Us*, COURT APPOINTED SPECIAL ADVOCATES, http://www.nationalcasa.org/about_us/index.html (last visited Mar. 11, 2011). The waitlist is essentially the result of an unfunded mandate that a court appointed special advocate be assigned to every abuse or neglect case. See Berfanger, *supra* note 94; see also *Ind. Gov't.—Improving the Child Welfare System*, IND. L. BLOG (June 21, 2009), http://indianalawblog.com/archives/2009/06/ind_govt_improv.html (discussing an *Indianapolis Star* column advocating for the full funding of state GAL/CASA programs).

96. See *Evidence of Effectiveness*, COURT APPOINTED SPECIAL ADVOCATES, http://www.casaforchildren.org/site/c.mtJSJ7MPISE/b.5332511/k.7D2A/Evidence_of_Effectiveness.htm (last visited Mar. 11, 2011) (listing reported statistical evidence that having a CASA on a case improves outcomes for children).

97. See CHILD ADVOCATES, GUARDIAN AD LITEM/CASA—BEST PRACTICES (on file with author) (stating that CASAs should visit the children on their caseload at least once every sixty days).

98. See *Volunteer Commitment Top Ten List*, *supra* note 92 (listing duties of a CASA volunteer, which include compiling written reports and making recommendations).

99. E-mail from Renee Fishel, Guardian ad Litem, Child Advocates, Inc., to author (Jan. 5, 2010) (on file with author).

would be to seek a court order for a new placement.¹⁰⁰ Licensing issues in Indiana's foster homes are therefore not substantially affected by the court appointed special advocates program.

C. The Third-Party Ombudsman

The most recent change in Indiana's child welfare system came in the 2009 special legislative session, when Indiana lawmakers created an independent third-party ombudsman to oversee DCS.¹⁰¹ With this legislation, Indiana joined at least thirty other states in providing for independent review of its foster care system.¹⁰² The ombudsman has the authority to "receive, investigate, and attempt to resolve a complaint alleging that [DCS] . . . failed to protect the physical or mental health or safety of any child or failed to follow specific laws, rules, or written policies."¹⁰³ This individual may also recommend changes in policies and procedures to increase the effectiveness of the child welfare system.¹⁰⁴

The creation of an independent ombudsman should be a laudable accomplishment, but it instead appears to be a largely symbolic appointment. The legislature only awarded \$145,000 in funds rather than the requested \$450,000 for 2009.¹⁰⁵ Nearly two-thirds of the allotted funding is for the ombudsman's salary.¹⁰⁶ Without adequate funding, it is unlikely that the ombudsman will be more than a placeholder, and it is even more unlikely that meaningful recommendations for foster care reform will accrue from the ombudsman's investigations. Lack of manpower is also a serious problem. The DCS ombudsman is the epitome of a one-man show, operating with no staff.¹⁰⁷ Indiana's situation contrasts sharply with programs in Michigan and Washington, where the ombudsman is supported by eleven and eight staff members, respectively.¹⁰⁸ Child welfare workers also fear that the legislature's failure to provide a comprehensive mission statement for the ombudsman weakens the legislation.¹⁰⁹ Cynthia Booth, Executive Director of Child Advocates, Inc., the

100. *Id.*

101. H.E.A. 1001, 116th Gen. Assemb., 1st Spec. Sess. (Ind. 2009) (codified at IND. CODE. § 4-13-19) (2011) (creating the Department of Child Services ombudsman).

102. Tim Evans, *Deaths of Kids Raise Oversight Questions*, INDIANAPOLIS STAR, Feb. 18, 2008, at A1.

103. IND. CODE § 4-13-195(a).

104. *Id.* § 4-13-195(b)(2), (6).

105. Tim Evans, *DCS Gets Ombudsman, but Doubts Remain*, INDIANAPOLIS STAR, July 7, 2009, at A1.

106. Evans, *supra* note 14, at A25 (noting that \$90,000 of the \$145,000 appropriated is for the ombudsman's salary).

107. *Id.*

108. *Id.* The Annie E. Casey Foundation 2009 *Kids Count Data Book* ranked Michigan 27th in overall child welfare and ranked Washington 14th. ANNIE E. CASEY FOUND., *supra* note 17, at 41.

109. *Id.*

organization that runs Marion County's court appointed special advocates program, remarked, "[T]he goal of systemic improvement through monitoring and investigating issues in our child welfare system by our ombudsman is certainly hindered by the lack of resources and vision."¹¹⁰

Given the legislation's lack of funding, manpower, and direction, it is unlikely that the ombudsman will address the issue of foster care licensing. It is important to have an independent agency review complaints and incidents of abuse and neglect at the hands of foster parents *ex post*, but the legislation does not directly address the need for changes in *ex ante* licensing procedures.¹¹¹ The safety of children in state custody is too important, and the theoretical ability of the ombudsman to address licensing issues too tenuous, to adopt a "wait and see" approach. Foster care licensing reform should be confronted directly rather than indirectly through the DCS ombudsman.

III. LICENSING SCHEMES OF NEW HAMPSHIRE AND MINNESOTA

New Hampshire and Minnesota ranked first and second, respectively, in the 2009 Annie E. Casey Foundation report on child well-being.¹¹² The same report ranked Indiana thirty-first for overall child well-being.¹¹³ Comparing the foster care licensing regime used in Indiana to the ones used in these high-ranking states yields proposals for changes to Indiana law that will better protect children placed in foster homes.

New Hampshire's foster care system is very small compared to Indiana's. As of October 1, 2009, New Hampshire had 959 licensed foster homes¹¹⁴ and only 723 children in foster care.¹¹⁵ Approximately 100 family service workers oversee

110. *A Message from Executive Director Cindy Booth*, NEWS AND INFORMATION FROM CHILD ADVOCATES (Child Advocates, Inc., Indianapolis, Ind.), Jan. 1, 2010, <http://view.exacttarget.com/?j=fe631570746c0c787616&m=fe81176746c07&ls=fd01673706c057a7c177975&l=fe9815717c65047873&s=fe2317707c610d7b761677&jb=ffcf14&ju=fe5b1c77766300787415>.

