

Managing Care of Children in State Custody

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NOTE

The Office of Research staff completed a draft of this report during the 1999 Tennessee legislative session. Staff presented preliminary findings and recommendations to a subcommittee of the House Children and Family Affairs Committee and the Task Force on Foster Care in April 1999, prior to completion of the report.

As a result, the General Assembly took action on some of the recommendations (as well as others by the Child Welfare League of America) before the report's release. The subsequent actions are noted in the executive summary and the recommendations section of the report.

Executive Summary

In March 1998 the Comptroller of the Treasury received a legislative request for a study of the Department of Children's Services (DCS) to examine the "myriad of complex issues surrounding placement of children in state custody." Office of Research staff identified the following issues for study: the quantity of placements, the quality of placements and treatment, cultural sensitivity, and the overall organizational functioning of DCS. Office of Research staff worked with the Special House Task Force to Study Foster Care and presented preliminary findings and recommendations to task force members and to a subcommittee of the House Children and Family Affairs Committee during the 1999 legislative session. The Task Force's work resulted in several legislative changes and the allocation of an additional \$15.4 million to DCS for fiscal year 1999-2000. The final report concludes:

Tennessee lacks sufficient placements to meet the needs of children in state custody.

As of April 1999 almost 400 children were awaiting permanent placement. In addition, children in temporary placements frequently experience extended lengths of stay. The greatest shortages are for shelter placements and Level II and III placements serving children with mental health needs. Factors that contribute to shortages include a lack of resources and a lack of system-wide data and analysis of children on waiting lists and in shelters. Consequently,

- Children are put on waiting lists and placed in shelters for extended periods without receiving needed treatment.
- Dangerous children with a history of violence are placed with non-dangerous children in temporary placements, putting previously victimized children at further risk.
- Some children are placed inappropriately.
- Some children are placed in locations far away from their families, impeding visits and reunification. (See pages 14-21.)

Although shortage of placements and length of stay continue to be serious problems, the Family Crisis Intervention Program (FCIP) appears to have helped decrease the number of unruly children coming into custody. Before committing an unruly child to the Department of Children's Services, state law requires that a child be referred to the FCIP program. The program works with children at risk of coming into custody and their families. In 1998, 7,480 children were referred to the program by the courts, of which 6,854 were accepted into the program. Of those children and families who successfully completed the program, 92 percent were not certified back to court. Although DCS does not track the rate of program participants who come into custody, the FCIP program appears to have helped reduce the DCS population adjudicated unruly, from 13 percent in FY 1997 to nine percent in FY 1998. Further study is needed to determine the long-term success of the FCIP program including services received by program participants over time and the effect on families who participated in the program. (See page 22.)

Overall, DCS appears to meet the basic food, shelter, and amenity needs of children in custody; however, detailed information evaluating the quality of the institutions, services available, and child performance is limited. The evaluation process itself is fragmented, limiting comparative information. Some institutions are evaluated by a DCS licensure process; some participate in an accreditation review, and the Department of Mental Health and Mental Retardation or other agencies evaluate others. As a result, facilities are held to different standards that allow little comparison from institution to institution. DCS maintains even less information

on foster care homes, which are evaluated for initial approval and consequently monitored by a residential case manager. In addition, licensure standards and monitoring practices are not stringent enough to curb some problems. For example, DCS cancelled contracts with some facilities housing DCS children, yet these facilities continued to meet licensing standards. Some of the most frequent violations of contracted agencies include:

- Failure of contracted staff to meet educational, experiential, and training requirements.
- Improper use or administration of psychotropic medications.
- Incomplete treatment plans, assessments, incident reports, and other incomplete required documents related to children or the facilities housing children in custody.
- Contracted agencies using unapproved subcontractors. (See pages 22-25.)

Some children in custody do not receive needed physical health and behavioral health services, in violation of federal law and departmental policy. Federal law and DCS policy require that all children in custody receive Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services to determine their physical, behavioral, and developmental needs. Failure to complete EPSDTs and obtain needed physical and mental health services for children on TennCare resulted in a lawsuit and consent decree— affecting both DCS and TennCare. A number of academic, judicial, state, and nonprofit officials have recognized the failure of the DCS/TennCare system to provide mental health services to children in custody on TennCare. Problems include incomplete assessments of children’s needs beyond EPSDT and lack of available psychological evaluations and services, resulting in the failure of some children— frequently adolescents, children with behavior disorders, and children who were sexually abused— to improve in custody. (See pages 26-29.)

Corresponding to the nationwide trend, African-American children in Tennessee are overrepresented in the juvenile court system and in state custody. As of June 1998 African American children comprised 39 percent of children in custody, but an estimated 21 percent of children under 18 in Tennessee. Because of limited data, it is difficult to determine if African-American children in state custody are thriving less than other children. The Tennessee Commission on Children and Youth (TCCY) publishes data in its Children’s Program Outcome Review Team reports (C-PORT), which indicate that although African-Americans do not consistently score lower on all measures of children, family, and system adequacy, they have scored lower on certain measures. Further examination is needed.

National research shows that African-American children in custody stay longer and receive fewer services. Tennessee officials indicate that finding permanency through foster and adoptive homes for African-American children is more difficult than for other groups. This may result in longer custody stays for African Americans. Potential factors that contribute to the difficulties of African-American children may include:

- far-reaching social indicators such as single parenthood, poverty, and drug/alcohol abuse, which may affect minorities more severely than other groups;
- a lack of cultural sensitivity by children’s services officials; and
- facility staff who do not proportionally reflect the ethnic heritage and gender of children in custody. (See pages 29-37.)

DCS lacks an adequate management information system to provide accurate data on children in state custody.

The lack of data on children in custody impedes efficient and effective treatment for children in state custody. Many of the data problems result from inadequate management information systems and problems merging databases during the creation of DCS. The lack of adequate information about children in state custody and the subsequent need for a database has been an issue in the delivery of services to children in Tennessee since the early 1980s. A report by the Government Accounting Office (GAO) identified this problem as one of the biggest challenges faced by child welfare systems in many states.

The department is developing a new management information system called TN Kids, but full implementation is not expected until November 1999. Although the department has preliminary designs and is testing the TN Kids system, much work remains to enable the system to analyze and report data aggregately at a statewide level. TN Kids also lacks the ability to track and assess outcomes of children placed in continuum of care contracts and other treatment options.

The department has contracted for much of the computer and program design of TN Kids. This may present a serious problem when contract staff leave unless the department hires someone who is familiar with the database. Frontline case managers will also need training. To combat this obstacle, the department has planned a training program for all field staff who will enter data. In addition, DCS is planning to phase in the system by region. However, ensuring that over 1,000 DCS staff enter data accurately poses challenges. (See pages 37-38.)

DCS lacks an adequate managed care system and budget to provide health and mental health services to children in state custody. The *John B. EPSDT* consent decree is the clearest indicator that children's health and mental needs are not met. (See explanation beginning on page 27.) The consent decree review team determined that managed care resulted in "a drastic reduction in the quantity, quality, and timeliness of behavioral health, medical and dental services for children in custody and children at risk of entering custody and their families." C-PORT indicators for 1998 also show a significant drop in the overall adequacy of the DCS system to meet the needs of children in custody and their families. Some apparent causes include:

- The department's lack of an adequate Management Information System (MIS) to monitor the availability, use, need, and success of available services.
- DCS's system of managed care does not adequately base its departmental budget on the actual cost and need for services. (See pages 38-39.)

Differences in organizational culture between the former staff of the Department of Youth Development and the Department of Human Services are causing problems in the development of DCS. Many key DCS staff from the central and regional offices came from the former Department of Youth Development (26 of 43), while a limited number of staff came from the Department of Human Services (4 of 43). Conversely, two-thirds of the children in custody are dependent/neglected, who previously would have been in the custody of the Department of Human Services. According to DCS staff, the consent decree reviewers, a consultant from the Child Welfare League, and other officials, conflict in organizational culture has prevented the department from establishing a common mission, contributing to:

- staff turnover,
- dependent/neglected children treated as delinquents, and
- role confusion of case managers. (See pages 40-42.)

High turnover and caseloads, inadequately trained staff, and understaffing continue to impede DCS’s progress in providing needed services to children in state custody.

DCS staff, court officials, academics, and others indicate that caseloads increased after the creation of DCS. Consent decree reviewers stated that “DCS case managers must have lower, equalized caseloads” and determined that reducing DCS caseload size is a “top priority.” Current DCS efforts to examine caseloads is underway, but a Child Welfare League official suggests the new caseload goals set by DCS are too high. According to staff, high caseloads have affected turnover, morale, and impaired case managers’ abilities to complete assessments, make required visits, and work with families.

In September 1998, DCS reported that 23 percent of caseworkers had less than one year’s experience. Consent decree reviewers suggest that high turnover has hindered awareness of children’s needs. Higher caseworker salaries, which are slightly lower in Tennessee than in other southeastern states, and lower than the national average may improve turnover problems.

According to officials from the University of Tennessee, TCCY, Child Welfare League, and the reviewers of the consent decree, current training for DCS staff is not meeting departmental needs. New caseworkers participate in a two-week core training session with one week of specialty training in either juvenile justice or child welfare. Some interviewed questioned the value of the current training program. For 1998, 67 percent of the children in custody sampled by C-PORT were not adequately served by the DCS system, the highest percent not adequately served from 1995 to 1998. The high percentage of children not adequately served by the system indicates a need for more and better training on assessment, permanency planning, and role clarification. Increased and improved training is also critical to ensure the usefulness of the new DCS database, to meet the requirements of the Adoption and Safe Families Act, and to address the needs of the increasing minority population in custody. The Child Welfare League suggested that DCS double its new employee training from three to six weeks.

In addition, more DCS attorneys are needed. In September 1998, DCS reported that its 16 attorneys averaged more than 400 cases each. The Adoption and Safe Families Act may result in an additional 6,000 cases requiring termination of parental rights. Failing to have enough attorneys delays the termination of parental rights and adoption of children in custody, causing them to stay in state custody longer than necessary. The DCS FY 1999-2000 budget requested an additional 12 attorneys, but the Child Welfare League recommended an increase of 36 attorneys. (See pages 42-47.)

Legislative Alternatives

The report includes alternatives that the General Assembly may wish to consider as well as recommendations for the Department of Children’s Services. These are listed on pages 48-53 of the report and summarized below.

- The General Assembly may wish to amend TCA 37-5-105(4) to require more comprehensive information in the Department of Children's Services annual report.

The General Assembly during the 1999 session adopted legislation requiring additional information in its annual report including: level of placement, placement type, average length of custody, the number of available DCS placements, and case manager and attorney staffing information.

- The General Assembly may wish to statutorily prohibit placement of dangerous children with non-dangerous children in temporary placements.

The General Assembly during the 1999 session adopted legislation prohibiting the placement in temporary shelters of certain types of delinquent or alleged delinquent children with children adjudicated dependent/neglected.

- The General Assembly may want to statutorily limit temporary placements to 30 days.

The General Assembly during the 1999 session adopted legislation restricting to 30 days the time children may spend in temporary placements without needed services.

Departmental Recommendations

- The Department of Children's Services should increase the quantity of placements, especially Level II and III placements. *(Level II and III placements serve children with mild to medium treatment needs.)*

A portion of the additional money appropriated to DCS for FY 1999-2000 is designated to obtain more Level II and III placements.

- The Department of Children's Services should ensure children's treatment needs are met by improving
 - assessments,
 - availability and quality of mental health services, and
 - evaluation of outcomes of children in custody.
- The Department of Children's Services should strengthen the standards for and evaluation of contracted agencies.
- The Department of Children's Services should evaluate the extent to which minority children are overrepresented in custody and whether they receive disparate treatment.
- In order to improve the organizational operations of the DCS the department should:
 - determine the department's budget based on children's needs for treatment,
 - establish adequate capitated rates for managed care contracts,
 - address problems caused by differences in organizational culture, and
 - ensure adequate numbers of staff and training.

A portion of the additional money allocated to DCS for FY 1999-2000 is for the purpose of expanding the training program for DCS employees and for the hiring of additional case managers, field supervisors, and attorneys. Funding allocated to DCS for FY 1999-2000 also includes a three percent increase in rates to contracted providers.

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Introduction

In March 1998 Representative Tommie Brown wrote the Comptroller of the Treasury requesting a study of children in state custody. The letter raised concerns about the distance of a child's placement from home, the lack of assistance to parents for visitation with children in custody, the appropriateness of each child's placement, and whether placements were sensitive to children's cultural needs. The letter also raised questions about the professional competency and cultural sensitivity of staff, and the "myriad of complex issues surrounding placement of children in state custody." (See Appendix A.)

This report attempts to address concerns by separating the report into the following sections: the quantity of placements and treatment; the quality of placements and treatment; cultural sensitivity; and the overall organizational functioning of the Department of Children's Services (DCS).

Methodology

Office of Research staff analyzed the limited available data from DCS. Because needed data was unavailable through the department, other research methods were used for the completion of this report including:

- Analysis of data from the Tennessee Commission on Children and Youth (Children's Program Outcome Review Team Reports and the 1998 survey of juvenile court judges) and the Tennessee Council of Juvenile and Family Court Judges (*1997 Annual Statistical Report*).
- Interviews with staff of DCS central office and field, the Community Service Agencies, contracted providers, juvenile court judges, the Select Committee on Children and Youth, the Tennessee Commission on Children and Youth, other state agencies, and representatives from child advocacy associations.
- Visits to placements operated by the state and contracted providers.
- Reviews of licensing and accreditation reports.
- Reviews of relevant state and federal statutes.
- Reviews of selected departmental policies and procedures.
- Examinations of literature from academia, advocacy associations, and other states.
- Reviews of audits, court cases involving DCS, and the consultants' report on a current consent decree involving DCS.
- Interviews with children in custody.
- Attendance at meetings of the Select Committee on Children and Youth, the Special House Task Force to Study Foster Care, and the House Committee on Children and Family Affairs.

Background

The Department of Children's Services

The Department of Children's Services was formed in 1996 to consolidate services for children in state custody or at risk of state custody. Prior to DCS, children in state custody were committed to the Departments of Human Services (DHS), Youth Development (DYD), Mental Health/Mental Retardation (DMHMR), or Education (DOE). In addition, the Departments of Health and Finance and Administration also provided services to children in state custody.

The merger was designed to eliminate redundancies in resources, expenditures, and programs. The statute creating the Department of Children's Services, *TCA 37-5-102*, defined the purpose of the new department as follows:

...to provide services to those children who are unruly, delinquent, dependent and neglected, and their respective families, as well as for children who are at imminent risk and in need of services to prevent entry into state custody, who are in state custody pending family reunification or other permanent placement, or as otherwise may be required for such children and their families pursuant to state law. The focus of the services shall be to preserve the relationship between the child and the family by providing, whenever possible, services in the community where the child lives and by providing the services in a setting which is the least restrictive and, yet, the most beneficial. For the children it serves, the department shall strive to:

- (1) Protect children from abuse, mistreatment or neglect;
- (2) Provide prevention, early intervention, rehabilitative, and educational services;
- (3) Pursue appropriate and effective behavioral and mental health treatment; and
- (4) Ensure that health care needs, both preventive and practical, are met.

The department will work to preserve the safety and protect the standards in Tennessee communities through efforts to combat delinquency and other social ills concerning young people. The department shall work to continuously improve the management and coordination of services for the children and families of Tennessee identified in this section by ensuring thorough evaluations and assessments, appropriate and effective service delivery, timely permanency planning and supportive supervision and monitoring of the progress of children discharged from state custody.

The department's 1997 *Strategic Plan for Improving Services to Children* lists three policy decisions made to improve services to children:

- ❖ Emphasis shifted to children and family services rather than just children's services (recognizing that reunification must involve the family);
- ❖ Residential services were defined not as the purchase of "beds," but as the purchase of services with measurable outcomes through a partnership with child care providers; and
- ❖ The service delivery system was redesigned for child safety, public safety, and child permanency through the use of child and family teams.

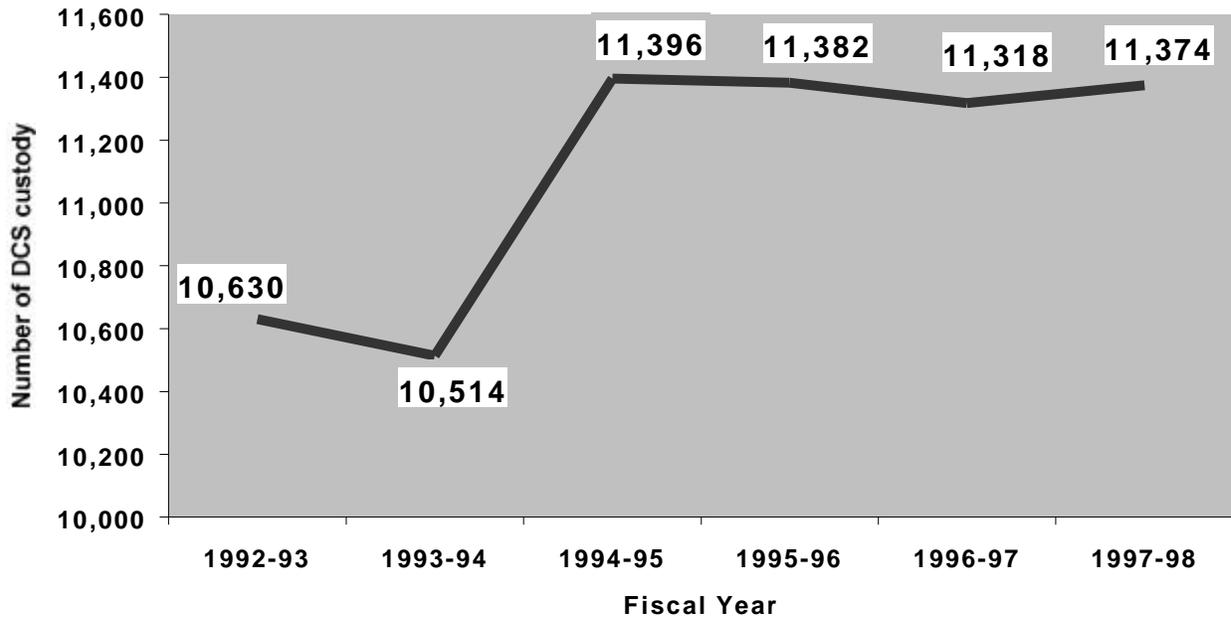
Children in Custody

The number of children in state custody has increased since Fiscal Year 1992-93, but has remained stable since FY 1994-95. In fact, since FY 1994-95 the number in custody has varied by less than 100 children in custody. The stable number of children in custody resulted from an attempt by DCS and other entities to limit the growth in the number of children in custody.