111. Instead, the legislation merely grants the ombudsman the power to "[r]ecommend changes in procedures for investigating reports of abuse and neglect and overseeing the welfare of children who are under the jurisdiction of a juvenile court." IND. CODE § 4-13-19(5)(b)(4) (2011). This broad language, although arguably encompassing foster care licensing procedures, does not explicitly direct the attention of the ombudsman to the need for licensing reform.

112. ANNIE E. CASEY FOUND., *supra* note 17, at 41.

113. *Id.*

114. E-mail from Ann Abram, Foster Care Worker At-Large, N.H. Dep't of Health & Human Servs., Foster Care Unit, to Misty Richard, Research Analyst, N.H. Div. of Children, Youth & Families (Nov. 2, 2009) (on file with author). Specifically, New Hampshire has 659 homes licensed directly by the Division of Children, Youth and Families and 300 homes licensed by licensed child placing agencies. *Id.*

115. *Id.* Note that there are more foster homes in New Hampshire than there are foster children, creating a situation where foster parents "compete" for the placement of young children in their homes. Telephone Interview with Ann Abram, Foster Care Worker At-Large, N.H. Dep't of Health & Human Servs., Foster Care Unit (Oct. 6, 2009). This is in stark contrast to Indiana's

New Hampshire's foster children.¹¹⁶ Family service workers are divided into assessment workers (those who respond immediately when there is a call for abuse or neglect) and ongoing workers (those who work on reunification and permanency plans).¹¹⁷ Although the average caseload for a family service worker is about seventeen cases per worker,¹¹⁸ assessment workers handle between thirty and forty cases at a time, while ongoing workers handle approximately fifteen cases at once.¹¹⁹

Minnesota's foster care system, with about 4000 licensed foster care providers as of December 2008, is similar in size to, but still smaller than, Indiana's system.¹²⁰ At the end of 2008, Minnesota had 6729 children in foster care.¹²¹ Minnesota does not maintain statewide statistics of workers' average caseloads.¹²²

A. Initial Foster Home Licensure

Both New Hampshire and Minnesota comply with federal law in terms of conducting national fingerprint-based criminal history checks and central registry checks on all applicants and adults residing in homes to be licensed.¹²³

situation, where there is less than one foster home available for every foster child. IND. DEP'T OF CHILD SERVS., *supra* note 21. The ratio of available homes to foster children need not be one to one, as many children come into foster care as a sibling group and are kept together in one foster home, and foster parents can care for multiple children at one time. *See* CHILD WELFARE MANUAL, *supra* note 37, CH. 8, § 1 (requiring siblings to be placed together whenever possible, unless a compelling reason exists why doing so would not be in the best interest of the children). Accordingly, child services agencies often look to the number of available beds rather than the number of homes. *See* Email from Regina C. Ashley, Deputy Gen. Counsel, Ind. Dep't of Child Servs., to author (Oct. 15, 2010) (on file with author).

116. E-mail from Misty Richard, Research Analyst, N.H. Div. of Children, Youth & Families, to Ann Abram, Foster Care Worker At-Large, N.H. Dep't Health & Human Servs., Foster Care Unit (Nov. 4, 2009) (on file with author). The figure is as of September 30, 2009. *Id.*

117. Telephone Interview with Ann Abram, *supra* note 115.

118. E-mail from Misty Richard to Ann Abram, *supra* note 116.

119. Telephone Interview with Ann Abram, *supra* note 115. Note that New Hampshire's caseload averages are higher than those reported in Indiana. *See supra* note 24 and accompanying text.

120. MINN. DEP'T OF HUMAN SERVS., LICENSING HUMAN SERVICES PROVIDERS PROTECTS HEALTH, SAFETY, RIGHTS (2008), <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-4743-ENG>.

121. MINN. DEP'T OF HUMAN SERVS., MINNESOTA'S CHILD WELFARE REPORT 2008, at 11 (2008), <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5408A-ENG>.

122. Telephone Interview with Mary Larson, Family Sys. Licensor, Minn. Dep't of Human Servs. (Oct. 14, 2009). Instead, each county operates as an independent unit. *Id.*

123. MINN. STAT. ANN. § 245C.03(1)(a)(1)-(2) (West, Westlaw through 2011 Reg. Sess.); N.H. REV. STAT. ANN. § 170-E:29(II-a) (2002). New Hampshire considers an adult, for purposes of this statute, a person seventeen years of age or older. N.H. CODE ADMIN. R. ANN. He-C 6446.06(a) (2010). Minnesota considers an adult a person thirteen years of age or older. MINN.

Minnesota's background check statute goes even further, requiring investigation of information from juvenile courts, the Bureau of Criminal Apprehension, records regarding substantiated perpetrators of vulnerable adults, and records regarding maltreatment of minors.¹²⁴

In New Hampshire, the Division of Children, Youth and Families (DCYF) must deny an application if the applicant has a criminal conviction for a "violent or sexually-related crime against a child, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime for a sexually-related crime against an adult."¹²⁵ A license can later be granted to such an individual if DCYF approves a corrective action plan.¹²⁶ In Minnesota, an applicant is disqualified from licensure for fifteen years after the sentence has been discharged if he has been convicted of, admitted to, or given an *Alford* plea¹²⁷ to certain enumerated felony-level crimes.¹²⁸ The disqualification period is shortened to ten years for certain gross misdemeanors and seven years for other misdemeanors.¹²⁹

Unless special circumstances exist, such as the need to place siblings together, a licensed foster home in New Hampshire cannot have more than six children under the age of twenty-one living in the home at any time, including children related to the foster parent.¹³⁰ In Minnesota, the maximum is eight children, including the foster parent's own children.¹³¹ However, in Minnesota, no more than six foster children can be in the home at one time,¹³² and no more than three children can be under the age of two.¹³³ The foster parent must also maintain at all times a ratio of one adult to every five children in the home.¹³⁴ Like in New Hampshire, these numbers may be altered to allow siblings to be placed in the same foster home.¹³⁵ Minnesota also allows exceptions for a child previously placed in a foster home to be placed in the same home again, or to

STAT. ANN. § 245C.03(1)(a)(2).