Exhibit 1 illustrates the number in custody from FY 1992-93 to FY 1997-98.

Exhibit 1

Total Children in State Custody by Fiscal Year



Source: DCS Annual Report 96-97, p.41. FY 1997-1998 figure provided by DCS.

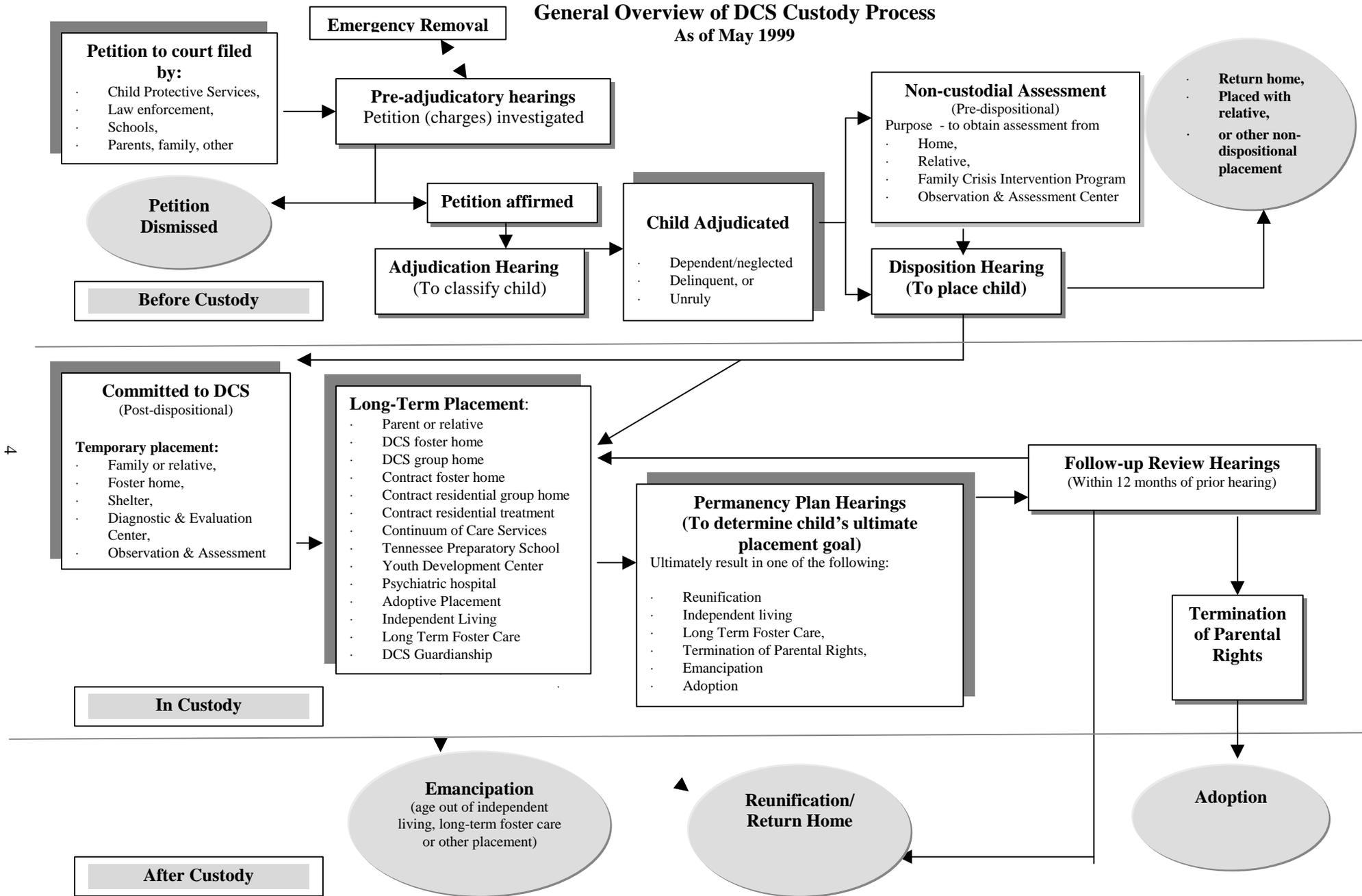
Commitment to State Custody

Prior to a child's commitment to custody a petition is filed before the court. Child Protective Services officials investigating alleged abuse, law enforcement officials, school staff, parents, family members, or others may file a petition. Children may reach state custody because they are in an abusive or neglectful home situation, or because of inappropriate or criminal behavior.

Exhibit 2 illustrates how:

- Children come into the court system,
- Children are committed to or diverted from custody, and
- Children leave custody.

Exhibit 2
General Overview of DCS Custody Process
 As of May 1999



Note: Flow chart provides a general overview and does not include an exhaustive list of all steps in the custodial process.

**After permanency plan hearing*

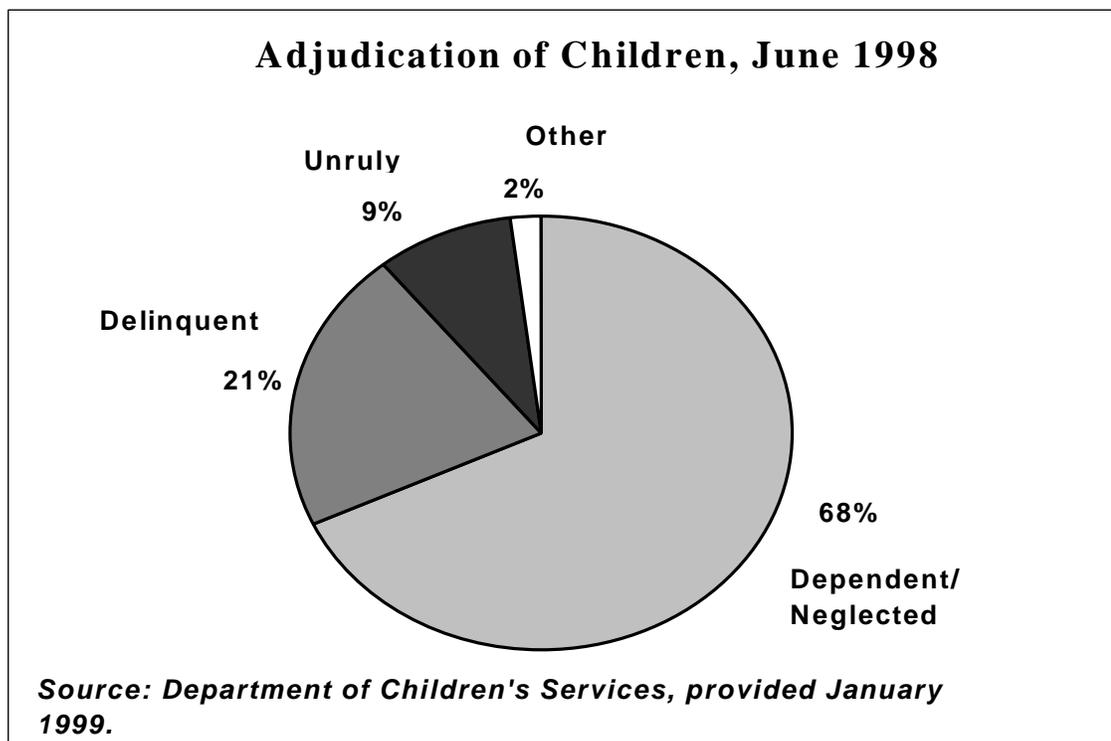
When judges place children in custody, they generally adjudicate them as one of three categories: dependent/neglected, unruly, or delinquent. The adjudication along with an assessment help determine the appropriate placement of a child. Below are the types of adjudication and an illustration of the proportion of children in custody as of June 1998.

Dependent/neglected: Children whose parents are neglectful and/or abusive, including physical and sexual abuse. As the data indicate, most children are in state custody because of parental neglect or abuse.

Unruly: Children committed to custody because they have committed an offense that would not be a crime as an adult, such as truancy, running away, or drinking alcohol.

Delinquent: Children placed into custody for committing an offense that is a crime for an adult.¹

Exhibit 3

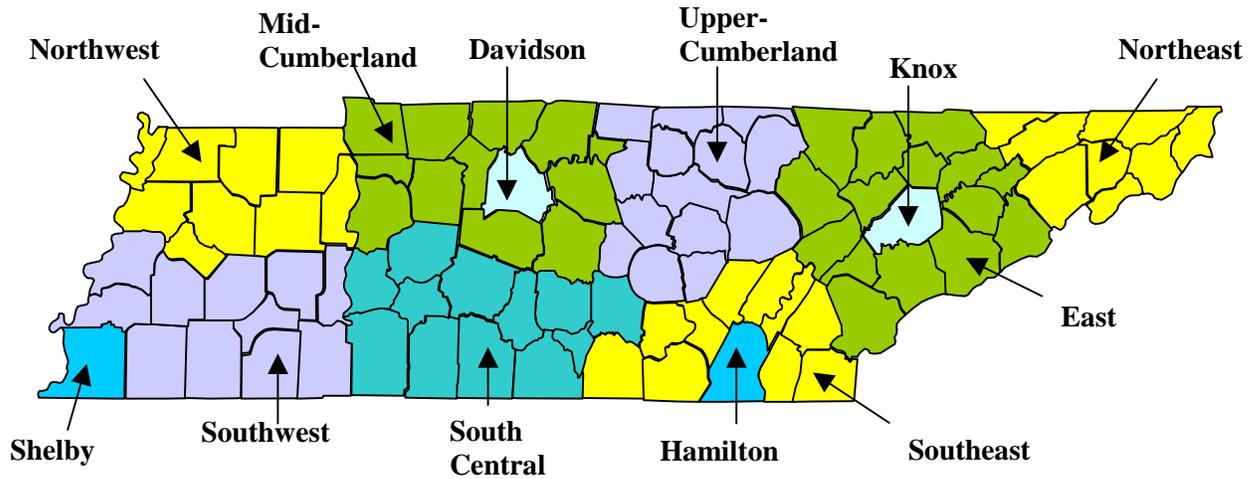


Placements for children, funding, and DCS field staff are allocated across the state based on 12 regional divisions. Exhibit 4 illustrates the 12 DCS regions of the state. The urban centers are regions unto themselves, while several counties may make up a rural region.

¹ State of Tennessee Department of Children's Services, *1996-97 Annual Report*, June 1998, p. 10.

Exhibit 4

12 DCS Regions



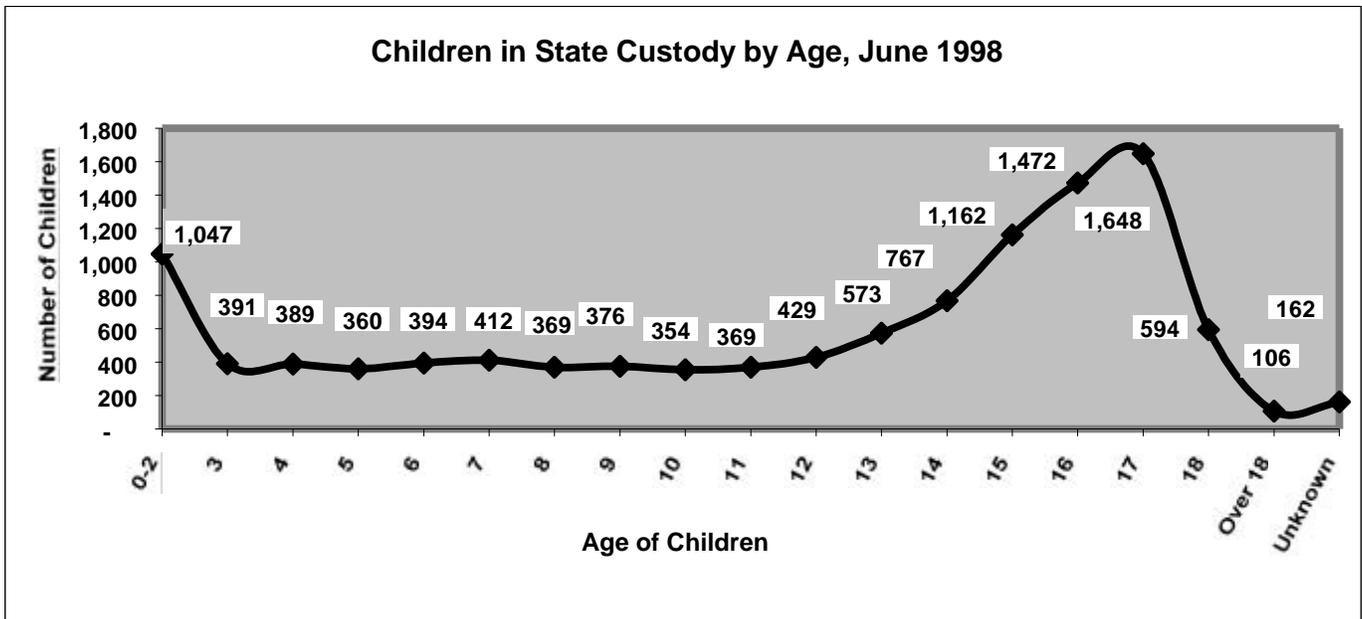
Source: Created by the Office of Research upon review of DCS documents.

Demographics of Children in Custody

According to department figures on June 30, 1998, Tennessee held 11,374 children in state custody. Of those, 6,427 were committed in FY 1997-98, over 800 fewer children than in the previous fiscal year. Fifty-nine percent of those children in custody were Caucasian and 39 percent were African-American.

Children may come into custody at birth and stay in custody beyond age 18. Two age groups are represented in the largest numbers: adolescents, particularly those ages 14 to 17, and children in the birth-to-two age group. (See Exhibit 5.)

Exhibit 5



Source: Department of Children's Service.

Types of Placements

Once in custody, children may be placed in DCS-operated residential facilities, contracted residential facilities, foster homes, medical or psychiatric placements, shelters, diagnostic and evaluation (D&E) centers or other temporary placements. Alternatively, a child may remain at home or with a relative. In June 1998 the largest number of children in custody were in foster homes (33 percent) primarily serving dependent/neglected children. The second largest category includes placements with parents, relatives, adoptive families, or with pre-adoptive families (18 percent). Continuum of care contracted placements also account for about 13 percent of children in custody.

Continuum of care contracted placements differ from other contracted placements in that their funding is based on capitated rates and the contracted agency is responsible for housing and providing all levels of care for a child during his/her tenure in custody. Rather than DCS or Community Service Agency (CSA) staff solely making decisions on child placement changes, continuum contract agency staff make such decisions, in consultation with DCS or CSA staff. After the initial placement, the continuum of care agency (continuum) in coordination with DCS staff determines the need and level of care appropriate for a child. The continuum agency decides when the child is ready to be moved (stepped down) to a lower, less restrictive, or less treatment-oriented placement or moved (stepped up) to a placement with more treatment or security. The continuum also determines when the child is ready to go home or achieve permanency by some other means.

DCS also operates the Tennessee Preparatory School (TPS) designed primarily to serve dependent/neglected and unruly youth; four youth development centers which serve delinquent youth, and 15 other facilities. These 15 facilities include: 13 group homes serving as community placements for children needing less secure settings; a diagnostic and evaluation center serving pre-adjudicated children; and a specialized program called Lift Academy, a custody diversion program.² Except for TPS, the state-operated facilities primarily serve delinquent children. As of June 30, 1998, approximately half of the children in state custody were housed in contracted placements.³

Exhibit 6
Placements of Children in DCS Custody in June 1998

| Type of Placement | Number of Children in Placement | Percent of Children in Custody in Placement |
|------------------------------------|---------------------------------|---|
| Birth or Adoptive Home | 1,020 | 9.0% |
| Pre-Adoptive Home | 72 | .6% |
| Non-relative Home | 158 | 1.4% |
| Relative Home | 980 | 8.6% |
| Trial Home Visit | 11 | .1% |
| Continuum of Care Contracts | 1,491 | 13.1% |

(Continued on next page)

² State of Tennessee Department of Children's Services Website.
<http://www.state.tn.us/youth/children/org/treatment/index.htm>

³ Figure based on the number of beds for which DCS contracted for FY 1997-98 divided by the number of children in custody on June 30, 1998. (See Exhibit 13 for the number of children in custody and number of beds contracted during FY 1997-98).

Placements of Children in DCS Custody in June 1998 (Continued)

| Type of Placement | Number of Children in Placement | Percent of Children in Custody in Placement |
|--|---------------------------------|---|
| Noncontinuum Placements | | |
| <i>(Can be operated by DCS, other state agency, local government, or Contract Agency)</i> | | |
| DCS Foster Care | 3,442 | 30.3% |
| Contracted Foster Care | 358 | 3.1% |
| Therapeutic Foster Home <i>(Serves children with more treatment or special needs than regular foster care)</i> | 179 | 1.6% |
| Level I <i>(Least restrictive and least treatment oriented)</i> | 491 | 4.3% |
| Level II | 400 | 3.5% |
| Level III | 101 | .9% |
| Level IV <i>(Most restrictive and treatment oriented)</i> | 118 | 1.0% |
| Specialized Noncontinuum Placements | | |
| Alcohol & Drug | 13 | .1% |
| Diagnostic Shelters <i>(Temporary placement)</i> | 189 | 1.7% |
| Emergency Shelter <i>(Temporary placement)</i> | 242 | 2.1% |
| Detention <i>(Temporary placement)</i> | 137 | 1.2% |
| Department of Mental Health and Mental Retardation Developmental Center | 3 | 0% |
| Independent Living | 101 | .9% |
| Medical/Psychiatric Hospital | 71 | .6% |
| Wilderness | 105 | .9% |
| DCS Operated Placements | | |
| DCS Group Homes | 141 | 1.2% |
| DCS Youth Development Centers | 606 | 5.3% |
| TN Preparatory School | 201 | 1.8% |
| Other | 79 | .7% |
| Unknown | 4 | 0% |
| Runaways | 661 | 5.8% |
| Total | 11,374 | 100% |

Source: Department of Children's Services.

Residential placements are distinguished as Levels I through IV by the intensity of services and amount of security and staff provided. A Level I residential placement is the least secure of the four levels and requires the least amount of treatment. Level IV is secure 24 hours a day and offers intense treatment. (For a more detailed explanation see Exhibit 7).

Exhibit 7
Levels and Types of Placements

(with FY 1998/99 cost per day)

Temporary Placements

| | |
|--------------------------------|----------------------------------|
| Shelters | \$45/day |
| Diagnostic & Evaluation Center | \$108/day |
| Detention | \$120/day |
| Observation & Assessment | Do not have cost figures per day |

| Level II |
|--|
| \$74.25/day-\$88.25/day (moderate intensity/supervision) mild-moderate clinical problems *DSM Diagnosis in need of clinical treatment usually attends public school |
| <i>Types of Placements</i> alcohol & drug treatment continuum of care/residential group homes therapeutic foster care wilderness |

| Level III |
|---|
| \$128.25/day-\$170.50/day (high intensity/high supervision) DSM Diagnosis moderate-severe problems usually attends school in house |
| <i>Types of Placements</i> alcohol & drug treatment continuum of care/residential group homes sex offender treatment therapeutic foster care |

| Level I |
|--|
| \$44.75/day (low intensity treatment) little supervision mild clinical problems may or may not need counseling attends regular school |
| <i>Types of Placements</i> foster care residential treatment independent living maternity group homes |

| Level IV |
|---|
| (high intensity environment) DSM Diagnosis actively suicidal |
| <i>Types of Placements</i> residential psychiatric hospital dual diagnosis |

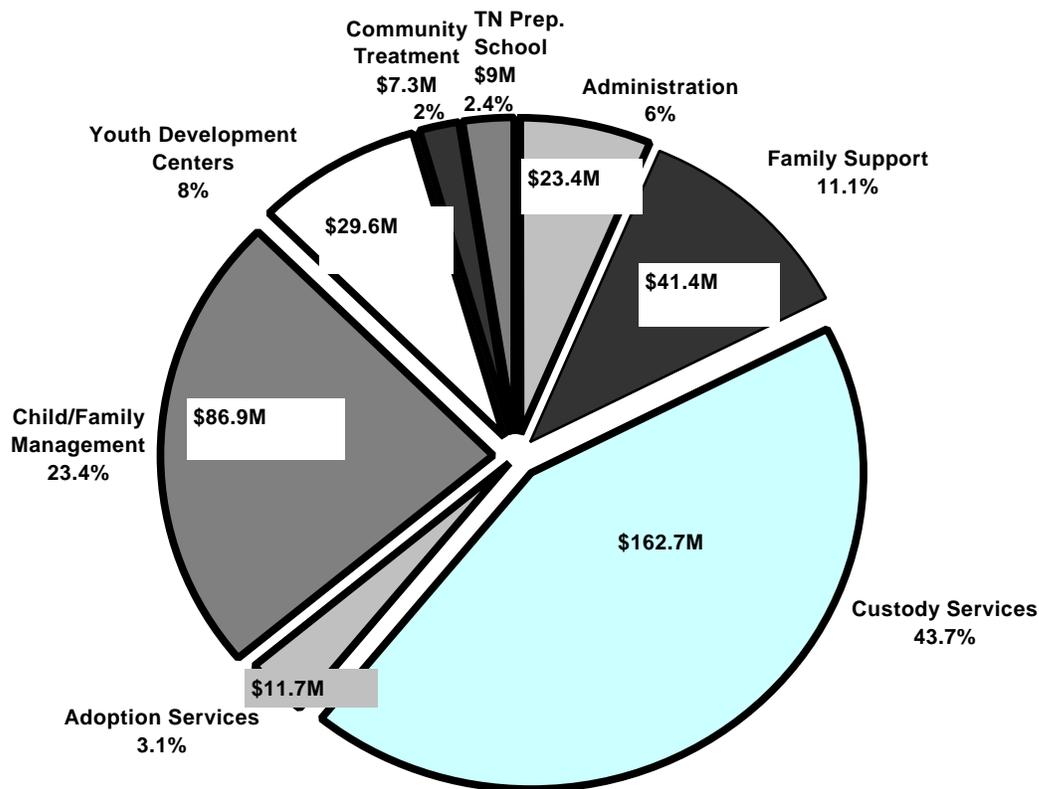
*DSM - Diagnostic Statistical Manual IV-R, American Psychiatric Association.

Source: Department of Children's Services Provider Policy Manual, July 1, 1998-June 30, 1999.

Expenditures and Resources

The total Department of Children's Services expenditures for FY 1997-98 totaled \$372 million. DCS estimates the annual cost per child in custody is \$23,900 for FY 1998-99.⁴ Seriously delinquent children in the Youth Development Centers are more expensive because they are secure 24 hours a day. Conversely, dependent/neglected children placed with a relative or in foster care are less expensive. The chart below shows DCS expenditures by division for Fiscal Year 1997-98. This study addresses the parts of the budget that affect children in custody:

Exhibit 8
FY 1997-98 Expenditures for Children's Services, Total \$372 Million



Source: FY 1999-2000 Budget, B-148-154.

- Custody Services (residential room and board and foster care payments),
- Youth Development (operational funding for the four DCS Youth Development Centers),
- Community Treatment (operational funding for DCS group homes), and
- Tennessee Preparatory School (operational funding for DCS residential school).

The central office costs are included in the administrative category, while the cost of operating the regional offices is reflected in the child/family management category. DCS receives revenues from the General Fund, the federal government, and other state agencies. For FY 1997-98, DCS received almost \$73 million from the federal government. In addition to federal funding, DCS received a large amount of funding from other state agencies, primarily TennCare. For FY 1997-

⁴ State of Tennessee Department of Children's Services, DCS written responses to questions submitted to the Fiscal Review Committee, September 25, 1998, p. 5.

98 DCS received almost \$121 million from TennCare and almost \$6.3 million from the Department of Education for operating schools in some DCS facilities.⁵

Laws, Reports, and Lawsuits

This report refers to some important federal laws, reports, and lawsuits. To help understand their significance short descriptions are given below.

Multiethnic Placement Act (MEPA)—Public Law 103-382. In 1994, the federal government enacted MEPA in an effort to promote transracial adoption. Section 554 requires that child welfare service programs “provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed.” The policy guideline for MEPA promulgated by the Office of Civil Rights states that the consideration of race, color, or national origin of a potential placement for a child is only permitted when an adoption or foster care agency has “made a narrowly, individualized determination that the facts and circumstances of a particular case require consideration...in order to advance the best interests of the child in need of placement.”⁶

Small Business Job Protection Act of 1996^{3/4} Public Law 104-188. In 1996, the federal government adopted Section 1808 of the Small Business Job Protection Act, entitled “Removal of Barriers to Interethnic Adoption.” This section repealed section 553 of MEPA so that race, color, or national origin can no longer be considered in determining a child’s placement. Section 1808 also prohibits the delay of a child’s placement and the denial of a foster or adoptive parent on the basis of race, color, or national origin.⁷ Part of this section amended a portion of the Social Security Act by requiring that each state develop a plan to remove barriers to interracial adoption. A state may have federal funds withheld or a state may withhold funds from an adoption agency if there is evidence of discrimination in adoptive or foster care placements.

In short, these two federal laws state that race cannot be a deciding factor in determining a child’s placement, and that race or ethnic background may not delay a child’s placement. In addition, the laws encourage states to find foster and adoptive parents reflective of races in their state.

Adoption and Safe Families Act of 1997. The Adoption and Safe Families Act, Public Law 105-89, was enacted to “improve the safety of children, to promote adoption and other permanent homes for children who need them and to support families.”⁸ DCS reported that this act “radically changes time frames for decision making.”⁹ Specifically, it reduces the length of time children may remain in custody before establishing permanency. It requires in part:

⁵ State of Tennessee Department of Children’s Services, Interdepartmental revenue provided by Paul Vander Meer, DCS Budget Director. TennCare amount includes receivables.

⁶ Dennis Hayashi and Olivia Golden, *Memorandum: Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996*, Office of Civil Rights, U.S. Department of Health and Human Services, June 4, 1997, pp. 1-4 (<http://www.os.dhhs.gov/progorg/ocr/iepguide.htm>).

⁷ *Ibid.*, p. 2.

⁸ Child Welfare League of America, *Summary of The Adoption and Safe Families Act of 1997 (P.L. 105-89)*, <http://www.cwla.org/cwla/publicpolicy/pl105-89summary.html> (6/25/98), p. 1.

⁹ State of Tennessee Department of Children’s Services, DCS written responses to questions submitted by the Fiscal Review Committee, September 25, 1998, p. 3.

- That DCS staff and courts to hold permanency hearings for children in custody sooner (in 12 months instead of 18);
- That reasonable efforts be made to reunify a family for 15 months of a child’s custody; and
- That parental rights be terminated if a child remains in custody for 15 of the most recent 22 months.

Immediate termination of parental rights is allowed in certain circumstances. Termination of parental rights is required before a child is placed for adoption. This act further encourages adoption by establishing adoption incentive payments.

Children’s Program Outcome Review Team (C-PORT). Since 1994, the Tennessee Commission on Children and Youth’s Children’s Program Outcome Review Team (C-PORT) annually conducts evaluations of children in state custody by reviewing a sample of more than 500 cases. This sample is drawn with statistical methods to accurately represent the population of children in custody. Staff of the Tennessee Commission on Children and Youth (TCCY) review DCS files and interview DCS staff, placement staff or foster parents, the child (if old enough), parents, school officials, court staff, and other significant adults in a child’s life. Data gathered from interviews and documents is evaluated using a large set of criteria to determine “essential information about the population served, needs of the children and families, and the system’s ability to adequately perform functions to meet the needs of the children and families it serves.”¹⁰

DCS Needs Assessment. In Fiscal Year 1997-98 DCS Central Office required each of its 12 regional administrators to submit a needs assessment, including the type of beds by level needed for the following year. Central office personnel used the regional information to determine the number, type, and location of placements for which to contract. DCS policy requires the regional administrators to report quarterly trends in the status of children awaiting placement, the number and cause of delays in securing step-down placements for children who have completed residential programs, and types of contract placements needed.¹¹

John B. v. Menke and Consent Decree for Medicaid-Based Early and Periodic Screening, Diagnosis and Treatment Services. In February 1998 a class action complaint, *John B. et al v. Menke, et al.*, was filed in the U.S. District Court of the Middle District of Tennessee. The suit argued that children on TennCare were unlawfully deprived of “medically necessary care” resulting in the “needless infliction of pain, the endangerment of young lives, and the stunting of children’s chances to achieve their full potential.” Specifically, the suit argued that the state violated federal law by failing to conduct Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) for children on TennCare. The suit also charged the state for violations of federal law by depriving “TennCare eligible children who are in state custody, or who are at risk of entering custody, of needed health and mental health services.”¹² Because TennCare covers 90 percent of children in custody, the filed complaint affects the services provided by DCS and TennCare to children in custody.

¹⁰ Tennessee Commission on Children and Youth, *Children’s Outcome Review Team Report*, 1997, pp. 1 and 2.

¹¹ State of Tennessee Department of Children’s Services, *Resource Management Policy and Procedures*, January 1998, p. 14.

¹² *John B. vs. Menke*, United States District Court, Middle District of Tennessee, February 25, 1998, pp. 1 and 2.

The state and attorneys representing children on TennCare signed a Consent Decree for Medicaid-Based Early and Periodic Screening, Diagnosis and Treatment Services in March 1998. The court found special coordination concerns related to children in custody beyond the other EPSDT concerns in the suit. For children in state custody the consent decree requires DCS to:

- Complete EPSDT screenings on all TennCare children in DCS custody within 18 months.
- Within 150 days of signing the consent decree, which would have been September 1998, develop an EPSDT tracking system that should be able to identify the EPSDT status of each child in custody.
- Ensure that case planning and case review for custody children identify and provide for the treatment of the behavioral health and medical needs of custody children.

Report of the Review Team for the EPSDT Consent Decree (Consultant's Report)

The consent decree required that the state contract with qualified and independent individuals to conduct “an expert review process to assess the adequacy of the present system to address the medical, dental and behavioral health needs of custody children and those at risk of coming into DCS custody.” In September 1998 the *Report of the Review Team for the EPSDT Consent Decree* was released. It concluded that “Tennessee does not meet EPSDT requirements for medical, dental and behavioral health assessments and treatment for children in state custody.”¹³ The findings go beyond determining if children’s health and mental health needs comply with federal law and indicate systematic departmental and interdepartmental concerns related to children in custody. The report makes several recommendations to comply with the consent decree.

¹³ Marty Beyer, Ph.D., Deborah Bryant, M.D., and Paul DeMuro, *Executive Summary, Report of the Review Team for the EPSDT Consent Decree*, September 15, 1998.

Analysis and Conclusions

Quantity of Services and Placements

Tennessee lacks sufficient placements to meet the needs of children in state custody.

“Placements” as it applies to children in state custody are the physical facilities where children are housed and receive services. These include foster care homes, group homes, treatment centers, and youth development centers. Exhibit 7 illustrates the four levels of placements.

A statewide needs assessment conducted by the department in 1997-98 illustrates shortages of placements by grand regions of the state. Staff in all five grand regions said they lack enough shelter beds. Shelters are often needed because of a shortage of more permanent placements. All five grand regions identified needs in Levels II and III. Level II placements include foster care, therapeutic foster care, and continuum of care services in residential facilities. (See Exhibit 9.) Mentally retarded children were identified as a specific need within the Level III category.¹⁴

Exhibit 9

1997-98 Types of Placement Shortages by Grand Region

| Region | Types of Placements | | | | | | | | | | | | | | | |
|----------------------------|---------------------|-----------|----------|----------|----------|-----------|-----------|------------|-----------|--------------------------|--------------|----------|----------|-----------|--------------|----------------|
| | Temporary | | | | | Permanent | | | | | | | | | | |
| | Shelter | Detention | D&E | O & A | TFC | FC | Continuum | Ind Living | Maternity | A&D Level II & Level III | Sex Offender | Level I | Level II | Level III | Level III MR | Dual Diagnosis |
| By Grand Regions | | | | | | | | | | | | | | | | |
| Middle East Grand | x | | | | x | x | | x | | x | | x | x | | x | x |
| Middle Grand | x | | | | | x | | | | | | x | x | | | |
| Northeast Grand | x | | | | | | | x | | | | | x | x | | |
| Upper East Grand | x | x* | | | x | | x | x | | x | x | | x | | | x |
| West Grand | x | | x | | | | | | | | | | x | x | | x |
| Grand Region Totals | 5 | 1 | 1 | 0 | 2 | 2 | 1 | 3 | 0 | 2 | 1 | 2 | 5 | 2 | 3 | 1 |

Source: DCS, Grand Regions Needs Assessments, 1997-98.

Key

X-Identifies a placement shortage.

D&E-Diagnostic and Evaluation center

O&A-Observation and Assessment center

A&D-Alcohol and Drug Treatment

TFC-Therapeutic Foster Care

MR-Mentally Retarded

*Grand Region Needs Assessment notes that detention needs are greatest in the East and Northeast regions.

All 5 Grand Regions Identified Level III placement shortages.

¹⁴ The Child Welfare League also recommended an increase in the number of emergency shelters and Level II and III placements to the Tennessee Special House Committee to Study Foster Care with an estimated annual cost of almost \$6.6 million in state funds. (See Appendix D.)

A survey of Tennessee’s juvenile court judges conducted in 1998 by the Tennessee Commission on Children and Youth also identified placement shortages. Judges cited the following types of placements and treatment as most needed:

| | |
|-----------------------------------|------------|
| Residential treatment placements- | 68 percent |
| Substance abuse treatment- | 67 percent |
| Wilderness programs- | 65 percent |
| Dual diagnosis- | 51 percent |
| Foster homes- | 49 percent |
| Sexual offender programs- | 49 percent |

In April 1999 almost 400 children in custody were on waiting lists for needed services. Office of Research staff contacted the regional resource managers to determine the number of children on waiting lists as illustrated in Exhibit 10. The resource managers explained that no child was counted more than once. Earlier conversations with the resource managers revealed that most children on waiting lists were waiting for either Level II or Level III placements.

Exhibit 10

| Region | Number of Children on Waiting List on April 19-21, 1999 |
|------------------|--|
| Davidson | *Did not respond |
| East | 72 |
| Hamilton | *Did not respond |
| Knox | 40 |
| Mid-Cumberland | 51 |
| Northeast | 29 |
| Northwest | 31 |
| Shelby | 50 |
| South Central | 38 |
| Southeast | 11 |
| Southwest | 29 |
| Upper-Cumberland | 15 |
| Total | 366 |

Source: Information based on telephone calls to the Regional Resource Managers in April 1999.

**Both Davidson and Hamilton regions responded to earlier requests for waiting lists, but not the requests for updated information in April 1999. In January 1999 Hamilton Region had a waiting list of 34 children. In March 1999 Davidson County had 60 children waiting for placement.*

Dangerous children may be housed with non-dangerous children in temporary placements, placing some children at risk.

TCA 37-1-130 (4)(b) prohibits the placement of dependent and/or neglected children in an institution or other facility designed or operated for the benefit of delinquent children, but no laws prohibit placement of dangerous children in temporary facilities designed for abused and neglected children. As a result, a child who has been sexually abused may be placed in the same temporary placement as a juvenile delinquent charged with sexual assault. Mixing these children

presents opportunities for further abuse, especially in temporary shelters. One judge stated: “It’s like mixing predators with prey.”¹⁵

Staff of the Department of Finance and Administration and DCS along with children in custody expressed concern that placing dangerous youth with other children negatively impacts child safety and progress. The department, however, does not monitor or report the extent to which child-on-child abuse or other violent incidents occur in custody. Current data does not distinguish between who is the perpetrator and who is the victim in recording incidents involving children in custody.

Because of a shortage of placements children are sometimes placed inappropriately.

TCA 37-5-102 requires that “Through the department of children's services, the state of Tennessee government, in cooperation with juvenile courts, local communities, schools and families will strive to provide timely, *appropriate* and cost-effective services for children in state custody and at risk of entering state custody so that these children can reach their full potential as productive, competent and healthy adults.” (Emphasis added.)