124. MINN. STAT. ANN. § 245C.08(1)(a).

125. N.H. REV. STAT. ANN. § 170-E:29(III).

126. *Id.*

127. "*Alford* plea" is the term given to the situation where a defendant enters a guilty plea for an offense while simultaneously maintaining his or her innocence. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

128. MINN. STAT. ANN. § 245C.14(1)(a)-15. The enumerated crimes include murder, manslaughter, assault, child abuse or neglect, kidnapping, criminal sexual conduct, indecent exposure, and other similar crimes. *Id.* § 245C.15(1)(a).

129. *Id.* § 245C.15(3)-(4). Other grounds for denial of a license include deficiencies in the physical home that could endanger the health and safety of children and failure to pass a fire inspection. MINN. R. 2960.3020(11) (West 2010).

130. N.H. REV. STAT. ANN. § 170-E:25(II)(a)(1).

131. MINN. R. 2960.3030(1).

132. *Id.*

133. *Id.* at 2960.3030(2)(A).

134. *Id.* at 2960.3030(1).

135. *Id.* at 2960.3030(3)(A).

avoid placing a child far away from his or her community.¹³⁶

In both Minnesota and New Hampshire, licensing authorities conduct investigations of the home and persons responsible for the care of the children.¹³⁷ In New Hampshire, an applicant must demonstrate, among other competencies, knowledge of proper disciplinary procedures and of statutory requirements pertaining to food, clothing, and shelter.¹³⁸ Minnesota applicants must demonstrate that they can provide constructive discipline, support for the child's cultural background, and a network of family and friends.¹³⁹ Additionally, applicants in both states must pass a home inspection, including a fire inspection.¹⁴⁰ In New Hampshire, applicants must meet with licensing authorities at least twice before receiving a license.¹⁴¹ In Minnesota, potential licensees must meet with licensors at least once.¹⁴² Licensees in New Hampshire must notify licensing authorities before moving, marrying or divorcing, bringing another child into the home, or making structural changes to the home.¹⁴³ In Minnesota, licensees must get approval prior to "making any changes that would alter the license information."¹⁴⁴ In New Hampshire, applicants must complete twenty-one hours of training before becoming licensed.¹⁴⁵ Thereafter, the licensee must complete sixteen hours of in-service training every two years.¹⁴⁶ Minnesota requires six hours of pre-license training and twelve hours of annual in-service training.¹⁴⁷

Notably, prior to licensure, Minnesota requires foster families to have a minimum of one hour of training in each of two areas: sudden infant death syndrome¹⁴⁸ and car seat use and installation.¹⁴⁹ These two hours of training must be renewed every five years.¹⁵⁰ Licensees are statutorily required to place infants to sleep on their backs with no pillows, comforters, or other soft toys in the crib.¹⁵¹ Further, licensees must check at least once annually to ensure that any

136. *Id.*

137. MINN. R. 2960.3050(1); N.H. REV. STAT. ANN. § 170-E:30 (2002).

138. N.H. CODE ADMIN. R. ANN. He-C 6446.03(f) (2010).

139. MINN. R. 2960.3060(4).

140. *Id.* at 2960.3040; N.H. CODE ADMIN. R. ANN. He-C 6446.08.

141. N.H. CODE ADMIN. R. ANN. He-C 6446.09-.10.

142. MINN. R. 2960.3060(4).

143. N.H. CODE ADMIN. R. ANN. He-C 6446.24(a).

144. MINN. STAT. ANN. § 245A.04(7)(d) (West, Westlaw through 2011 Reg. Sess.). Pertinent changes would include a change of residence or last name (e.g., because of marriage), as well as bringing another child into the home. *See id.*

145. N.H. CODE ADMIN. R. ANN. He-C 6446.11(b)(1).

146. *Id.* at He-C 6446.19(a).

147. MINN. R. 2960.3070(1)-(2).

148. MINN. STAT. ANN. § 245A.144.

149. *Id.* § 245A.18(2).

150. *Id.* § 245A.144(b) (sudden infant death syndrome training); *id.* § 245A.18(2)(c) (car seat training).

151. *Id.* § 245A.1435.

cribs used are not listed as unsafe on the United States Consumer Product Safety Commission's website.¹⁵² Licensees must also complete a comprehensive crib examination on a monthly basis.¹⁵³ Minnesota licensing agencies require annual documentation of compliance with these measures.¹⁵⁴ Failure to comply with these requirements subjects a licensee to a range of disciplinary actions (issuance of a correction order, imposition of fines or an injunction, suspension of license, or revocation).¹⁵⁵

New Hampshire does not allow waivers for any of the statutory requirements for foster care licenses.¹⁵⁶ However, waivers can be obtained for the administrative regulations that flesh out the statutory requirements.¹⁵⁷ Minnesota allows variances for rules that do not relate to the health and safety of the child as long as the licensee proposes and the department accepts an equivalent alternative.¹⁵⁸ Once granted, a foster care license is valid for two years in New Hampshire.¹⁵⁹ In Minnesota, the initial license is valid for one year, and each renewal is valid for two years.¹⁶⁰

B. Foster Home Monitoring and License Revocation

This section first discusses how New Hampshire and Minnesota evaluate a licensee's continued compliance with licensing regulations. Next, it lays out the various reasons why authorities may revoke a foster caretaker's license. Finally, it details the administrative procedures that licensing authorities must follow when revocation proceedings are initiated.

1. Ongoing Monitoring and Reasons for Revocation.—In both New

152. *Id.* § 245A.146(3)(a).

153. *Id.* § 245A.146(4).

154. *Id.* § 245A.146(5).

155. *See id.* §§ 245A.06-.07.

156. N.H. CODE ADMIN. R. ANN. He-C 6446.26(b) (2010).

157. *Id.* at He-C 6446.26(a).

158. MINN. STAT. ANN. § 245A.04(9); *see also* MINN. R. 2960.3020(9) (West 2010) (laying out the process for requesting variances).