Field staff spoke of placing children in any available “slot” when appropriate placements are not available. Several judges expressed concern in a 1997 report by the Administrative Office of the Courts that DCS workers “give kids what is available and not necessarily what they need.”¹⁶ In a survey conducted in late 1998 by the Tennessee Commission on Children and Youth, 73 percent of juvenile court judges who responded said that the lack of placements always or usually prevents children from appropriate placements.¹⁷

The review team’s report for the John B. Consent Decree also noted that “DCS services are driven by available slots, not children’s needs.”¹⁸ The Northeast Region’s needs assessment states that because of a shortage of Level II and III residential treatment resources,

“Children are backed up in the system and are often served inappropriately, resulting in repeated disruptions, delays in securing needed treatment services, frequent requests for respite or emergency placements. Too many children/youth end up moving through multiple temporary placements (emergency shelters, emergency foster care) – sometimes as long as 12-14 months.”¹⁹

¹⁵ Tim Whaley, “Court Officers: Tenn. Juvenile Services ‘bed driven’ System,” *Kingsport Times-News*, Sunday, March 14, 1999, p. 2 B.

¹⁶ Cindy Wood MacLean and Rebecca Shea, *Tennessee Supreme Court Improvement Program for Juvenile Dependency Cases: An Assessment of Tennessee’s Court Performance and A Plan for Improvements*, State of Tennessee Administrative Office of the Courts, August 1997, p.44.

¹⁷ Tennessee Commission on Children and Youth, *Juvenile Court Judges Survey, 1998-99* (not yet released).

¹⁸ *Report of the Review Team for the EPSDT Consent Decree*, September 15, 1998.

¹⁹ DCS North East Grand Region, *Service Gaps by Grand Region*, 1997.

At one point in time between September 1998 and March 1999 almost 500 children were in temporary placements. Of the seven regions reporting, almost 40 percent of children in temporary placements had exceeded stays of more than 30 days.²⁰

Temporary out-of-home placements include emergency shelters, diagnostic and evaluation centers, observation and assessment centers, temporary holding facilities, detention centers, mental health facilities, or emergency foster homes. Children may be placed temporarily to protect them during an alleged abuse investigation; to house runaways; to conduct a pre-adjudication evaluation; or to evaluate a child after disposition. Because children do not receive treatment and may not be enrolled in school while in a temporary placement, extended stays cause concern.

TCA 37-1-128 (g) regulates the amount of time a small number of children may stay in temporary shelters. The statute allows judges to place children in DCS custody for an evaluation after adjudication, but prior to disposition. The statute prohibits this pre-dispositional custody from lasting longer than 30 days. The purpose of the evaluation is to provide information about a child and family to assist the judge in making a disposition. The statute specifies that if DCS does not have a suitable placement available for the evaluation, the judge may not order the department to take a pre-dispositional child into custody.

TCA 37-2-403 requires DCS to prepare a plan within 30 days of placement for children in foster care. Departmental policy initially authorizes children to stay in shelters up to 30 days, but no formal departmental policy limits the time beyond the initial 30 days that a child may spend in a temporary shelter.²¹ As a result, children may stay in a temporary placement for extended periods waiting on the completion of evaluations or permanency plans or waiting on the appropriate treatment-oriented placement. Exhibits 11a and b illustrate the amount of time children have been in temporary shelters.

| Exhibit 11(a) | | | |
|---|-----------------------------|-----------------------|-----------------------------|
| Number of Children in Temporary Placements | | | |
| (Regions reporting number of children held over 30 days) | | | |
| Region | Number in Placements | # Over 30 Days | Percent Over 30 Days |
| Hamilton | 31 | 17 | 54.84% |
| Knox | 42 | 19 | 45.24% |
| Northeast | 15 | 3 | 20.00% |
| Shelby | 80 | 31 | 38.75% |
| Southeast | 22 | 5 | 22.73% |
| Southwest | 28 | 9 | 32.14% |
| Upper-Cumberland | 21 | 8 | 38.10% |
| Subtotal | 239 | 92 | 90/239-----*38.49% |

²⁰DCS regional resource managers provided the number of children in temporary placements for a given day between September 1998 and March 1999. The date differs from region to region.

²¹ State of Tennessee Department of Children’s Services, *Resource Management Policy and Procedures*, January 1998, p. 16.

| Exhibit 11(b) Number of Children in Temporary Placements (Regions reporting average lengths of stay) | | |
|---|-----------------------------|--|
| Region | Number in Placements | Average Length of Stay |
| Davidson | 61 | 39 days |
| East | 68 | 1.2 months (Shelters); 1.7 months (D&E); 2 months (Foster homes); 14 days (Detention) |
| Mid-Cumberland | 71 | 27 days for emergency shelters; D&E-length of stay not reported |
| Northwest | 17 | 27-31 days |
| South Central | *29 | 2-2.5 months |
| Subtotal | 246 | Not Reported |
| Grand Total of 11 (a) and (b) | 485 | Not Reported |

Source: Department of Children's Services, Regional Resource Managers, data from one point in time between September 1998-March 1999.

Temporary placements include shelters, detention centers, observation and assessment centers, and diagnostic and evaluation centers.

**Note-South Central provided the number of temporary shelter and diagnostic and evaluation beds in the region and average length of stay. South Central regional officials did not provide the actual number of children in the beds at the time of the request.*

The 1997 C-PORT data show that 23 percent of the children in the sample cases were in emergency shelters one or more times.²² In a TCCY survey of juvenile court judges conducted in late 1998, 57 percent of respondents said that children are either always or usually placed in temporary shelters.²³

Despite improvements, children continue to be placed out of region, impeding family visits and reunification.

According to TCA 37-5-102, "The focus of the services shall be to preserve the relationship between the child and the family by providing, whenever possible, services in the community where the child lives and by providing the services in a setting which is the least restrictive and, yet, the most beneficial." DCS resource management policy states: "Upon a child's referral to the regional Resource Management Unit the resource manager attempts to match the child's needs with appropriate services that are available close to the child's home."²⁴ If this is not possible, regional resource managers are to document conditions preventing immediate placement within the child's home region.

²² Tennessee Commission on Children and Youth, 1997 C-PORT Protocol.

²³ Office of Research staff used the 1997 and 1998 C-PORT data to identify trends in the state child custody population. The Tennessee Commission on Children and Youth annually analyzes a sample of children in custody for its C-PORT report (see p. 13).

²⁴ State of Tennessee Department of Children's Services, *Resource Management Policy and Procedures*, p. 25, January 1998.

The department could provide few statistics on the number of children placed out of region. However, 1998 C-PORT data shows that the percentage of children placed outside the Community Service Agency Region has decreased from 42 percent to 35 percent between 1997 and 1998.

Exhibit 12
Placements of Children in C-PORT Sample for 1997 and 1998

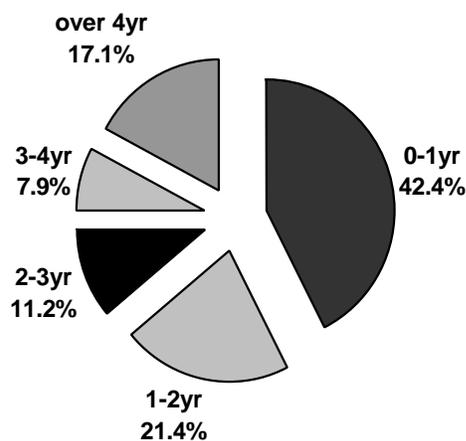
| C-PORT Sample Results | Percentage Placed in Home County | Percentage Placed in Community Service Agency Region | Percentage Placed outside Community Service Agency Region |
|------------------------------|---|---|--|
| 1998 | 52% | 65% | 35% |
| 1997 | 47% | 58% | 42% |

Source: Information provided by the Tennessee Commission on Children and Youth.

DCS central office officials explain that out of region placements stem from the lack of specialized treatment within a certain region. Placement of a child far from home makes it more difficult for the home county case manager to stay in touch with the child, and for parents to participate in visitation, counseling, and reunification efforts. This further prolongs placement and undermines treatment efforts and outcomes.

Children’s placement far away from home, in addition to other factors, contributes to extended stays in custody. As of June 30, 1998, DCS reported that 36 percent of children have been in custody two years or longer, and 17 percent of those have been in custody four years or longer. (See Exhibit 13.) Children adjudicated delinquent seem to stay in custody for shorter periods, while dependent/neglected children are more likely to stay in custody for extended periods.

Exhibit 13
Length of Time in Custody, June 1998



Although some children may need to be in custody for an extended period, lengthy stays in custody delay permanency. The Adoption and Safe Families Act recognizes the need to quickly establish permanency by requiring the state to initiate the termination of parental rights if a child is in custody 15 of the last 22 months.

Source: Department of Children’s Services.

According to 1998 C-PORT data, 29 percent of all children in custody have been there too long. “Too long,” is assessed on length of time in custody, circumstances of case, permanency plan, services received, and evidence of need for termination of parental rights. Since 1995 the number of children staying in custody too long reflected in the C-PORT sample has increased. The increase is attributable to the backlog of children in custody who need to have parental rights terminated. C-PORT results from 1998 show that approximately 10 percent (over 1,100) of all children in state custody need to have parental rights terminated. High turnover rates among staff along with an insufficient number of attorneys have been blamed for delays in initiating court action.

Reasons for Lack of Placements

DCS staff cited lack of resources as the primary cause of placement shortages. One regional resource manager stated: “Our biggest problem is our budget allocation to purchase “beds” for children to be placed in. We do not have enough resources.”²⁵ Department officials acknowledge that, despite changes, children stay in temporary placements too long and lack adequate resources in certain areas.

In an effort to better utilize resources DCS began a shift from contracting individual placements for each level to contracting for continuum care placements, which are designed to provide a wide range of services at different levels at a reduced cost. In addition, DCS increased the number of Level II and III beds, while keeping the total number of contracted beds between FY 1997-98 to FY 1998-99 about the same. Exhibit 14 illustrates the allocations of DCS contracts for FY 1997-98 and FY 1998-99.

**Exhibit 14
Contract Placement Allocations for FY 1997-98 & FY 1998-99**

| Type of Placement | Program/Continuum | FY 1997/98 | FY 1998/99 | Change | % Change |
|-------------------------|-------------------|------------|------------|--------|----------|
| Dual Diagnosis | | 112 | 101 | -11 | -10.89% |
| Emergency Shelters | | 233 | 204 | -29 | -14.22% |
| Diagnostic & Evaluation | | 207 | 200 | -7 | -3.50% |
| Level I | | 445 | 379 | -66 | -17.41% |
| Level II | program | 323 | 278 | -45 | -16.19% |
| | continuum | 388 | 518 | 130 | 25.10% |
| Level III | program | 15 | 16 | 1 | 6.25% |
| | continuum | 664 | 694 | 30 | 4.32% |
| Foster Care | | 259 | 273 | 14 | 5.13% |
| TFC | program | 161 | 147 | -14 | -9.52% |
| | continuum | 561 | 535 | -26 | -4.86% |

²⁵ State of Tennessee Department of Children’s Services, DCS Regional Resource Manager, e-mail, March 1999.

Contract Placement Allocations for FY 1997-98 & FY 1998-99 (Continued)

| Type of Placement | Program/Continuum | FY 1997/98 | FY 1998/99 | Change | % Change |
|-------------------------|-------------------|------------|------------|--------|----------|
| Dual Diagnosis | | 112 | 101 | -11 | -10.89% |
| Emergency Shelters | | 233 | 204 | -29 | -14.22% |
| Diagnostic & Evaluation | | 207 | 200 | -7 | -3.50% |
| Level I | | 445 | 379 | -66 | -17.41% |
| Level II | program | 323 | 278 | -45 | -16.19% |
| | continuum | 388 | 518 | 130 | 25.10% |
| Level III | program | 15 | 16 | 1 | 6.25% |
| | continuum | 664 | 694 | 30 | 4.32% |
| Foster Care | | 259 | 273 | 14 | 5.13% |
| TFC | program | 161 | 147 | -14 | -9.52% |
| | continuum | 561 | 535 | -26 | -4.86% |
| Independent Living | | 94 | 87 | -7 | -8.05% |
| Maternity | program | 46 | 44 | -2 | -4.55% |
| | ancillary | 9 | 2 | -7 | -350.00% |
| Alcohol/Drug | | 112 | 87 | -25 | -28.74% |
| Sex Offender | program | 30 | 26 | -4 | -15.38% |
| | continuum | 134 | 131 | -3 | -2.29% |
| Wilderness | | 100 | 104 | 4 | 3.85% |
| Level IV | | 123 | 115 | -8 | -6.96% |
| State Managed | | 154 | 158 | 4 | 2.53% |
| State Shared | | 1564 | 1564 | 0 | 0.00% |
| Net Change | | 5734 | 5663 | -71 | -1.25% |

Source: DCS Allocations for 1997/98-1998/99.

The department does not determine the number children who are awaiting needed placements at any one time. One administrator from a contracted provider noted, “You can’t manage what you don’t measure.”²⁶ Regional Resource Managers have their own methods of tracking (or not tracking) the number of children on waiting lists. This information is not analyzed aggregately on a regular basis, nor are needs determined by the adjudication of children awaiting placements, or by the type of placements needed. As a result, children remain on waiting lists, in temporary shelters, out of region, and in other inappropriate placements. Ultimately, much needed treatment is delayed or not provided. Although the department’s new management information system, TN Kids, has the potential to provide information on needed placements and waiting lists, it has not been programmed to do so. (See conclusion related to DCS Management Information Systems on page 37)

²⁶ Fred Wulczyn and Britany Orlebeke, Draft of *Fiscal Reform for Child Welfare Systems: Four Case Studies*, The Chapin Hill Center for Children, University of Chicago, January 1998, p. 84.

Although lack of placements and length of stay continue to be serious problems, the Family Crisis Intervention Program (FCIP) appears to have helped decrease the number of unruly children coming into custody.

The Family Crisis Intervention Program was established in 1997 in *TCA 37-1-168* to stabilize families in crisis to ultimately reduce the number of children coming into custody. Before committing an unruly child to the Department of Children's Services, *TCA 37-1-132* requires that a child be referred to the FCIP program. The program works with children at risk of coming into custody and their families. In 1998, 7,480 children were referred to the program by the courts. Of those referred to the FCIP program, eight percent (627) were not admitted because they did not meet the program's criteria. Of the 6,854 who were accepted into the program 92 percent (6,316 children) successfully completed the program and were not referred back to court. The remaining participants were certified back to court because the family's crisis was not resolved. It is not known how many of those certified back to court or those who completed the FCIP program eventually come into custody, because DCS does not track this information.

The FCIP program, however, appears to have contributed to a reduction of the DCS unruly population, from 13 percent of the custody population in FY 1997 to nine percent in FY 1998. The four main urban areas showed the highest success rates of participants completing the FCIP program and the lowest percentages of unruly children in custody. Further study is needed to determine the long-term success of the FCIP program in keeping participants out of custody; what services program participants receive over time; and how families who participated in the program are functioning.

The new Adoption Center in Nashville also appears to have helped the department's placement shortages. Adoptions in middle Tennessee increased 31 percent, from 91 to 119 in the first nine months of the adoption center. However, the critical need for adoptive parents statewide persists. Over 700 children in custody are awaiting adoption. The Child Welfare League found that children are "aging out" of custody while waiting for adoptive families. Total adoption placements for FY 1998 actually decreased compared to FY 1997 from 379 to 352. Although the need for more adoptive families is apparent, progress has been made through the Center for Adoption and DCS plans to create two more adoption centers in Maury and Shelby Counties.

Quality of Services/Placements

Overall, DCS appears to meet the basic food, shelter, and amenity needs of children in custody; however, detailed information evaluating the quality of the institutions, services available, and child performance is limited.

To ensure that placements housing children are adequate, the Department of Children's Services has a three-fold approach: contract monitoring by the Department of Finance and Administration, accreditation, and licensure. *TCA 37-5-113* requires that the American Correctional Association (ACA) or another appropriate accrediting agency accredit all youth development centers. Accreditation assures that facilities meet basic national standards. ACA accreditation reviews occur every three years. A review of 15 of the latest accreditation reports for DCS facilities indicates that all facilities are accredited and had at least 98 percent compliance with standards.

TCA 71-3-504 requires that all child welfare agencies be licensed annually by the Department of Children's Services or Human Services, depending on the type of facility. Licensure helps ensure that agencies meet minimum operational standards. DCS annually licenses approximately 250 facilities supplying services to children. Some providers contract with the state and some do not.

TCA 37-5-109 gives the Department of Children's Services responsibility for licensing children's programs, agencies, group homes, institutions and other entities serving children. These facilities include child abuse agencies, child-care institutions, child-placing agencies, detention centers, family boarding or foster care homes, group care homes, maternity homes, and temporary holding resources. All children in state custody must be placed in licensed placements, unless they are placed in a DCS operated youth development facility. DCS staff conduct announced licensing visits annually and try to conduct two unannounced visits each year. Besides these visits, staff may also visit a facility unannounced if concerns or complaints arise.

Standards used by DCS to license facilities that serve children may need to be strengthened. *TCA 71-3-504* requires that licensure standards reflect six points of excellence:

- (A) The present need for the proposed child welfare agency;
- (B) The good character and intention of the applicant;
- (C) The adequate financing of the organization;
- (D) The capability, training and experience of the workers employed;
- (E) The facilities for and the methods of care provided, and the consideration of the best interest of the child and the welfare of society in any placements of children to be made; and
- (F) The probability of permanence of the child welfare agency.

Standards include staff qualifications, staffing ratios, and requirements for record maintenance; fire, safety, and health compliance; level of treatment provided; and required agency planning documents.

The director of DCS Licensure explained that almost all facilities that reach the point of a site visit become licensed. Providers who realize they cannot meet licensure standards usually drop out of the process, never obtaining a site visit. Some placements for which the state cancelled contracts for poor conditions or other problems may remain licensed. The director reiterated that the licensing standards are only a minimum measure of quality for these facilities. The standards and forms used to approve licenses are limited in scope. The director indicated that he has licensed facilities he does not consider adequate solely because they meet the standards.

Most of the current licensing requirements and forms were promulgated prior to the creation of DCS. Two sets of revised standards were submitted for approval in 1994, but still have not been approved. According to the director, almost all the standards need revision. He has established a committee of providers and DCS staff to review the standards for child placing agencies, but it had not met at the time of the interview.²⁷

DCS's system of evaluating the quality of institutions housing children in custody is fragmented. Most state-operated facilities do not go through the DCS licensing process as required for other childcare facilities. The Tennessee Preparatory School (TPS) is the only DCS-operated facility

²⁷ Interview with Jerry Hughett, Director of Licensure, DCS, November 9, 1998 and follow-up discussion on November 18, 1998.

that participates in the licensure process. Licensure was a function previously handled by the Department of Human Services (DHS). (TPS was previously a Department of Education facility.)

After the creation of DCS the licensure function remained separate, and was not expanded to review youth development centers and group homes operated by the department. However, current statute allows these facilities to participate in licensure. *TCA 37-5-106 (3)(b)* states that the Department of Children's Services will "license or approve and supervise all facilities which were previously operated by the department of youth development." Using different standards to evaluate state and contracted facilities means that they are held to varying standards, making comparison and objective evaluation difficult.

Further fragmenting licensure, the Departments of Mental Health and Mental Retardation (DMHMR) and Health also have some licensing responsibilities for placements of children in state custody.²⁸ The Department of Children's Services does not license facilities approved by DHS or DMHMR.

The Department of Finance and Administration's Division of Resource Development and Support also evaluates the quality of DCS contracted facilities housing children in custody. The Development and Support Division monitors both the programmatic performance and financial contract compliance of DCS's residential contracted providers. Annually the Resource Development and Support Division staff evaluate each of the contracted residential providers against standards developed by DCS. Standards include the amount and type of services provided; the number, qualifications, and training of staff; the overall safety of residents; the adequacy of children's plans of care and permanency; and the compliance with departmental policy. For FY 1997-98, 52 of the approximately 180 contract agencies reviewed indicated no findings or concerns.

The 1998 Performance Audit of DCS reports that the Office of Residential Licensing and the Department of Finance and Administration's Office of Program Evaluation provide information that is complementary. The audit, however, recommends that the two offices improve coordination efforts to "ensure that all important areas are reviewed and that there is no duplication of effort."²⁹

Although children's basic needs appear to be met in placements, facility evaluations show specific needs.

Evaluation of facilities for accreditation, licensing, or contract monitoring indicate that children's basic needs for shelter, food, and basic amenities are met. The Director of the Resource Development and Support Division indicated few problems with the contractors providing for the children's basic needs. The Director of DCS licensure also indicated few incidents relating to basic needs.

²⁸*TCA 33-2 Part 5 and 71-3-Part 5.*

²⁹ State of Tennessee Office of the Comptroller, Division of State Audit, *November 1998 Performance Audit of Department of Children's Services*, p. 12.

Licensure Violations

Office of Research staff analyzed 26 licensing review reports of approximately 250 facilities annually licensed to determine the performance of licensed child-serving agencies. In addition, staff reviewed the licensing inspections of four facilities placed “on notice” by DCS licensing staff. The status of “on notice” means facilities may lose licensure if concerns of DCS are not remedied. The most serious concern of one facility on notice was its use of excessive physical restraint of children. However, that situation seems to have been unique and remedied. Ten of the 26 agencies did not have all required discharge plans and statements for children released from their care. Nine agencies did not have complete documentation that agency staff had received training related to sexual abuse.

DCS also cited 16 violations related to incomplete medical records. Six agencies did not have records of children’s physicals; five lacked dental records; and five did not have all required immunization records. Four of 26 licensure reports revealed improper distribution, protection, or record keeping of medication to children.

Some agencies were unable to produce required plans or reports for children residing at the agency. Five agencies failed to have foster care plans for all their children and another five agencies did not have completed foster care reports. According to a licensing consultant for the state, in cases of missing records, often the agency has not received them from the sending institution or the DCS central office.

Violations Cited by Finance and Administration

Office of Research staff reviewed the FY 1997-98 evaluations of the DCS contracted agencies conducted by the Department of Finance and Administration’s Division of Resource Development and Support. Of the 179 contracts reviewed, the following were the most frequent contracting violations:

- Failure to meet staff requirements for education, experience, and training. (36 agencies)
- Improper use of psychotropic medications. (34 agencies)
- Incomplete treatment plans, assessments, incident reports, and other required documents related to children or the facility. (29 agencies)
- Contracted agencies using unapproved subcontractors. (13 agencies)

According to the Director of Resource Development and Support, contract agencies usually act responsively to remedy violations. Plans for training are usually accepted as a proper response and DCS frequently grants waivers for staff education and experience requirements.³⁰

The Resource Development and Support Director indicates that DCS is quick to give waivers, particularly in rural areas. Many contracted agencies in rural areas lack the opportunities for under-qualified staff to gain needed experience. DCS allows an associate’s degree to substitute for experience of childcare workers. In some cases DCS grants waivers for staff who have no degree but have some college credit.³¹

³⁰ State of Tennessee Department of Finance and Administration., Division of Resource Development and Support, *FY 1997-98 Corrective Action Report*.

³¹ State of Tennessee Department of Finance and Administration, Division of Resource Development and Support Division, *FY 1997-98 Corrective Action Report*.

Quality of Health and Mental Health Services

Some children in custody do not receive needed physical health and behavioral health services, in violation of federal law and departmental policy.

TCA 37-5-102 states that “the department shall strive to... pursue appropriate and effective behavioral and mental health treatment and ensure that health care needs, both preventive and practical, are met.” Most children in state custody are TennCare recipients. Therefore, in addition to DCS, TennCare is also responsible for providing for the health of children in custody.

Assessing Needs for Services

Although DCS policy and federal law require Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) of children on TennCare, most children do not receive them, including children in custody.³² Approximately 90 percent of children in custody are on TennCare. An EPSDT screening is designed to determine potential health, developmental, and behavioral problems so children may receive early treatment to limit the effects of identified problems. The screening consists of a comprehensive health, mental health, nutrition, and developmental history and assessment; an unclothed physical examination; immunizations; laboratory tests; and health education.

In 1989 the federal Health Care Financing Administration set a goal for all states that by 1995, 80 percent of children under 21 on Medicaid (TennCare) would have an annual EPSDT. In July 1998 the state reported to the court that only 21.9 percent of children on TennCare had received such screenings. The state’s failure to provide children on TennCare with EPSDT assessments resulted in a lawsuit.

In February 1998 a class action complaint, *John B, et al v. Menke, et al*, was filed in the U.S. District Court of the Middle District of Tennessee. It alleged that children on TennCare were deprived of “medically necessary care” and denied “essential diagnostic and treatment services” in violation of federal and state law.³³ The state and attorneys representing children on TennCare signed a *Consent Decree for Medicaid-Based Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT)* in March 1998, which required that TennCare, TennCare providers, and DCS make many improvements. Specifically, the decree required DCS to:

- Complete EPSDT screenings on all TennCare-eligible children in DCS custody within 18 months.
- Develop an EPSDT tracking system that could identify the EPSDT status of each child in custody within 150 days of signing the consent decree, which would have been September 1998.

A DCS official responsible for working with the courts on the consent decree, stated that DCS had created an EPSDT tracking system but that preliminary numbers of children from a sample “were not good.” Subsequently, she asked that the department conduct a review of the tracking

³² USC 42 § 1396 and Subsection 621, the Adoption Assistance and Child Welfare Act and the DCS *Assessment Training Manual*.

³³ *John B, et al vs. Menke, et al*, United States District Court, Middle District of Tennessee, February 25, 1998, pp. 1 and 2.

system and pull a second sample. Although the resulting information was requested by the Office of Research, the department did not provide it.

In September 1998 the *Report of the Review Team for the EPSDT Consent Decree* was released evaluating the state’s compliance with EPSDT requirements and assessing the state’s medical, dental, and behavioral health services available for children in custody. The report concluded that little improvement had been made since the signing of the decree. It also determined that “Tennessee does not meet EPSDT requirements for medical, dental and behavioral health assessments and treatment for children in state custody.” Of 50 cases of children in custody examined for the review team’s report only one child had a record of receiving an EPSDT screening.

Besides EPSDT, some children in custody are not receiving other assessments as needed. Commissioner Hattaway at the July 1998 subcommittee meeting of the Juvenile Justice Reform Commission, when asked about giving every child a psychological examination upon entering custody, said, “I think it is a waste of money,” contending that current policy allows case managers to request psychological exams when needed. However, the Executive Director of the Tennessee Commission of Children and Youth explained that fewer children in the 1998 C-PORT sample had formal mental health diagnoses than in previous years. Rather than indicating that children in custody have fewer mental health needs, the decrease in mental health diagnoses may indicate that children who need psychological evaluations are not receiving them.

Exhibit 15
Percent of C-PORT Sample with a Formal Mental Health Diagnosis

| 1996 | 1997 | 1998 |
|------|------|------|
| 58% | 52% | 31% |

Source: Information provided by the Tennessee Commission on Children and Youth.

TCCY’s Executive Director attributed the decrease to the difficulties in obtaining psychological evaluations for children in custody. She said that children were not receiving psychological assessments because behavioral health organizations deny requests, which in turn causes DCS staff not to request them.

According to 1997 C-PORT data, 14 percent of the 586 cases sampled reported inadequate assessment of needs.³⁴ In 1998 the number rose to 27 percent. The Commission on Children and Youth attributes this in part to the high turnover of case managers, the lack of training in assessment requirements, and lack of psychological assessments given to children in custody. Information provided by the DCS Regional Resource Managers show that almost 40 percent of children in temporary placements had been there over 30 days, beyond the initial time authorized for children in temporary placements.³⁵ Some Resource Managers have attributed the extended lengths of stay in temporary placements to the delay of children receiving, not only psychological assessments, but initial assessments as well.

³⁴ Tennessee Commission on Children and Youth, 1997 C-PORT Roll-up.

³⁵ Length of time in temporary placements based on “point in time information” on a single day between September 1998 and March 1999.

The Comptroller's November 1998 Performance Audit of the Department of Children's Services concurs with TCCY and the DCS Resource Managers: "Department staff stated that the assessments and plans of care are not always completed within the time allowed and cited two reasons: the high caseload case managers carry and the extra time needed to consult with the behavioral health organizations regarding mental health assessments for children enrolled in TennCare."³⁶

Availability of Services

Some children in custody have not received needed physical health and behavioral health services. The EPSDT consultants, referred to as the review team, also found that some children were not improving in custody. In fact, only 14 percent, or seven of the 50 children whose files were reviewed, appeared to have made steady progress while in state custody.³⁷ According to the review team, three groups in particular—adolescents, children with behavior disorders, and children who had been sexually abused—failed to improve in custody. The failure of these groups to improve is significant because they represent a large portion of those in custody. As of June 1998 adolescents (age 13 and above) comprised almost 52 percent of children in custody. According to the 1996 C-PORT sample, 58 percent of children in custody had a mental health diagnosis and 34 percent had been sexually abused.

The review team's report indicated that managed care has resulted in "a drastic reduction in the quantity, quality, and timeliness of behavioral health, medical and dental services for custody children and children at risk of entering custody and their families."³⁸ According to the decree, timely assessments, accessible medical, dental, and behavioral health services, and sufficient and effective services for a high needs population are all necessary to meet the medical and behavioral needs of children in custody.

According to the 1997 C-PORT study, Tennessee's child welfare system does a better job of addressing children's physical than emotional needs. Only four percent of the 1997 C-PORT sample failed to have their physical needs addressed adequately by the system, but 16 percent did not have their emotional needs adequately met. Overall, the child welfare system failed to achieve adequate progress for children in 12 percent of the sampled cases. In 1998, the C-PORT sample showed slight improvement in these categories. TCCY officials attribute the system's failure to address children's mental health needs and achieve overall progress to the lack of mental health assessments and the limited access to needed treatment.

Academic, judicial, state, and nonprofit officials also recognize the failure of the DCS/TennCare system to provide mental health services to children in custody. Dr. Charles Glisson, Research Director of the Children's Mental Health Research Center at the University of Tennessee-Knoxville, has evaluated the status of children in custody in Tennessee under the current system and prior to the creation of DCS. He has been under contract with DCS to provide certain consulting and research services. Dr. Glisson found that children in custody's "mental health

³⁶ State of Tennessee Comptroller of the Treasury, Division of State Audit, *November 1998 Performance Audit of Department of Children's Services*, p. 6.

³⁷ The review team determined that although 14 percent making progress seems low, the figure may underestimate actual positive outcomes of the state on children in custody.

³⁸ *Report of the Review Team for the EPSDT Consent Decree*, September 15, 1998, p. 17.

needs are not being met for all types of adjudication.”³⁹ His study found that the majority entering custody need clinical intervention, yet only 14 percent were referred for mental health services.⁴⁰ Dr. Glisson concluded that “most children who enter state custody, regardless of cause or placement, have psychosocial problems that require clinical mental health services.”⁴¹ Data from the Tennessee Commission on Children and Youth also found that, regardless of adjudication, children in custody have mental health needs. The 1996 C-PORT review found that over half of children in state custody had a formal mental health diagnosis.⁴²

The TennCare Partners program-monitoring group is comprised of advocates, family members, consumers, and other stakeholders responsible for monitoring the Partners Program, the mental health portion of TennCare. In April 1998 the Monitoring Group issued a Policy Statement on Children’s Issues related to the inadequacy of mental health services to children. It states that “Tennessee’s children with serious emotional disturbance and their families are severely underserved by the TennCare Partners program.” Specifically, children are denied needed diagnostic and treatment services; families are encouraged to put their children in state custody in order to obtain needed services; and it is not guaranteed that state custody will provide needed services.⁴³

One juvenile court judge interviewed described the current DCS system including the medical and behavioral treatment available as “managed money and mangled care.” He believes that not only are children in custody not receiving needed services and treatment, but that DCS is discouraging certain types of treatment even if need is demonstrated. The judge said that DCS has told community mental health centers not to recommend children for inpatient care. He criticized the state for canceling contracts with effective treatment programs and replacing them with less effective and less expensive treatment providers. In his opinion, the lack of quality treatment services available results in children staying in custody for longer periods of time, ultimately costing the state more, with fewer improvements for the children.

Minority Representation and Associated Problems

Corresponding to the nationwide trend, African-American children in Tennessee are overrepresented in the juvenile court system and in state custody.

The proportion of all minority children in the out-of-home care system is three times their proportion in the nation’s population.⁴⁴ Although African-Americans comprise 15 percent of all U.S. children, they represent 49 percent of children in foster care and 30 percent of children in group care. African-American children comprise 44 percent of all children in out-of-home care. Although Caucasian children comprise 66 percent of all U.S. children, they represent only 41

³⁹ Interview with Dr. Charles Glisson, Director of the Children’s Mental Health Services Research Center, University of Tennessee, August 7, 1998.

⁴⁰ Dr. Charles Glisson, “Judicial and Service Decisions for Children Entering State Custody: The Limited Role of Mental Health,” *Social Service Review*, 1996, pp. 263 and 265.

⁴¹ *Ibid.*, p. 273.

⁴² Tennessee Commission on Children and Youth, 1996 C-PORT, p. 7.

⁴³ The TennCare Partners Program Monitoring Group Policy Statement of Children’s Issues also states “the current TennCare Partners Program is not meeting the needs of children with mental health problems.”

⁴⁴ Ruth McRoy, Zena Oglesby, and Helen Grape, “Achieving Same-Race adoption placements for African-American Children: Culturally Sensitive Approaches,” *Child Welfare*, Jan-Feb, Volume 76, Edition 1, 1997, p. 86.

percent of those in out-of-home care.⁴⁵ The Child Welfare League of America publishes an annual statistical report on child abuse and neglect. This report tracks trends among all states and allows comparisons between Tennessee and other states. However, for its 1997 report the Child Welfare League of America was unable to provide data for Tennessee in many of the categories including out of home care by race, adoption by race, and child abuse fatality by race. As a result, comparisons between Tennessee and other states are limited.

To determine the extent to which African-American children in Tennessee are overrepresented in the juvenile court system and in state custody, Office of Research staff analyzed census, juvenile court, and DCS data. For 1997, African-American males were overrepresented in the juvenile court population, comprising more than twice the percentage of the juvenile court population than they represent in the under 18 population at large. When male and female figures are combined, African-American children comprised a higher percentage of children in custody than in juvenile courts. (See Exhibit 16.)

Exhibit 16
African American Overrepresentation in Juvenile Court System and DCS Custody

| Gender and Race | Percent of Estimated 1996 TN Population under 18 | Percent of 1997 TN Juvenile Court Population | Percent of 1997 Juvenile Court Commitments to DCS Custody | Percent DCS Custody Population on June 30, 1997 |
|----------------------------------|--|--|---|---|
| Total Caucasian | 75.1% 1,062,451 | 59.7% 40,585 | 63.7% 3,663 | 59% 6,717 |
| Total African-Americans | 21.2% 299,270 | 35.8% 24,314 | 31.4% 1,807 | 39% 4,385 |
| Total Other Non-Caucasian | 3.7% 52,589 | 1.6% 1,065 | 1.4% 82 | 2% 216 |
| Unknown | 0% | 2.9% 1,988 | 3.4% 194 | 0% |
| Total | 1,414,310 | 67,952 | 5,746 | 11,318 |

Sources: 1997 Tennessee Annual Juvenile Court Statistical Report, Tennessee Council of Juvenile and Family Court Judges, September 1998; Under 18 population information prepared by the Tennessee Department of Economic and Community Development, Research Division, December 1997 using data from the U.S. Census; FY 1996-97 Annual Report, Department of Children's Services, p. 42. Note: Census data was given through age 19. Office of Research staff adjusted figures subtracting those estimated to be 19 years of age.

However, for 1997, Caucasians appeared in juvenile court in smaller proportions than they represent in the under 18 population in Tennessee, but were committed to custody more frequently than were African-American children. The courts' actions of committing Caucasians more frequently to custody may represent a trend of juvenile courts, may be an isolated incident for one year, or may indicate that although Caucasians may come into custody more frequently, once in custody, African-American children tend to stay longer.

The *C-PORT 1997 Evaluation Results* found that of Tennessee children ages 12-17, African-Americans were almost twice as likely to be in the custody of DCS. The report found that

⁴⁵ Michael R. Petit and Patrick A. Curtis, *Child Abuse and Neglect: A Look at the States, 1997 CWLA Stat Book*, Washington, D.C., CWLA Press, 1997, pp.88 and 92. Percentages based on 1995 data.

between 1994 and 1997 the percentage of African-American children in custody increased, from 25 percent of the state custody population in 1994 to 38 percent in 1997.⁴⁶ Compared to 1997, C-PORT data for 1998 indicates a gradual increase of African-Americans in custody and a decrease of Caucasians in custody.

With limited data available beyond the C-PORT studies in Tennessee, it is difficult to determine if African-American children in state custody stay in custody longer, receive fewer services, are treated differently than other children in placements, or have less successful outcomes.