159. N.H. REV. STAT. ANN. § 170-E:31(I) (2002).

160. MINN. STAT. ANN. § 245A.04(7)(b). Although the statute actually states that “[t]he commissioner may issue an initial license for a period not to exceed two years,” in practice, an initial license is granted for one year, and at renewal, the license validity period is increased to two years. Telephone Interview with Mary Larson, *supra* note 122. In a monthly licensing memo from July 2008 that was sent to all county and private licensing agencies, the Minnesota licensing department stated:

Initial licenses for all family systems programs including . . . child foster care . . . should be issued for a one-year time period. This one year license provides opportunity to meet with the provider in a relatively short period of time in their first year of licensure to verify that licensing requirements are being met and so that support can be provided.

E-mail from Mary Larson, Family Sys. Licensors, Minn. Dep't of Human Servs., to author (Oct. 14, 2009) (on file with author).

Hampshire and Minnesota, the licensee must pass an evaluation at least once annually.¹⁶¹ Foster parents in both states are prohibited from using certain forms of discipline on children in their care, including any form of corporal punishment; depriving a child of food, water, or other basic needs; punishment of any sort for bed-wetting or other toilet training lapses; and requiring a child to perform dangerous or difficult work as a form of punishment.¹⁶² In New Hampshire, DCYF may revoke a license if the licensee neglects or abuses children; violates any rule or regulation pertaining to licensing; makes false statements to DCYF; refuses to: (i) cooperate with investigations, (ii) admit authorized persons into the home, or (iii) allow authorized persons to view their license; fails to maintain the home in a sanitary and safe manner; fails to comply with an approved corrective action plan; or fails to acquire and use adequate monies for proper care of the children.¹⁶³

New Hampshire's administrative regulations require DCYF to issue a compliance order for any violation of licensing requirements that is not "related to the health, safety, or well being of the child in care."¹⁶⁴ If the violation is not cured within sixty days, DCYF may revoke the license.¹⁶⁵ If the violation does relate to the health, safety, or well-being of the child, DCYF must remove the children immediately.¹⁶⁶ If the licensee is convicted of certain enumerated felonies, DCYF must revoke the foster care license, and may revoke the license if DCYF substantiates a report of abuse or neglect against a foster parent.¹⁶⁷ The enumerated felonies include child abuse or neglect, spousal abuse, crimes against children, child pornography, rape, sexual assault, homicide, physical assault, battery, drug-related offenses, and violent or sexually-related crimes against children.¹⁶⁸ Minnesota provides for a variety of sanctions ranging from issuing a corrective order (similar to an order to comply issued in New Hampshire) to fines to revocation.¹⁶⁹ For each substantiated complaint of maltreatment of a child in Minnesota, the licensee is fined \$1000.¹⁷⁰ For violations of licensing rules that pertain to the health, safety, or supervision of children, the fine for each violation is \$200.¹⁷¹ For all other violations, licensees are fined \$100 for each occurrence.¹⁷²

2. *The Revocation Process.*—In order for a license to be revoked in New Hampshire, DCYF must first notify the licensee in writing with reasons for the

161. N.H. REV. STAT. ANN. § 170-E:31(IV); MINN. R. 2960.3100(1)(G).

162. MINN. R. 2960.3080(8); N.H. CODE ADMIN. R. ANN. He-C 6446.21(b).

163. N.H. REV. STAT. ANN. § 170-E:35; *see also* N.H. CODE ADMIN. R. ANN. He-C 6446.27.

164. N.H. CODE ADMIN. R. ANN. He-C 6446.25(a).

165. *Id.* at He-C 6446.25(b).

166. *Id.* at He-C 6446.25(e).

167. *Id.* at He-C 6446.25(f), (g).

168. *Id.* at He-C 6446.27(b)(1)-(3).

169. MINN. STAT. ANN. § 245A.07(1)(a) (West, Westlaw through 2011 Reg. Sess.).

170. *Id.* § 245A.07(3)(c)(4).

171. *Id.*

172. *Id.*

determination.¹⁷³ The licensee is given ten days to appeal through an administrative hearing.¹⁷⁴ The administrative hearings must comport with New Hampshire's Administrative Procedure Act,¹⁷⁵ and the final decision of DCYF is subject to judicial review.¹⁷⁶ New Hampshire law includes a provision allowing for the immediate closure of a foster home in certain instances:

When the department decides to suspend, revoke, deny, or refuse to renew a license or permit, and it expressly finds that the continued operation of a child care facility or child-placing agency violates any minimum standard prescribed by law or rule, or otherwise jeopardizes the health, safety, morals, well-being or welfare of children served by the facility or child-placing agency, *the department shall include in its notice an order of closure directing that the operation of the facility or child-placing agency terminate immediately. In this event, the facility or child-placing agency shall not operate during the pendency of any proceeding for the review of the decision of the department, except under court order.*¹⁷⁷

In Minnesota, if a violation "pose[s] an imminent risk of harm to the health, safety, or rights of persons served," the commissioner must immediately temporarily suspend the license.¹⁷⁸ The licensing agency must notify the licensee in writing of the reasons for the immediate suspension.¹⁷⁹ The licensee can then request an expedited hearing before an administrative law judge.¹⁸⁰ As in New Hampshire, the final decision is subject to judicial review.¹⁸¹

IV. LEARNING FROM WHAT WORKS IN NEW HAMPSHIRE AND MINNESOTA

As the preceding discussion indicates, Indiana's foster care licensing system parallels that of both New Hampshire and Minnesota in many respects. Generally speaking, each state has statutes, administrative rules, and policies that address the fitness of applicants for licensure in terms of criminal history and ability to provide for the safety and welfare of children in their care.¹⁸² Similarly, all three states have a system for addressing complaints regarding deficiencies in a

173. N.H. REV. STAT. ANN. § 170-E:36(I) (2002).

174. *Id.*

175. *Id.* § 170-E:36(II).

176. *Id.* § 170-E:37.

177. *Id.* § 170-E:36(III) (emphasis added).

178. MINN. STAT. ANN. § 245A.07(2) (West, Westlaw through 2011 Reg. Sess.).

179. *Id.*

180. *Id.*

181. *Id.* § 245A.08(5).