C-PORT presents mixed results as to how African-American children fare in custody. System measures for overall adequacy of services were lower for African-American children in custody. However, other types of services for these children received higher measures. Analysis of 1997 C-PORT data indicates that upon entering custody, African-American children are not as likely to receive adequate services crucial to achieving permanency and improving family participation. Exhibit 17 illustrates a discrepancy in the way the DCS system facilitates the participation of minority children and their families in decision-making compared to the system's efforts toward white children and families. It also shows that the DCS system is not as accomplished at facilitating progress or overall adequacy with minority children.

Exhibit 17
1997 C-PORT Status of System Performance Indicators⁴⁷

| 1997 C-PORT System Indicators | # African-American/Biracial children receiving inadequate services | % African-American/Biracial children receiving inadequate services | # Caucasian children receiving inadequate services | % Caucasian children receiving inadequate services | Disparity |
|---------------------------------|--|--|--|--|-----------|
| Inadequate child participation | 21 | 9% | 13 | 4% | -5% |
| Inadequate family participation | 46 | 20% | 41 | 12% | -8% |
| Inadequate family progress | 84 | 37% | 106 | 30% | -7% |
| Overall adequacy | 116 | 52% | 151 | 43% | -9% |

Source: 1997 C-PORT Roll-Up, Tennessee Commission on Children and Youth. Note: There are 16 indicators related to the adequacy of service system performance. In four of 16 indicators, African-American children had statistically significant lower scores.

The difference in inadequacy between minority and Caucasian children on these four measures is statistically significant. This indicates that it is unlikely that differences between minority and Caucasian children are based on chance and that race is a factor in whether or not children receive adequate services. *This does not mean that race is the cause*, but there is enough statistical difference in these four areas to suggest it is a factor and that more study is needed.

⁴⁶ Tennessee Commission on Children and Youth, *Children's Program Outcome Review Team 1997 Evaluation Results*, p. 5.

⁴⁷ Status of Service System Performance C-PORT indicators include assessment of needs, long term view for services, child participation, family participation, service plan design, service plan implementation, service coordination, monitoring and change, advocacy, early child and family intervention, home/community resources, placement resources, supportive intervention services to achieve permanent goal, urgency response, progress achieved by child, and progress achieved by family.

As illustrated in Exhibit 18, in 1998, African-American children fared better than did Caucasian children on key indicators of the status of children and families. However, the overall status of African-American children and families was worse than Caucasians. African-American children fared equal to or better than Caucasian children on key indicators of service system adequacy as well, including overall adequacy of service system functioning. However, adequacy of service system functions for all children in state custody decreased substantially from 1997 to 1998. In 1997, overall adequacy of service system functions was 51 percent, while in 1998 it dropped to 33 percent. In other words, while service system functions were adequate for half of the cases in 1997, they were adequate for only one-third of the cases in 1998.

Exhibit 18

1998 C-PORT Status of System Performance Indicators, Suggesting Discrepancies in Service Delivery

| | Percent of African-American Children (of C-PORT Sample) Inadequate | Percent of Caucasian Children (of C-PORT Sample) Inadequate |
|--|---|--|
| Key Indicators of Status of Child/Family | Safety- 7% | Safety- 5% |
| | Emotional Well-Being- 18% | Emotional Well-Being- 12% |
| | Physical Well-Being- 2% | Physical Well-Being- 1% |
| | Caregiver Functioning- 6% | Caregiver Functioning 7% |
| | Stable Home- 10% | Stable Home- 11% |
| | Permanence- 16% | Permanence- 18% |
| | Appropriateness of Placement- 8% | Appropriateness of Placement- 12% |
| | Educational Progress- 21% | Educational Progress- 14% |
| | Family Unification- 40% | Family Unification- 41% |
| | Independent Living- 18% | Independent Living- 19% |
| | Child Satisfaction- 17% | Child Satisfaction- 20% |
| | Family Satisfaction- 26% | Family Satisfaction- 42% |
| Overall Status of Child/Family | 23% | 16% |
| Key Indicators of Service System Function | Assessment of Needs- 30% | Assessment of Needs- 25% |
| | Long Term View for Services- 24% | Long Term View for Services- 28% |
| | Child Participation- 14% | Child Participation- 16% |
| | Family Participation- 24% | Family Participation- 28% |
| | Service Plan Design- 52% | Service Plan Design- 52% |
| | Service Plan Implementation- 28% | Service Plan Implementation- 36% |
| | Service Coordination- 37% | Service Coordination- 44% |
| | Monitoring/Change- 36% | Monitoring/Change- 44% |
| Overall Inadequacy of Service System | 65% | 68% |

Source: Tennessee Commission on Children and Youth.

The 1998 Performance Audit of DCS suggests a need to monitor the effectiveness of services provided to children in custody. Although its recommendations concern all children in custody, there is a specific need to gather this information about minority children because C-PORT data shows mixed results for African-American children. Collecting and analyzing detailed information in each of the areas mentioned in the audit (i.e., the delivery of foster care, early

intervention programs, juvenile court prevention programs, and child abuse prevention grants) would provide missing information regarding the care of minority children and methods to decrease the number entering custody.

Factors Contributing to the Overrepresentation of Minorities in the Child Custody System

Far-reaching social indicators may explain why minority children enter state custody and remain there longer. A 1991 study by David Lindsay found that “the most critical variable affecting the foster care placement decision is the income situation of the child’s parents.”⁴⁸ McRoy, Oglesby, and Grape in their 1997 research state that “as African-American children are disproportionately poor, they are more likely to be removed from their homes and placed in out-of-home care.”⁴⁹ In addition to family poverty, the Child Welfare League discovered a link between discrimination, single parenthood, domestic violence, substance abuse, racism, staffing patterns, and staff decisions and African-American overrepresentation of children in out-of-home care.⁵⁰

Researchers indicate that African-American children in custody stay longer and receive fewer services. A recent journal article found that “in states with the largest foster care population, African-American children stay in foster care 32 percent longer than Caucasian children.”⁵¹ One study found that nationally “parental rights for African-American children were terminated at younger ages than those for white children, although the African-Americans were less emotionally disturbed, suggesting less patience on the part of the system in working with African-American families.”⁵² As this suggests, non-Caucasian children tend to receive fewer reunification services, resulting in longer custody stays.⁵³ Tennessee does not maintain information that determines the length of stay in custody by race.

In addition, DCS and contract agency officials may need increased cultural sensitivity training. In the 1998 DCS Title VI hearing, a legislator suggested that DCS case managers should receive training on cultural sensitivity to combat the potential unequal treatment of African-Americans in custody. New employee training includes a cultural sensitivity element, but ongoing training on cultural sensitivity is limited. DCS staff are not evaluated on the effects of training received. In addition, contract employees are not included in DCS cultural sensitivity training. Because 41 percent of the children in custody are minorities, training of DCS staff relative to cultural sensitivity is necessary.

Research indicates that awareness of cultural issues is important at five major points of decision making for children in the child services system: “maintenance of children in the home, removal of children from the home, reunification of children, permanency planning options such as

⁴⁸ D. Lindsay, “Factors Affecting the Foster Care Placement Decision: An Analysis of National Survey Data,” *American Journal of Orthopsychiatry*, 61(2), 1991, p. 276.

⁴⁹ McRoy, Oglesby, and Grape, “Achieving Same-Race Adoptive Placements for African-American Children: Culturally Sensitive Approaches,” *Child Welfare*, 76 (1), 1997, p. 87.

⁵⁰ Michael R. Petit and Patrick A. Curtis, *Child Abuse and Neglect: A Look at the States, 1997 CWLA Stat Book*, Washington, D.C., CWLA Press, 1997.

⁵¹ Jacqueline M. Kocinski, “Safe at home at last,” *State Government News*, Council of State Governments, May 1998, p.19.

⁵² Pinderhughes, 1986 study as cited in “The Delivery of Child Welfare Services to African-American Clients,” *American Journal of Orthopsychiatry*, 61(4), 1991, p. 600.

⁵³ Mark E. Courtney, “The Politics and Realities of Transracial Adoptions,” *Child Welfare*, Nov-Dec, 76(6), 1997, pp. 769-770.

adoption, and referral for mental health services.”⁵⁴ The Child Welfare League has recently published two documents related to the significance of cultural competence and has prepared a corresponding training guide.

Staff may not proportionally reflect the ethnic heritage and gender of children in custody .The information below indicates differences by race and gender between staff of DCS-operated facilities and children placed at those facilities. Information for contracted placements is not available. Exhibit 19 illustrates that for the facilities and information analyzed, there is a high percentage of female staff and a correspondingly low percentage of female children. Conversely, the percentage of minority children in custody is greater than the percentage of minority staff (52.8 percent vs. 35.5 percent).

Exhibit 19

Comparison of Race and Gender of Children in Custody and Staff of DCS operated Youth Development Centers, Group Homes, and Observation & Assessment Centers, June 1998.

| Race/Gender | Percent of Children | Percent of Staff |
|--------------------|----------------------------|-------------------------|
| Minorities | 52.8% | 35.5% |
| White Males | 42.6% | 39.3% |
| Females | 7.4% | 42.4% |

Source: Department of Children’s Services EEO reporting documents and June 30, 1998, count of children in custody Columns total more than 100 percent because minority females are counted in both the minority and female categories for staff and children.

Actions to Address Minority Overrepresentation in Custody

To address the overrepresentation of African-American children in custody and promote transracial adoption the federal government passed the Multiethnic Placement Act (MEPA) in 1994. The law no longer allows state authorities to disqualify potential foster or adoptive families on the basis of race, and encourages states to find foster and adoptive families reflecting the ethnic proportion of the community. MEPA was amended in 1996 to clarify that race, color, or national origin could only be considered in rare circumstances when making placement decisions.⁵⁵ Some significant problems exist with the implementation of MEPA. These include: —difficulty of changing long-standing social work practices and beliefs about the centrality of race and cultural heritage to a child’s identity; —translation of legal principles into practical advice for caseworkers; and —the ability of agencies both to develop information systems to monitor compliance with MEPA’s restrictions and to meaningfully analyze the results.⁵⁶

The Director of Adoptions at DCS said that MEPA has not significantly effected the number of transracial adoptions. Although the department does not have exact numbers, federal law does not allow a potential adoptive family to be denied a child because of race, unless there is a “compelling reason.” The director has not yet been faced with any cases where the “compelling

⁵⁴ Ellen Pinderhughes, “The Delivery of Child Welfare Services to African-American Clients,” *American Journal of Orthopsychiatry*, 61(14), October 1991, p. 601.

⁵⁵U.S. Department of Health and Human Services, AFC Bulletin 97-04 regarding Public Law 104-188, sec 1808, 110 stat.1755, 1903-04. June 1997.

⁵⁶United States House of Representatives, Committee on Ways and Means, *Research Regarding the Multi-Ethnic Placement Act and Amendments: Testimony before the Subcommittee on Human Resources*, Richard Barth, September 15, 1998, pp.6-7.

reason” standard has resulted in a denial of a potential adoptive family because of race. It is department policy to place children in the adoptive home that best suits the child’s individual needs. Department staff generally prefer to place children in same-race homes when possible. The department estimates that there are about 800 children waiting for adoption, many of whom are African-American. For 1997-98 the department placed 104 African-American children in adoptive homes. This represents 29.5 percent of the DCS adoptions that year. The Director of Adoptions said that, in particular, older African-American males have been very difficult to place in adoptive homes.

More recently, President Clinton signed into law the Adoption and Safe Families Act of 1997 (ASFA) in an effort to establish permanency more quickly for children in out-of-home care. The act reduces the length of time children are allowed to remain in custody before establishing permanency for a child. For the first 15 months a child is in custody, the state must provide reasonable efforts to reunify a child with his/her family. If the child remains in custody 15 of the most recent 22 months and has not been reunified with family, the state must begin the termination of parental rights process for a child to be placed for adoption. In September 1998, DCS reported to the Fiscal Review Committee that this could affect more than 6,000 children in custody.

In July 1997, the American Public Human Services Association’s (APHSA) Children and Family Services Committee conducted a state-by-state survey on implementation of MEPA and ASFA. Thirty–seven states and the District of Columbia responded, and a variety of recruitment strategies for more expedient adoptions were identified including:

- Contracting and partnering with private and community agencies;
- Airing weekly television and radio spots, public service announcements, newsletter/newspapers, and media campaigns;
- Partnering with groups such as One Church, One Child and Families for Kids, and businesses such as Wendy’s;
- Raising awareness of waiting children by participating in community and religious events;
- Using national and statewide adoption exchanges, web sites, and photo listings; and
- Targeting and expanding recruitment, and working with foster and adoptive parent support groups and organizations.⁵⁷

The survey results also indicate that “31 of the 38 states reported that they provide a variety of post-adoption services, including financial assistance, counseling, respite care, information and referral to community-based programs, training for therapists, day care, case management, and residential treatment.”⁵⁸ Funding for the programs comes from local, state, and federal funds such as Titles IV-E, IV-B, IX, and XX.⁵⁹

To address concerns related to the overrepresentation of minorities in the juvenile justice system, the Tennessee Commission on Children and Youth formed the Disproportionate Minority

⁵⁷ American Public Human Services Association, *Survey Results: State Implementation of MEPA and ASFA*, W-Memo, Vol.10, No. 6 (November-December 1998).

⁵⁸ *Ibid.*, p. 12.

⁵⁹ *Ibid.*, p.12.

Confinement Task Force aimed at preventing delinquent African-Americans from coming into the court system and eventually into custody. The federally funded Task Force was created in 1995 to serve as the state advisory group for the Juvenile Justice Delinquency Act. It developed an action plan in 1996, with the primary focus of establishing prevention initiatives in communities across the state. Community grants are allocated for projects designed to keep children out of the juvenile justice system. The Task Force also educates the public about the requirements of the federal law. The Task Force allocates between \$70,000 and \$120,000 annually to local governments and smaller amounts, between \$7,000 and \$20,000 through federal formula grants to nonprofits. The Task Force has not formally evaluated the percentage of children in these programs who came into custody. Further, the task force has not specifically addressed service delivery to minority children once in custody.

The Comptroller's November 1998 Performance Audit of DCS notes the lack of monitoring results of prevention and intervention programs operated by DCS. The audit suggests that DCS provide an annual report of these programs to the General Assembly indicating the effectiveness of program goals in keeping children from entering custody.⁶⁰ Since the number of minority children entering state custody is gradually increasing annually, identifying trends in the effectiveness of prevention programs on minority populations is crucial.

DCS does not have any specific program or advisory group aimed at analyzing and reducing the number of minority children in custody. However, the department has continued to work with the existing five Friends of Black Children Councils, which have been in place since the 1970s and help recruit African-American foster and adoptive parents. Newer departmental activities include current discussions regarding the creation of a center for adoption in Memphis, which could increase the number of African-American children adopted.

The Child Welfare League of America and the Institute for Black Parenting, which operates the first licensed minority adoption agency in Southern California, developed recommendations for addressing the overrepresentation of minority children in custody. The recommendations are particularly aimed at improving permanency for minority children through adoption:

1. Increase the amount of flexible (non-traditional) hours adoption service agencies are open.
2. Provide accessible adoption office locations.
3. Ensure that staff and board members of children's services-related agencies, foster care, and adoption agencies proportionately represent the ethnicity of children served.
4. Institute "Rapid Response" programs to quickly involve potential adoptive families who have expressed interest in adopting minority children.
5. Establish only reasonable or no adoption fees.⁶¹

A 1998 Tennessee juvenile court judges survey conducted by the Tennessee Commission on Children and Youth asked judges what could make the most difference in addressing minority overrepresentation in juvenile justice. The survey indicated:

⁶⁰ State of Tennessee Comptroller of the Treasury, Division of State Audit, *November 1998 Performance Audit of Department of Children's Services*, p.19.

⁶¹ McRoy, Oglesby and Grape, "Achieving Same-Race Adoptive Placements for African-American Children: Culturally Sensitive Approaches," *Child Welfare*, 76 (1), 1997.

- 58 percent favor providing effective delinquency prevention and early intervention programs. (43 of 74 respondents)
- 46 percent support ensuring favorable treatment for minority children. (34 of 74 respondents)
- 31 percent believe that providing cultural sensitivity and competency training for law enforcement, judges, teachers, attorneys, service providers, and concerned citizens would address the overrepresentation of minorities in juvenile justice. (23 of 74 respondents)

Management Issues

DCS lacks an adequate management information system to provide accurate data on children in state custody.

The lack of data on children in custody impedes efficient and effective treatment for children in state custody. Many of the data problems result from inadequate management information systems and problems merging databases during the creation of DCS.⁶² The lack of adequate information about children in state custody and the subsequent need for a database has been an issue in the delivery of services to children in Tennessee since the early 1980s.⁶³ Tennessee is not the only state that struggles with this problem. A report by the Government Accounting Office (GAO) identified it as one of the biggest challenges faced by child welfare systems in many states.⁶⁴

The department is developing a new management information system called TN Kids, but full implementation is not expected until November 1999. Although the department has preliminary designs and is testing the TN Kids system, much work remains to enable the system to analyze and report data aggregately at a statewide level. TN Kids is designed to gather and report basic demographics and caseload summaries at the regional level. However, TN Kids lacks the ability to track and assess outcomes of children placed in continuum of care contracts and other treatment options. In addition, the system needs to be able to isolate various groups of children—such as younger children, those with special needs, minority children, or children at particular placements—to analyze patterns of success or problems.

Few DCS staff are familiar with the new TN Kids system at a programming and analysis level. Apparently no one who will be responsible for analyzing and reporting information from TN Kids was involved in the design of the system. The DCS official in charge of TN Kids from its inception left the department in April 1999, and the individual responsible for establishing a quality assurance unit has not been involved in the design of the system. The department has contracted for much of the computer and program design of TN Kids. This may present a serious problem when contract staff leave unless the department hires someone who is familiar with the database. With the current CORS system, DCS has only one staff member who is able to pull information from its system beyond standard queries. Frontline case managers will also need training. To combat this obstacle, the department has planned a training program for all field

⁶² State of Tennessee Comptroller of the Treasury, Division of State Audit, *November 1998 Performance Audit of Department of Children's Services*, p. 14.

⁶³ Kathleen Maloy, J.D., Ph.D., "The Children's Plan: Report to the Annie E. Casey Foundation and the State of Tennessee," *Vanderbilt Institute for Public Policy Studies Center for Mental Health Policy*, November 1994, pp. 12, 26.