182. See IND. CODE § 31-27-4-5 (2011); MINN. STAT. ANN. §§ 245C.03(1), 245C.08(1)(a); N.H. REV. STAT. ANN. § 170-E:29(II-a); 465 IND. ADMIN. CODE 2-1-3 (2011); MINN. R. 2960.3050(1) (West 2010); N.H. CODE ADMIN. R. He-C 6446.03 (2010); see also discussion *supra* Parts I.A, III.A.

licensee's ability to care for children, with license revocation as the most severe penalty.¹⁸³ Finally, each state sets out administrative procedures to be followed in the event that revocation proceedings are initiated.¹⁸⁴ These similarities seem to indicate that Indiana has the tools necessary to achieve better outcomes for child welfare, which in turn indicates that the problem may lie with monitoring and enforcing of existing laws, policies, and procedures. However, New Hampshire and Minnesota also have statutory laws and administrative rules that are more effective at safeguarding children than what is available in Indiana. Such rules could be incorporated into Indiana's regime in order to strengthen the tools available to foster care licensing authorities. This Part explores foster care licensing provisions from New Hampshire and Minnesota that could be adopted in Indiana. Moreover, it suggests that lax monitoring and enforcement may account for the deficiencies in outcomes for children in Indiana, given that the laws of Indiana, Minnesota, and New Hampshire are similar in many respects.

A. Areas in Need of Improvement

There are several areas where Indiana could incorporate statutory law or administrative rules from Minnesota or New Hampshire into its foster care licensing system. Specifically, Indiana can improve its licensing regime by restricting the use of waivers, requiring temporary suspension or revocation of a license when a licensee commits certain violations, mandating the content of training, and placing limits on the time frame for which a license is valid.

1. *Waivers.*—Statutory law in Indiana currently allows an applicant to receive a waiver for any foster care licensing requirement¹⁸⁵ as long as the applicant requires with the procedural requirements for waivers and granting the waiver does not adversely affect child health, safety, or welfare.¹⁸⁶ The determination of whether waiving a given license requirement would adversely affect child health or welfare is left to DCS's discretion.¹⁸⁷ DCS's internal policy is to only grant waivers for administrative rules and regulations, not statutory licensing requirements.¹⁸⁸ Yet Indiana Code section 31-27-4-12 allows waivers for both administrative rules and regulations and statutory requirements.¹⁸⁹

183. See IND. CODE §§ 31-27-4-32, 33; MINN. STAT. ANN. § 245A.07; N.H. REV. STAT. ANN. § 170-E:35; N.H. CODE ADMIN. R. ANN. He-C 6446.27(c), (d); see also discussion *supra* Parts I.B, III.B.

184. See IND. CODE §§ 31-27-4-22 to -25; MINN. STAT. ANN. §§ 245A.07-.08; N.H. REV. STAT. ANN. §§ 170-E:36, 37; see also discussion *supra* Parts I.B.2, III.B.2.

185. IND. CODE § 31-27-4-12.

186. *Id.* § 31-27-2-8(d)(4).

187. *Id.* § 31-27-2-8(d).

188. See CHILD WELFARE MANUAL, *supra* note 37, CH. 12, § 19. For example, DCS could grant a waiver of the administrative regulation requiring that each foster child have his or her own bed, but it would not grant a waiver requesting that a person residing in the home to be licensed be exempted from the statutory background check requirements.

189. See IND. CODE § 31-27-4-12 ("A foster family home may be eligible to receive a waiver

The purpose of the waiver program is to allow foster care applicants who are otherwise unable to comply with all licensing requirements to become licensed.¹⁹⁰ For example, DCS could grant a waiver to a foster care license applicant who has a felony conviction from several decades prior to the date of his application if DCS determines that the prior conviction does not pose a threat to the health or safety of children.¹⁹¹ Because the ratio of licensed foster homes to children in need of placement is less than one to one,¹⁹² licensing authorities may be pressured to grant waivers in order to avoid a shortage of available homes.¹⁹³ A policy that purportedly only allows waivers for licensing requirements that do not affect the health and safety of children, yet in practice allows convicted felons to become licensed foster parents, is contradictory and potentially extremely dangerous.

Minnesota does not allow waivers at all.¹⁹⁴ New Hampshire prohibits the issuance of waivers for any statutory provision pertaining to foster care licensing but permits waivers for licensing rules imposed by DCYF.¹⁹⁵ Indiana also purportedly prohibits waivers for statutory licensing requirements, but this policy conflicts with the plain language of the statute.¹⁹⁶ The contradictory situation posed by the discrepancy between Indiana's waiver policy and practice could be remedied by adopting a statutory provision similar to New Hampshire's, prohibiting the issuance of waivers that would exempt an applicant from

... *from the requirements of this chapter* by complying with IC 31-27-2-8." (emphasis added)). Indiana Code section 31-27-2-8 states that DCS may "grant . . . a waiver of a rule . . ." However the word "rule" is not defined. DCS has interpreted "rule" in this context to mean administrative regulations. See CHILD WELFARE MANUAL, *supra* note 37, CH. 12, § 19 ("Waivers shall be granted only for rules and regulations and not for Indiana statutory requirements.").

190. Interview with Regina C. Ashley and Vonda Ramsey, *supra* note 4.

191. *Id.* Under Indiana Code section 31-27-4-13, DCS cannot license a foster parent who has been convicted of any of the felonies enumerated in the statute or any misdemeanor related to the health and safety of a child. Under DCS policy, however, anyone convicted of any felony, regardless of whether it is specifically enumerated in Indiana Code section 31-27-4-13, is disqualified from becoming a licensed foster parent. See CHILD WELFARE MANUAL, *supra* note 37, CH. 12, § 30. Because DCS has interpreted Indiana Code section 31-27-4-12 to mean that it cannot waive statutory requirements, DCS may issue a waiver allowing a person who has been convicted of a felony not listed in the statute to become licensed, but it cannot do so for an applicant convicted of a felony listed in the statute. *Id.*

192. See DCS PRACTICE INDICATOR REPORT, *supra* note 20; IND. DEP'T OF CHILD SERVS., *supra* note 21.

193. See Diane DePanfilis & Heather Girvin, *Investigating Child Maltreatment in Out-of-Home Care: Barriers to Effective Decision-Making*, 27 CHILDREN & YOUTH SERVS. REV. 353, 367 (2005) (finding that maltreatment in out-of-home care in New Jersey is partially caused by "[p]ressure to unsubstantiate due to shortage of foster homes").

194. See MINN. STAT. ANN. § 245A.04 (West, Westlaw through 2011 Reg. Sess.) (permitting variances but not addressing waivers).

195. N.H. CODE ADMIN. R. ANN. He-C 6446.26(a)-(b) (2010).

196. See *supra* note 190 and accompanying text.

compliance with the statutory rules for licensure. New Hampshire's provision is preferable to Minnesota's because it is more flexible. The shortage of available foster homes in Indiana¹⁹⁷ necessitates flexibility for DCS to make exceptions to licensing rules in situations where child safety is not an issue to ensure an adequate number of licensed homes. However, DCS should raise awareness of the need for foster families and stress the necessary requirements rather than grant waivers.¹⁹⁸ This practice will maintain a focus on child safety while allowing DCS to recruit needed foster families.

2. *License Suspension and Revocation.*—Variation is most apparent among Indiana, Minnesota, and New Hampshire laws in the area of revocation. Specifically, the amount of discretion licensing authorities have to revoke a license after receiving a complaint pertaining to the health and safety of a child in foster care differs among the three states.¹⁹⁹ Indiana law should require that a license be immediately temporarily suspended in cases where DCS is investigating potential violations that pose an immediate threat to the health or safety of children. Both Minnesota and New Hampshire permit the immediate temporary suspension or closure of a foster home in cases where license holders' actions pose a risk of imminent danger to children in their care.²⁰⁰ These provisions allow licensing authorities to suspend or revoke a license during the pendency of an investigation into the complaint. Indiana has no such provision in its laws. Rather, Indiana statute specifically requires that license holders receive notice and an opportunity for a hearing prior to license revocation.²⁰¹ When DCS receives a complaint that a foster parent has abused or neglected a child in his or her care, a temporary suspension would preclude such person from maintaining his or her license until an investigation has been completed and procedures for notice and a hearing have been followed. In the case of Destiny Linden, the court appointed special advocate went to court in order to convince a judge that the children she was advocating for should be removed from the

197. Mary McDermott, *Reporting on Foster Care*, JOURNALISM CTR. ON CHILDREN & FAMILIES (Sept. 11, 2006), <http://www.journalismcenter.org/resource/reporting-best-practices/reporting-foster-care> (discussing the vast shortage of available foster homes in Indiana).

198. See KATHY BARBELL & LISA SHEIKH, CHILD WELFARE LEAGUE OF AM., A COMMUNITY OUTREACH HANDBOOK FOR RECRUITING FOSTER PARENTS AND VOLUNTEERS 1 (2000), available at <http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/recruiting-foster-parents.pdf> (stating that community outreach efforts can inform the public about the need for foster families and increase the number of qualified families).

199. Compare IND. CODE § 31-27-4-33(b) (2011) (stating that the department "shall" revoke the license of a licensee convicted of certain enumerated felonies but "may" revoke the license for other violations), with MINN. STAT. ANN. § 245A.07(2) (mandating the immediate temporary suspension of a license if a violation pertains to the health or safety of children), and N.H. REV. STAT. ANN. § 170-E:36(III) (requiring immediate closure of a foster home when continued operation would jeopardize child health or safety).

200. See MINN. STAT. ANN. § 245A.07(2); N.H. REV. STAT. ANN. § 170-E:36(III).

201. IND. CODE § 31-27-5-33.

Colemans' care.²⁰² Had a temporary suspension provision been available to the licensing authorities, the Colemans' license could have been temporarily suspended while DCS investigated the child abuse complaints, abdicating the need to obtain a court order for the children's removal.²⁰³ And it is likely that Destiny would still be alive today if a temporary suspension procedure had existed in Indiana at the time she was placed in foster care.

3. *Training.*—The third major area where Indiana can incorporate strengths from Minnesota and New Hampshire is in its foster parent training program. Although the quantity of required pre-license and ongoing training in Indiana parallels that of Minnesota and New Hampshire,²⁰⁴ there are no prescribed guidelines in Indiana for what must be covered during training.²⁰⁵ In contrast, New Hampshire regulations mandate seven areas of training, including discipline techniques and information on child development.²⁰⁶ Minnesota regulations similarly provide a list of twenty-six suggested topics for in-service training²⁰⁷ and mandate five competencies to be covered in pre-license training.²⁰⁸ Pre-license training in Minnesota must include emergency preparedness, laws and regulations governing foster care, cultural diversity, licensing requirements, and the role of foster parents in the child welfare system.²⁰⁹ Like New Hampshire and Minnesota, Indiana law should specify the areas of training that must be completed prior to licensure.²¹⁰ DCS currently uses a training curriculum

202. Evans, *supra* note 1.

203. During the pendency of the investigation, children placed in the home under investigation could be moved to another foster home. New Hampshire follows this practice. Telephone Interview with Ann Abram, *supra* note 115.

204. Recall that Indiana requires twenty hours of pre-license training and ten hours of ongoing training on an annual basis. 465 IND. ADMIN. CODE 2-1-16 (2011). New Hampshire requires twenty-one hours of pre-license training and sixteen hours of ongoing training biannually. N.H. CODE ADMIN. R. ANN. HE-C 6446.11(b), 6446.19(a) (2010). Minnesota requires only six hours of pre-license training, but the state requires twelve hours of ongoing training annually. MINN. R. 2960.3070 (West 2010).

205. Compare 465 IND. ADMIN. CODE 2-1-16 (mandating twenty hours of training but failing to specify what the training should entail), with N.H. CODE ADMIN. R. ANN. HE-C 6446.11(b), 6446.19(a), and MINN. R. 2960.3070 (listing the areas that must be covered during training).