⁶⁴ General Accounting Office (GAO), Report to the Chairman, Subcommittee on Human Resources, Committee on Ways and Means, House of Representatives, "Child Welfare, Early Experiences Implementing a Managed Care Approach," GAO/HEHS-99-8, October 1998, p. 4.

staff who will enter data. In addition, DCS is planning to phase in the system by region. However, ensuring that over 1,000 DCS staff enter data accurately poses challenges.

In addition to implementation, system design, and training, the department also faces the task of converting the data from the old databases into the new system and resolving Y2K problems if TN Kids is not fully implemented; the present system is not Y2K compliant.

DCS lacks an adequate managed care system and budget to provide health and mental health services to children in state custody.

In 1995, just before the creation of DCS, Tennessee adopted a managed care approach for health and mental health services to children in state custody.⁶⁵ As of March 1998 Tennessee and 12 other states had been operating under various forms of managed care for an average of 20 months.⁶⁶ A draft report by the University of Chicago's Chapin Hall Center for Children defined managed care as it relates to child welfare as:

- A capitated payment system whereby a preset reimbursement rate is set for a bundle of services for a specified population for a predetermined period of time, and
- Care management – a set of organized activities that actually improve resource utilization and services for children and families.

The report stated that both elements, capitated rates and care management, are necessary for a strong managed care system.⁶⁷

Based on the report's criterion of a strong versus weak managed care system, Tennessee is stronger in terms of financial management, but weak on care management. Tennessee has a strong financial management system because DCS contracts are based on capitated rates that shift the financial risk to providers. However, costs are not related to outcomes. Managing care as well as dollars is essential to ensure that quality of services is not compromised with capitated rates.

In 1995 DCS began to implement continuum of care contracts as a means of shifting financial risk and responsibility to providers, to cut rising costs, and to improve service availability and accountability. Under these contracts, providers agree to provide a continuum of services to meet the child's needs at a set capitated rate per child. These contracts are designed to allow more continuity of care at a reduced cost. Contractors must provide various levels of services to children within the established reimbursement rates or suffer a loss. Although managed care is designed to provide more cost-effective services, it must first be based on objective and realistic cost estimations. The Chicago study reported that per diem rates were not based on the actual cost of care or on a set of state standards, but rather based on competitive bids by providers for specific types of residential care.⁶⁸

⁶⁵ Fred Wulczyn and Britany Orlebeke, draft of *Fiscal Reform for Child Welfare Systems: Four Case Studies*, The Chapin Hall Center for Children, University of Chicago, January 1998, p. 72.

⁶⁶ GAO/HEHS-99-8, October 1998, pp. 27-29. These twelve states include: CA, CO, FL, GA, IL, IN, KS, MA, MI, NY, OH, and WS.

⁶⁷ Wulczyn and Orlebeke, pp. 8-10.

⁶⁸ *Ibid.*, pp. 72-73.

Providers have and continue to express concern that current reimbursement rates do not cover the cost of providing services. The report states that “providers (in Tennessee) have had difficulty maintaining financial viability with the continuum model. These providers have approached DCS for fiscal relief, but so far, DCS has not raised rates.”⁶⁹ DCS has recognized the need to raise rates and included a three-percent increase in reimbursement rates in its 1999-2000 budget. Providers, however, doubt whether the three-percent increase is sufficient. The Tennessee Association of Child Care (TACC, an organization that represents 75 providers across Tennessee) testified in a legislative committee that rates did not cover the cost of providing services. TACC officials suggest a six-percent increase in rates is needed, or providers will be forced to reduce services, cut contracts, or close agencies.⁷⁰

Currently, DCS does not track treatment outcomes to assess the effectiveness of services. Although the department indicates it is establishing more outcome measures, current success is determined only by:

— whether length of time in a placement was over or under length of stay set by capitated contract,

—how quickly a child returns home, and

—whether the child remains at home for nine months without coming back into custody.⁷¹

Information is not available on assessed treatment needs of the child, treatment provided, or outcomes specific to that treatment, which is important in determining success, capitated rates, and effective treatment programs.

A recent report published by the GAO states that a sound management information system (MIS) is “critical to establishing an appropriate capitated payment rate and a performance-based monitoring system.”⁷² The department initiated capitated contracts with providers without having an adequate MIS in place. Current and future MIS systems are not designed to track resource needs, utilization, or child outcomes to the extent needed. As a result, reimbursement rates may not accurately reflect the cost of providing needed services, or assure that children receive needed treatment.

Lack of an adequate managed care system is confirmed by the consent decree review team’s report that said the state’s approach to managed care fails to meet children’s needs. The report said that managed care has resulted in “a drastic reduction in quantity, quality, and timeliness of behavioral health, medical, and dental services for custody children and children at risk of entering custody and their families.”⁷³ In conclusion, almost three years after the creation of DCS and the implementation of managed care, the state still lacks an adequate MIS system and has inadequate resources, staff, and services to meet the needs of children in state custody.

⁶⁹ Ibid, pp. 85-86.

⁷⁰ Mark Akers, the President of Tennessee Association of Child Care, Presentation to Children and Family Committee state of Tennessee General Assembly, March 3, 1999.

⁷¹ Wulczyn and Orlebeke, p. 86.

⁷² GAO/HEHS-99-8, October 1998.

⁷³ *Report of the Review Team for the EPSDT Consent Decree*, September 15, 1998, Report.

Differences in organizational culture between former staff of the Department of Youth Development and the Department of Human Services are causing problems in the development of DCS.

The merger of different agencies to create DCS meant bringing together people from different professional ideological backgrounds – those from a correctional background and those from a social services background. Many have testified about the organizational problems caused by animosity between the two departments in the formation of DCS. A consultant from the Child Welfare League of America (CWLA) described the merger as “a bad divorce where you are still living together.”⁷⁴ Today, staff from TCCY, DCS, and children in state custody indicate that merging multiple agencies has had negative effects on:

- staff turnover and morale,
- treatment of dependent/neglected children,
- role clarity, and
- the establishment of departmental unity.

Although many DCS staff agree that changes were needed with the previous service delivery systems to children, they believe that DHS staff was not included in developing changes to form DCS. This sentiment was most prevalent among team leaders and front line staff.⁷⁵ Field staff’s concerns about lack of DHS consultation may have resulted from the prevalence of Department of Youth Development staff in key leadership roles. An examination of DCS staff at the following levels—Commissioner, Deputy Commissioner, Assistant Commissioner, Director, and Regional Administrator—reveals that 26 of 43 DCS leaders came from the Department of Youth Development, while only five of 43 came from the Department of Human Services.⁷⁶ Conversely, two-thirds of the children in custody are dependent/neglected, who previously would have been in the custody of the Department of Human Services. According to DCS staff, the consent decree reviewers, a consultant from the Child Welfare League, and other officials, conflict in organizational culture is preventing the department from establishing a common mission.

Prior to the department’s creation, an evaluation of the Children’s Plan determined that the state needed a vision supporting long-term change efforts for children’s services as well as a prioritized comprehensive and informed planning process by departmental leaders.⁷⁷ More recently under DCS, the EPSDT review team’s report found over-arching organizational problems and recommended that DCS “clearly define DCS values, vision, and mission to direct child welfare and juvenile justice practices.”⁷⁸ In a letter to the Special House Task Force to Study Foster Care, one CASA (Court Appointed Special Advocate) volunteer stated that “the ongoing staffing problems are a key symptom of root cause management problems. These include poor morale, ineffective organizational structure, inappropriate salary structure, ineffective decision making, poor integration of contractors, and weak recruiting and hiring

⁷⁴ Carol Hill, testimony before the state of Tennessee General Assembly Special House Task Force to Study Foster Care, March 10, 1999.

⁷⁵ Interview with Executive Director of Select Committee on Children and Youth, 6-9-98.

⁷⁶ State of Tennessee Department of Personnel, Andrea Hawkins, 2-4-99.

⁷⁷ Kathleen Maloy, *The Tennessee Children’s Plan: How do we get there? Evaluating Mental Health Services*, American Evaluation Association, 1994, pp. 139-140.

⁷⁸ *Report of the Review Team for the EPSDT Consent Decree*, September 15, 1998, p. 25.

practices. Policymaking does not reflect input from the working level and hence, is part of the problem rather than part of the solution.”

Management has tried to organize case management according to the old DYD structure, which has been less effective in serving the dependent/neglected population. The current case management structure, used in DYD, provides for a home county case manager and residential treatment manager for each child. The Child Welfare League and the EPSDT review team’s report found that when this model is applied to thousands of children with multiple placements, the coordination of case management becomes problematic. The model has inhibited communication and coordination between the two case managers resulting in children not receiving services.⁷⁹

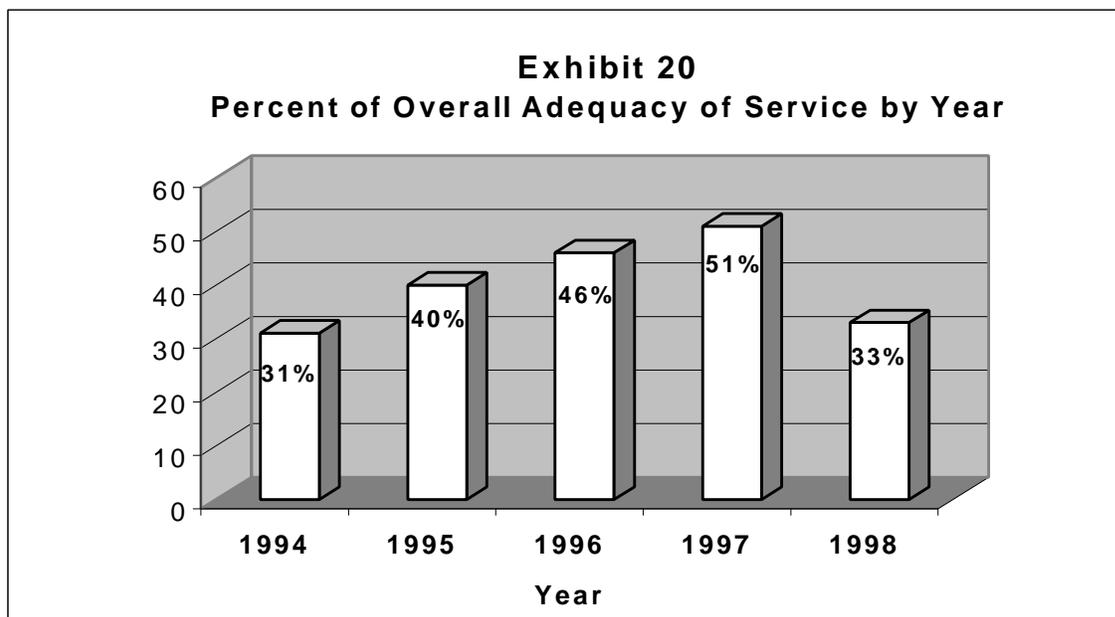
Others also claim that the DYD culture has not resulted in the optimal treatment of dependent/neglected children. Children on the Tennessee Youth Advisory Council, a group of children in state custody, recently spoke about the problem in a presentation to Juvenile and Family Court Judges. Children said they were treated like delinquents who could not be trusted even if they had not done anything wrong and were committed to custody because of parental neglect or abuse.

Problems with merging different cultures, the DYD case management approach, and inadequately trained staff have caused problems in DCS’ ability to adequately serve children. The 1998 C-PORT results show that after three years of improvement in system performance, overall system adequacy declined from 51 to 33 percent. (See Exhibit 20.)

The “essential” variables that are measured to determine overall adequacy in Exhibit 20 are:

- Assessment of needs
- Child participation
- Service plan design
- Service coordination
- Long-term view for services
- Family participation
- Service plan implementation
- Monitoring change

⁷⁹ Tennessee Commission on Children and Youth, C-PORT presentation to Special House Task Force to Study Foster Care, March 3, 1999; interviews with case managers in two regions; and interview with Camelot Staff, August 5 and 6th, 1998.



Source: TCCY, C-PORT, 1998.

The Executive Director of TCCY attributes the decline in overall adequacy to problems with the new home county and residential case management model, inadequate coordination of staff, and problems with training.

Adequacy and Quality of Staff

High turnover and caseloads, inadequately trained staff, and understaffing are impeding DCS's progress.

At the July 1998 meeting of the Select Committee on Children and Youth, lawmakers and DCS central office staff acknowledged that Child Protective Service caseloads are too high, leading to high turnover and burnout. Office of Research interviews of field staff also indicate that high caseloads are a primary concern. Team leaders and front line supervisors in one region reported that caseloads have increased since the merger and creation of DCS.

Although team leaders have not officially monitored caseloads, they report that new employees have lower caseloads of 13-18, and estimate that others carry caseloads of 35-51, with an average of 40. One region explained that caseloads have increased because referrals to Child Protective Services from law enforcement authorities have increased significantly from 60 referrals per month in 1996 to 250 referrals per month in 1998 for the same number of positions.⁸⁰

Two DCS regional administrators explain that home county case managers working with the child and family teams and CPS workers have high caseloads and high stress jobs. The workers are on call 24 hours a day, seven days a week. Generally, these employees stay from three to five years. Hiring freezes from September 1996 to January 1997 contributed to high caseloads and turnover.

⁸⁰ Interview with Team Leaders, August 5, 1998.

Court officials, academics, and advocacy groups also find caseloads to be a problem. The report of the review team of the EPSDT consent decree, released in September 1998, concluded that “DCS case managers must have lower, equalized caseloads” and that “reducing DCS caseload size is a top priority.” The report found that caseworkers were spending a great deal of time trying to obtain services for children and their families and, as a result, could not focus on the outcomes of individual cases. The potential duplication of efforts between home county and residential case managers of children in foster care further hinders good case management.⁸¹

Dr. Charles Glisson, Research Director of the Children’s Mental Health Research Center at the University of Tennessee-Knoxville, believes DCS caseloads are “getting out of hand,” leading to frustration and low worker morale. High caseloads limit the likelihood of favorable outcomes for children in custody. Caseworkers have large amounts of paperwork limiting actual contact with children in custody and their families. This hinders the caseworker’s ability to form a relationship and commitment needed to facilitate intervention.⁸² Michael McSurdy, Program Manager of the Social Work Office of Research and Public Service (SWORPS) in Nashville, a research, training, and technical assistance arm of the University of Tennessee School of Social Work, and coordinator of the state’s Youth Advisory Council, agrees with Dr. Glisson and others, that caseloads and turnover are too high and pay is too low for DCS workers.⁸³

DCS Caseload Study

To address high caseloads and turnover DCS set new caseload goals for its case managers and began a study in summer 1998 to be completed in 1999. Central office staff analyzed caseloads, then worked with the field offices to close lingering cases and reorganize field staff caseloads. Exhibit 21 examines the caseloads for the three completed regions and the new DCS caseload goals for each type of caseworker. Information from the two other completed regions was not provided to the Office of Research when requested. For the regions provided, Exhibit 21 shows that DCS caseloads were not in compliance with new standards until DCS central office helped field staff “clean up” caseloads. Upon second review, many caseloads were in compliance with the new standards; however, some were still too high.

It is not known when central office will complete all 12 regions or if DCS will be able to maintain reduced caseloads. The Child Welfare League has said that some of the new caseload goals are too high and recommends a standard of 25 cases per case manager. This would result in the need for 122 new case managers.⁸⁴ (See Appendix D for CWLA recommendations and associated costs.)

⁸¹ *Report of the Review Team for the EPSDT Consent Decree*, September 15, 1998, pp. 26-27.

⁸² Interview with Dr. Charles Glisson, Director of the Children’s Mental Health Services Research Center, University of Tennessee, August 7, 1998.

⁸³ Interview with Michael McSurdy, SWORPS Program Manager, July 7, 1998.

⁸⁴ Child Welfare League of American, *Review of the Foster Care and Adoption Programs, First Quarterly Report*, April 6, 1999, p. 33.

Exhibit 21

1998 Average Caseworker Caseloads for the Knox County, Northeast, and Upper Cum

| Job Function | New 1998 DCS Caseload Standard | Knox County Region Average Caseload (First Visit) | Knox County Region Average Caseload (Last Visit) | Northeast Region Average Caseload (First Visit) | Northeast Region Average Caseload (Last Visit) | Up Cu Re Ca (Fi |
|--|---------------------------------------|--|---|--|---|------------------------|
| Child Protective Services Case Managers | 15 - 25 | *33 | *24 | 25 | 22 | |
| Family Crisis Intervention Team Case Mgrs. | 10 - 12 | 8 | N/A | 13 | 10 | |
| Home County Case Managers Social Services | 25 - 35 | ***42 | ***40 | ***&***33 | ***&***37 | |
| Home County Case Managers Juvenile Justice | 35 - 45 | Not provided separately (See average above) | Not provided separately (See average above) | Not provided separately (See average above) | Not provided separately (See average above) | (S |
| Residential Case Managers-Contract Agencies | 35 - 45 | ***34 | ***34 | ***34 | ***32 | |
| Residential Case Managers-DCS Foster Homes | 25 - 35 | Not provided separately (See average above) | Not provided separately (See average above) | Not provided separately (See average above) | Not provided separately (See average above) | (S |

Source: Data provided by the Department of Children's Services.

Figures are rounded up to the nearest whole number.

N/A-Not available-DCS did not conduct follow-up review in Knox County of Family Crisis Intervention Team Case Managers.

** Four of 17 Child Protective Service investigators also have follow up responsibilities of families that may be at risk of having their chi*

***Three of the 45 Home County Case Managers also have CPS or residential case manager duties.*

****Caseload figures did not distinguish between social service or juvenile justice home county case managers or between contrac residential case managers.*

Staff turnover

In September 1998, 23 percent of DCS caseworkers had less than one year's experience. The average turnover for the 12 regions of the state for FY 1997-98 averaged 17.49 percent, ranging from almost 9.5 percent in Northeast Tennessee to a little over 27 percent in Southeast Tennessee. Five of the 12 regions had fewer caseworkers leave than the previous fiscal year, while seven of the 12 regions had more turnover. In August 1998, team leaders in one region reported an 80 percent turnover in Child Protective Services caseworkers in 10 months.⁸⁵ DCS officials illustrate that high turnover is not uncommon by explaining that the FY 1997-98 turnover for Correctional Counselor II positions in the Department of Correction averaged 25 percent, higher than that of DCS case managers.⁸⁶ The consent decree review team report indicates that high turnover of DCS caseworkers contributes to the loss of client information and hinders caseworkers' awareness of children's needs.