206. Specifically, N.H. CODE ADMIN. R. ANN. HE-C 6446.11(b) provides that the pre-license training must include:

(a) An orientation to the foster care system; (b) A review of the laws and regulations pertaining to foster care; (c) The impact of trauma on child growth and development; (d) Understanding grief and loss; (e) Maintaining family connectedness; (f) The guidance and positive discipline of children; and (g) The impact of sexual abuse and maintaining a safe environment.

207. MINN. R. 2960.3070(2).

208. *Id.* at 2960.3070(1).

209. *Id.*

210. See Cheryl Buehler et al, The Potential for Successful Family Foster Care: Conceptualizing Competency Domains for Foster Parents (unpublished manuscript), available at

developed by the Institute for Human Services.²¹¹ However, the competencies covered are not statutorily required and are subject to change.

One training area that should be statutorily mandated in Indiana is the prevention of sudden infant death syndrome. Minnesota requires at least one hour of training in sudden infant death syndrome.²¹² The training includes a discussion of factors that are linked to shaken baby syndrome and sudden infant death syndrome and methods of prevention.²¹³ License applicants are also instructed to put babies to sleep on their backs.²¹⁴ The importance of sudden infant death syndrome training in Indiana is evidenced by the fact that DCS embarked on a "Safe Sleep" campaign in July 2009 in an effort to increase awareness about proper sleep placement and prevention of sudden infant death syndrome.²¹⁵ It is thus reasonable to require that potential foster parents in Indiana, like those in Minnesota, receive instructions on how to prevent sudden infant death syndrome.

Another area of training that should be statutorily mandated in Indiana is discipline. DCS currently has a policy that prohibits certain forms of discipline,²¹⁶ but neither statute nor regulation mandates that this policy be taught in training.²¹⁷ Given the incidence of maltreatment of children by foster parents in Indiana,²¹⁸ foster care training should specifically enumerate prohibited forms of discipline and require instruction in recommended disciplinary methods.²¹⁹

<http://searcde.org/hdf/facultystaff/Buehler/Succussful%20Family%20Foster%20Care%20CW%20In%20Press.pdf> (last visited Mar. 11, 2011) (arguing that specific competencies should be included in state foster care licensing regulations).

211. CHILD WELFARE MANUAL, *supra* note 37, CH. 12, § 5. The curriculum includes modules on teambuilding; the impact of abuse and neglect on child development; issues of attachment, separation, and placement; discipline; cultural issues in placement; primary families; sexual abuse; and effects of caregiving on the family. *Id.*

212. MINN. STAT. ANN. § 245A.144(b) (West, Westlaw through 2011 Reg. Sess.).

213. *Id.* § 245A.1435.

214. *Id.*

215. *See generally Safe Sleep*, IND. DEP'T OF CHILD SERVS, <http://www.in.gov/dcs/2869.htm> (last visited June 25, 2011).

216. CHILD WELFARE MANUAL, *supra* note 37, CH. 8, § 18.

217. Discipline training is, however, included in the foster parent training curriculum currently used by DCS. *See id.*, CH. 12, § 5.

218. DEMOGRAPHICS AND TRENDING REPORT, *supra* note 16, at 125 (stating that there were seventy-three cases of neglect, nineteen cases of physical abuse, and seven cases of sexual abuse perpetrated by licensed foster caregivers in 2008).

219. *See* Buehler et al., *supra* note 210, at 8 (noting that foster parents should "possess a variety of positive discipline strategies"); KRISTINE N. PIESCHER ET AL., CTR. FOR ADVANCED STUDIES IN CHILD WELFARE, EVIDENCE-BASED PRACTICE IN FOSTER PARENT TRAINING AND SUPPORT: IMPLICATIONS FOR TREATMENT FOSTER CARE PROVIDERS, at iv (2008), *available at* http://www.fftta.org/research_outcomes/EBP_FP_Training_Support_Guide.pdf (remarking that effective training of foster parents includes teaching disciplinary methods).

Specificity would be helpful in the area of feeding as well.²²⁰ Janice Ellis, a DCS Foster Care Unit Supervisor, stated, “[DCS] do[es] not have a set curriculum regarding the principles of feeding children; however, the subject *may* come up in the pre-service training as a discussion point.”²²¹ Because the state leaves to foster parents the important task of preparing nutritionally sound and age-appropriate food for children in state custody, DCS should provide nutrition training to potential licensees. License applicants do not necessarily have knowledge, for example, of the appropriate age at which to start feeding a child solid food or the dangers of feeding young children fast food on a regular basis. Although the content of nutritional training changes as new research in child nutrition comes to light, some base level of training should be statutorily required.

B. The Need for Better Monitoring and Enforcement

Regardless of whether Indiana substantively changes its foster care licensing rules and regulations, it is nonetheless vital that the existing laws be enforced and licensed homes be monitored regularly. Proper screening of foster care applicants is crucial to protect children from maltreatment while in foster care.²²² Accordingly, DCS should simply not issue waivers for licensing regulations that are intended to safeguard the health and welfare of children in state care. For example, the statutory requirement that license applicants demonstrate knowledge of proper feeding principles should not be overlooked. Furthermore, family case managers should report concerns to licensing authorities, who should not hesitate to revoke licenses when necessary.²²³ Research suggests that licensing agencies’ failure to properly monitor foster parents after initial licensure is a contributing factor to the maltreatment of children in foster care.²²⁴ When the state removes children from their homes, it commits to providing a safer placement for those children in foster care.²²⁵ Given the state’s responsibilities to children removed

220. E-mail from Janice Ellis, Foster Care Unit Supervisor, Ind. Dep’t of Child Servs., to author (Nov. 19, 2009) (on file with author) (emphasis added).

221. *Id.* Indiana law in this regard used to parallel New Hampshire, with a two-year validity period, but the period was increased by the legislature in 2006. *See* 2006 Ind. Legis. Serv. 145 (2006).

222. *See, e.g.,* Sharon Balmer, Comment, *From Poverty to Abuse and Back Again: The Failure of the Legal and Social Services Communities to Protect Foster Children*, 32 FORDHAM URB. L.J. 935, 939 (2005) (detailing how child protective agencies put children in danger by “cutting corners” and insufficiently investigating homes prior to licensure); Adair Fox & Jill Duerr Berrick, *A Response to No One Ever Asked Us: A Review of Children’s Experiences in Out-of-Home Care*, 24 CHILD & ADOLES. SOC. WORK J. 23, 34 (2007) (explaining that a study of children’s views of foster care revealed that licensing authorities should screen foster caregivers more carefully to reduce the incidence of maltreatment in foster care).

223. For further discussion, see *supra* Part II.A.

224. Mushlin, *supra* note 15, at 210.

225. *See id.* at 204 (noting that the purpose of foster care is to provide a safe haven for children); *see also* Harper, *supra* note 19, at 795 (discussing how children are removed from their

from their homes, acquiescing in noncompliance with established policies and procedures is unacceptable. Improved enforcement will not require additional funding or manpower because DCS already has enforcement policies in place and a dedicated team of licensing authorities who oversee licensed foster homes.

In addition to emulating other states that fare better in child welfare rankings for substantive changes to child welfare laws, Indiana lawmakers should research internal controls and procedural policies used elsewhere and consider overhauling the chain of command and communication protocols. Communication breakdowns between internal departments of DCS, between DCS and court appointed special advocates, or between DCS and other service providers such as therapists, may contribute to the tragic deaths of children in foster care.²²⁶ Discussing the death of Destiny Linden, the Indiana director of the guardian ad litem and court appointed special advocates programs stated, "The same issues come up over and over again . . . communication. The exchange of documents. Notification. Phone calls not being returned. I clearly think we can do better with conflict and communication."²²⁷

A comprehensive enforcement scheme requires the various departments within DCS (i.e., ongoing case managers and licensing authorities) to regularly communicate information regarding the status of foster parents and children in their care.²²⁸ Such information also needs to be communicated to child advocates, home-based counselors, and other service providers involved in a child's case.²²⁹ Assuming it is technologically feasible, it would seem prudent to implement a system whereby a foster parent who is the subject of a complaint can be "flagged" in DCS's computer system, alerting case managers to the issue.

The Indianapolis Metropolitan Police Department (IMPD) has a flagging system that is used to alert patrolmen when a family on their beat is involved with DCS.²³⁰ The system was implemented at the end of 2007 after a child who was previously in foster care was beaten to death shortly after returning to her

homes when a social service agency finds it unsafe to remain there).

226. See Evans, *supra* note 1 ("DCS officials blamed . . . [Destiny Linden's] death on communication breakdowns, errors in judgment and a lack of urgency."); see also John A. Byles, *Problems in Interagency Collaboration: Lessons from a Project that Failed*, 9 CHILD ABUSE & NEGLECT 549, 549 (1985) ("[I]nquests into child deaths from abuse have often attributed some blame to faulty communication and/or poor cooperation.").

227. Evans, *supra* note 1.

228. See Michael A. Nunno & Janet K. Motz, *The Development of an Effective Response to the Abuse of Children in Out-of-Home Care*, 12 CHILD ABUSE & NEGLECT 521, 526 (1988) ("The key . . . appears to be the development of clear written formal agreements . . . [between] licensing and child protective services administration.").

229. *Id.* ("The coordination and cooperation of all agencies involved in the care, treatment, and protection of children is essential in any state effort to protect children from harm in residential facilities.").

230. Tim Evans, *IMPD Officer Failed to Report Incidents to DCS*, INDIANAPOLIS STAR, Dec. 6, 2009, at A1, available at <http://www.indystar.com/apps/pbcs.dll/article?AID=/20091206/NEWS14/912060366/IMPD-failed-to-report-incidents-to-DCS&template=printart>.

biological family, while DCS was still involved in the case.²³¹ Unbeknownst to DCS, the police made a house call to the girl's home just days before she was beaten.²³² The simplicity of the system is striking:

[T]he addresses of families involved with DCS are submitted to the Marion County emergency dispatch system. When police are dispatched to one of those addresses, a notice on an officer's in-car computer alerts him or her to the DCS case. The officer is instructed to call the family's DCS caseworker.²³³

A similar flagging system could be used to improve interdepartmental communication within DCS. For example, DCS could flag a licensee in the computer system when it receives a complaint about a foster home. The computer system would then alert all family case managers who have children placed in the home. Such a system would prevent the twin problems of case managers not knowing that children on their caseload are placed in a potentially dangerous home and additional children being placed in a home that is the subject of a complaint.

CONCLUSION

Recent deaths of several children in state custody have raised public awareness of the magnitude of responsibility the state assumes when it removes children from their homes.²³⁴ Legislative efforts in the past few years requiring that each child in the system have a court appointed special advocate,²³⁵ increasing the number of family case managers,²³⁶ and creating an independent third-party ombudsman²³⁷ are steps in the right direction. However, the safety of children in state custody could be better addressed by focusing legislative efforts on those who provide day-to-day services to these children—foster parents. Indiana can strengthen its licensing regime by incorporating statutory provisions from New Hampshire and Minnesota in the areas of waivers, temporary suspension of licenses, training, and license validity periods.²³⁸ Achieving the goal of safeguarding Indiana's children can be met in a cost-effective manner by properly enforcing existing policies and procedures.²³⁹ A simple computer flagging system may improve communication among internal departments of

231. *Id.*

232. *Id.*

233. *Id.*

234. *See* Evans, *supra* note 14 (noting that since September 2007, at least fifteen children have died in Indiana while involved in an active or recently closed DCS case).

235. IND. CODE § 31-34-10-3 (2011).

236. *About DCS*, *supra* note 78.

237. H.E.A. 1001, 116th Gen. Assemb., 1st Spec. Sess. (Ind. 2009) (codified at IND. CODE. § 4-13-19).

238. *See* discussion *supra* Part IV.A.

239. *See* discussion *supra* Part IV.B.

DCS as well as between DCS and its external service providers.²⁴⁰ By adequately training licensees, implementing regulations that prevent inappropriate caretakers from receiving licenses, and removing noncompliant licensees from the system, Indiana can build a reliable network of foster parents who can provide for the best interests of children. Strengthening Indiana's foster care licensing regime will ensure that the tragedy of Destiny Linden's death is not repeated.

240. Evans, *supra* note 14.