Nationally, caseworker turnover is a problem. The U.S. General Accounting Office reported in 1995 that, next to funding, the most serious problem that affects the delivery of child welfare services in most states is staffing. According to the report, 90 percent of states reviewed reported difficulty recruiting and retaining caseworkers. The report determined that inadequate staff results in extended stays in out-of-home care and delays in family reunification.⁸⁷ In addition, filling case manager vacancies disrupts operations and contributes to high caseloads. It results in increased training costs and disruption of services to children and families.

Top department staff indicated that high turnover might have increased with the creation of DCS. Department officials report that they are trying to combat the increased turnover by advertising available positions, increasing efforts on recruiting, reclassifying certain positions to standardize pay, and increasing training.⁸⁸

Case Manager Salaries

DCS regional administrators indicate that starting salaries are too low to attract good applicants. Currently, the minimum starting salary for a Case Manager I is \$1,682 per month or \$20,184 annually.⁸⁹ A 1997 comparison study conducted by the Child Welfare League showed that Tennessee average case manager salaries were 32 percent lower than the national average case manager salary in states responding to the survey.⁹⁰

Salaries for some case manager positions are compared in the 1998 *Southeastern States Salary Survey* and illustrated in Exhibit 22. It shows that Tennessee pays less than the Southeastern average for most positions.

⁸⁵ Interview with Team Leaders, August 5, 1998, in one DCS region.

⁸⁶ Department of Children's Services CS Case Manager Turnover Data, November 1998.

⁸⁷ Annie Woodley Brown and Barbara Bailey-Etta, "An Out-of-Home care System in Crisis: Implications for African-American Children in the Child Welfare System," *Child Welfare*, 76,1, pp. 69 and 70, Jan-Feb, 1997.

⁸⁸ Interview with Commissioner Hattaway, Bo Irvin, Marilyn Hayes, Ken Steverson, and Dottie Hagood, June 11, 1998.

⁸⁹ State of Tennessee Department of Children's Services, DCS written responses to questions submitted by the Fiscal Review Committee, September 25, 1998.

⁹⁰ Child Welfare League of America, *1997 Salary Study*, as cited in the *Review of the Foster Care and Adoption Programs, First Quarterly Report*, April 6, 1999, p.34.

Exhibit 22

1998 Case Manager Salary Information for Tennessee and 14 Southeastern States

| Tennessee's Titles | Position Requirements used in Comparison | TN Average Annual Salary | Comparison States Average Salary for Similar Positions | TN Ranking Compared to Average Salary in 14 Comparison States |
|--|--|--|--|---|
| Case manager 1 | Not Compared | \$18,432-\$29,508 (minimum to maximum salary) | Not Compared | Not Compared |
| Case manager 2/CPS Investigator | Bachelor's Degree 3 yrs experience, Investigates abuse/neglect allegations. | \$26,301 | \$27,060 | 9 th |
| Case manager 2 (Home county or Residential Case manager) | Bachelor's degree, 1 yrs experience, Counsel's children and families. | \$24,366 | \$25,303 | 7 th |
| Case manager 3 | Not Compared | \$21,756-\$34,908 (minimum to maximum salary) | Not Compared | Not Compared |
| Case manager 4 | Master's Degree in Social Work, 3 yrs experience, First line supervisor and trainer. | \$33,913 | \$35,390 | 8 th |
| Team Coordinator | Master's Degree, 2 yrs supervisory, consulting, or managerial experience, Supervises a unit, develops policy. | \$40,845 | \$39,626 | 7 th |

Sources: State comparisons from the 1998 Southeastern States Salary Survey, provided by the Tennessee Department of Personnel. Fourteen states included: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Missouri, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, West Virginia. Salary information for Case manager 1 and 3 from Department of Children Services documents to the Fiscal Review Committee, September 1998. For FY1999-2000 case managers' base salary was slightly increased.

Training

DCS staff need more training. The September 1998 Report by the Review Team of the EPSDT Consent Decree determined that added training was needed to prepare DCS staff to assess a child's and family's needs and to develop a specialized treatment plan for the child and family.⁹¹ The Executive Director of the Commission on Children and Youth in presenting 1998 C-PORT data to a legislative committee stated that some decreased scores in the system indicators illustrated a need for more and better training on assessment, permanency plans, and role clarification. An official from the Child Welfare League of America reported its results of field visits to the Special House Task Force to Study Foster Care in April 1999. She stated that the department's greatest need was improving training for the first line supervisors in the field.

Dr. Glisson said that a lack of adequate training and high caseworker turnover also contribute to problems with case management and getting children needed services. Currently, new DCS case managers participate in a two-week training session of core skills and one week of specialized training in either child welfare or juvenile justice. Referring to the caseworkers' core training, Dr. Glisson says it is "impossible to learn

⁹¹ Marty Beyer, Ph.D., Deborah Bryant, M.D., and Paul DeMuro, *Executive Summary, Report of the Review Team for the EPSDT Consent Decree*, September 15, 1998, p. 25.

everything (about child development) in two weeks.” He believes that DCS spends a great deal on training new people who leave very soon afterwards. Dr. Glisson suggests that DCS should rethink its departmental culture, expand training, and increase required caseworker qualifications. Specifically, he believes that all front line staff should have masters degrees to accurately assess children and to effectively change the culture from one of bureaucracy and role-confusion to one focused on assessing children’s needs and obtaining needed services.⁹²

Some DCS staff interviewed indicated their initial training did not adequately prepare them for their job responsibilities. According to the Child Welfare League, “most public child welfare training systems provide a minimum of six to eight weeks of training in core skills for new child welfare staff.”⁹³ In the spring of 1999 the Child Welfare League recommended that Tennessee double its new employee training from three to six weeks at a cost of \$626,800. (See Appendix C for CWLA recommendations and associated costs.) Currently, the department has a \$2.3 million contract with the University of Tennessee to write curriculum and train staff.

Staff will also need computer training on the new TN Kids system. DCS case managers will be responsible for entering data on all assigned caseloads into the new database, but many lack training and experience working with computers. The usefulness of TN Kids will largely depend on the quality of the data entered by the case managers.

Additional Staff Needs

DCS currently has a shortage of attorneys. The Adoption and Safe Families Act will require additional legal staff to complete the termination of parental rights dictated by the federal act. In September 1998 the department reported that 6,000 children in custody had been in foster care 15 of the most recent 22 months, which would require DCS to initiate the termination of parental rights or return children home.⁹⁴ These terminations are in addition to attorneys’ already cumbersome caseloads. DCS reported that in September 1998, 7,219 active cases were handled by 16 DCS field attorneys, or more than 400 active cases per attorney. Despite heavy caseloads, the attorney turnover and vacancy rates have been low.⁹⁵ Additional cases terminating parental rights—more than 6,000— at the same attorney/caseload ratio, would require an additional 15 attorneys.⁹⁶ The court, DCS officials, and the Child Welfare League have all recognized the need for more attorneys. Without additional attorneys the return of children home, termination of parental rights, and adoptions are delayed. This results in extended stays in custody and increased costs. (See Appendix D.)

⁹² Interview with Dr. Charles Glisson, Director of the Children’s Mental Health Services Research Center, University of Tennessee, August 7, 1998.

⁹³ Child Welfare League of America, *Review of the Foster Care and Adoption Programs, First Quarterly Report*, April 6, 1999, p. 43.

⁹⁴ Exceptions to ASFA allow for termination of parental rights sooner if parent has committed certain criminal acts. Termination may not have to initiate as quickly if the child is placed safely with relatives; if there is a compelling reason not to terminate rights; or if the family has not received services required in case plan.

⁹⁵ State of Tennessee Department of Children’s Services, DCS written responses to questions submitted by the Fiscal Review Committee, Attachments E, F, and G, September 25, 1998, p. 3.

⁹⁶ Ibid. Attachment H.

Legislative Alternatives

- **The General Assembly may wish to amend TCA 37-5-105 (4) to require the following information be included in the Department of Children’s Services annual report:**

- Number of children in state custody by age, race, gender, region, adjudication, type of abuse and/or offense that lead to petition for custody,
- Number of incidents of abuse in state custody,
- Number of placement changes by type of adjudication,
- Number of delinquents in state custody who were previously dependent/neglected,
- Number of adoptions per year by age, race, and gender, and number currently awaiting adoption,
- Update on compliance with Safe Families and Adoption Act,
- Number of case managers and average caseloads for each region and the state,
- Number of children placed out of region by adjudication and type of placement,
- Average cost of services per child by adjudication, with information that shows what costs were included to calculate cost,
- Outcome reports on number of children leaving custody by adjudication and placement, and
- Recidivism rates for all adjudications.

The General Assembly during the 1999 session adopted legislation (Public Chapter 508) requiring additional information in DCS’ annual report including: level of placement, placement type, average length of custody, the number of available DCS placements, and case manager and attorney staffing information. The definitions, racial composition, and statutory or regulatory authority are to be given for each these items in the annual report where appropriate.

- **The General Assembly may wish to statutorily prohibit the placement of dangerous children with non-dangerous children in temporary placements.**

Temporary placements are designed to house children during assessment and permanency planning. During the time period examined for this report, there were no departmental policies or statutes restricting what types of children are placed together in temporary placements. As a result, dangerous children may be placed with previously victimized children, placing abused children at further risk. Other facilities are statutorily restricted from placing certain types of children together. TCA 37-1-130 (4)(b) prohibits children adjudicated dependent/neglected from placement in youth development facilities designed for seriously delinquent children, but the reverse is not prohibited.

The General Assembly in 1999 recognized the risk in allowing “dangerous” and non-dangerous children to be placed together in custody and passed legislation prohibiting the placement in temporary shelters of certain types of delinquent or alleged delinquent children with children adjudicated dependent/neglected. Public Chapter 508 amends TCA 37-1-116 requiring the total separation including space, programming, and staff of children who committed felony offenses against a person or felony drug offenses from other children held in temporary shelters.

- **The General Assembly may want to statutorily limit the amount of time children may stay in temporary placements.**

Children in temporary placements do not receive treatment services and may not be enrolled in school. Extended periods in temporary placements may hinder children’s progress. Data show that for one point in time examined in 1998 and 1999, 37 percent of children in temporary placements had been there

longer than 30 days. TCA 37-1-128 limits the placement of pre-dispositional children in temporary placement to 30 days; however, the same limit does not apply to children who have been remanded to state custody.

The General Assembly during the 1999 session adopted legislation (Public Chapter 508) restricting to 30 days the time children may spend in temporary placements without needed services.

Departmental Recommendations

- **DCS should develop a uniform and centralized means of monitoring waiting lists and children in temporary placements to better assess shortages.**

Currently, many children are placed in temporary shelters, in inappropriate placements, and out of region. Any information kept is done so at the regional level.

- **DCS should consider kinship foster care as an effective, economical, and efficient means to deal with the shortage of placements.**

Kinship care can reduce the shortage of placements and foster parents and place children closer to home. The Florida legislature recently passed legislation making it possible for relatives lacking financial resources to receive compensation for foster care to children in state custody.⁹⁷ Currently, states are allowed to use excess Temporary Assistance for Needy Families (TANF) funds to fund some kinship programs, which may provide resources to implement such a program.

- **Because the Family Crisis Intervention Program is new and the full effects of the program are not known, DCS should create evaluation measures to monitor the program's performance.**

Evaluation should include:

- reasons for initial referral,
- age, race, and gender of participants,
- outcomes of cases by referral type,
- reasons program is successful/unsuccessful,
- recidivism rates,
- reasons for certification to juvenile court (i.e., why program was not effective with those that are certified),
- length of time each family is served,
- average length of time for program,
- number of participants that receive extensions and reasons, and
- cost per family to operate program.

- **DCS should review licensing standards, focusing on preventing the occurrence of serious problems found in some licensed facilities.**

An examination of the standards allows for licensure to continue to operate as a baseline measure while ensuring that children are in adequate facilities. Currently, there are some facilities with which the state has canceled contracts to hold children in custody because of serious concerns, but the facilities

⁹⁷ While kinship care may provide a solution to shortages of placements and keep children closer to home, the National Center on Addiction and Substance Abuse cautions against placing children with relatives just for convenience. They point out the need for careful assessment to determine relatives' ability to care for a child due to the dysfunctional families from which child-abusing parents often come.

maintained licensure under current standards. Revised standards were submitted in 1994, but have never been approved or implemented.

- **DCS should consider reviewing DCS operated facilities annually.**

Except for the Tennessee Preparatory School, DCS operated facilities are reviewed only every three years during accreditation. Other facilities housing children in state custody are evaluated annually during licensure. Evaluating state and non-state facilities annually using similar standards would allow for comparison. Current comparison between types of facilities is difficult. Annual review of DCS operated facilities could be incorporated into the existing licensure process or through the creation of an annual review process similar to that used by Department of Correction.

- **DCS should expand its review of contracted facilities to better ensure that agencies are adequate and are providing services that best meet children's needs.**

The current contracting process does not include a formal review of:

- facility inspections of various types;
- incident reports and child protective services investigations involving a facility;
- qualifications, gender, and ethnicity of facility staff; or
- outcome measures of children in a facility.

Consultation with staff from DCS' Licensing Division, Finance and Administration's Division of Resource Development and Support, Child Protective Services, DCS' field offices, and Community Service Agencies would allow contracting decisions to include the knowledge of those who evaluate and place children in facilities.

- **The Department of Children's Services and TennCare need to complete Early and Periodic Screenings, Diagnosis and Treatment (EPSDT) evaluations within 30 days of custody and improve access to psychological evaluations.**

The state is not complying with the John B. Consent Decree or federal law by failing to ensure that all children in state custody on TennCare receive EPSDTs. In addition, psychological assessments should be ordered and obtained for those showing needs during EPSDT. Proper assessment of needs will help ensure children's needs are met and provide a baseline measure for evaluating a child's progress in custody.

- **DCS should better evaluate and measure the quality of services and outcomes of those served.**

Currently there is little accountability for quality of services for children in state custody. The consultants' report and 1998 C-PORT results show a decline in quality of treatment. Outcomes are based primarily on returning home within the preset length of time allowed under contracts based on capitated rates and if a child remains at home for nine months without returning to custody. It does not measure the quality of treatment provided by type of placement nor recidivism rates.

- **DCS should improve monitoring of incidents of abuse of children in state custody.**

Currently, the department does not monitor and report abuse of dependent and neglected children in state custody separately from other investigations. Current data gathered on incidents of abuse involving dependent/neglected children does not distinguish who perpetrates incidents of abuse, specify type of abuse committed, placement, characteristics of victim, or the outcome of investigation. Such information would prove valuable in determining the extent and types of incidents involving children in custody.

- **DCS should collect and analyze data to determine whether minority children are treated differently than non-minority children in custody.**

Such data should include:

- Number of CPS investigations and outcomes by race
- Differences in adjudication based on ethnicity
- Needs of children in custody
- Frequency of children receiving EPSDT and psychological evaluations
- Frequency of mental health diagnosis
- Treatment received
- Placement type, number of placements, number placed out-of-region
- Length of time in custody
- Percent of children involved in incidents and CPS investigations while in custody
- Type of permanency achieved
- Number of termination of parental rights by race
- Recidivism rates of children reentering custody

- **DCS should increase efforts to place African-American children in appropriate adoptive or foster homes.**

DCS, CSA, and court staff say that it is more difficult to establish permanency for African-American children because of a lack of appropriate adoptive and foster homes. Proposals during the 1999 legislative session included kinship care and the creation of a Center for Adoption in Shelby County, both of which may have improved the difficulties in finding permanency for minority children. In addition, the Child Welfare League recommended that DCS create a Center for Adoption in each of the 12 regions of the state.

Although none of these specific proposals was adopted by the 1999 General Assembly, an additional \$15.4 million was appropriated to implement some of the Child Welfare League's recommendations. (See Appendix D for cost of CWLA recommendations.)

- **DCS should increase efforts to hire staff and contractors that are more ethnically and gender representative of the children served.**

In order to make improvements, DCS should analyze ethnic and gender distribution of current DCS, facility, and contract agency staff and develop suggested targets if disparity exists. DCS does not compare minority staffing to demographics of children served. Interviews with DCS staff indicate that it is sometimes difficult to recruit and retain minority staff, particularly in rural areas.

- **DCS should develop system-wide training on cultural sensitivity and require comparable training of contract agency staff with an evaluation component to measure effectiveness of training.**

A limited portion of the pre-service training for new DCS staff includes cultural sensitivity training. Beyond this, additional training on cultural sensitivity is offered at the discretion of an individual facility or regional office. Literature shows that cultural sensitivity training improves the treatment of and decision-making about minority children. Training and testing materials on cultural sensitivity and its importance are available through the Child Welfare League of America and other agencies.

- **DCS should design its management information system to track the need for placements and use information to manage resources more effectively.**

Children are spending months in temporary shelters and on waiting lists because of a lack of placements. The current method for assessing needs is insufficient to provide timely, uniform, and objective information regarding needs of the department statewide or from region to region. DCS should design TN Kids to uniformly track and report the number of children on waiting lists and children in temporary placements to better assess quantity, types, and levels of placements needed. This information should in turn be used to manage resources more effectively and budget for needed services.

- **DCS should improve its managed care system to formally evaluate quality of services for children in state custody, and use information to determine if capitated rates are adequate to provide quality services.**

Currently the department does not track and compare cost of providing services with capitated rates, or outcomes of those services. Both the Child Welfare League and the Tennessee Association of Childcare have indicated that capitated rates are too low to pay for services provided under continuum of care contracts. The Government Accounting Office, as well as others have emphasized the importance of using outcomes to ensure that quality treatment is not compromised to compensate for rates that are too low, or conversely compromised to increase profits. To do this the department's management information system must be able to track and compare costs with outcomes. The current database does not measure either.

- **The Department of Children's Services should consider balancing management between staff formerly from the Department of Youth Development and the Department of Human Services.**

Currently, most regional and central office administrative/management personnel are from the former DYD that served juvenile delinquents. However, most children served under the new department are dependent/neglected children previously served by the DHS. Allowing more input from former DHS staff in implementing changes could help alleviate some organizational conflict and create a more unified department. In addition, when hiring new employees the department should strive to employ staff with previous child welfare experience.

- **DCS should increase efforts to recruit and retain qualified caseworkers. This may include a departmental request that the starting salary of case managers be increased.**

In September 1998, 23 percent of DCS caseworkers had less than one-year's experience. In addition, almost six percent of caseworker positions were vacant. Regional administrators interviewed reported that starting salaries are too low to attract good applicants. For 1998, caseworker salaries in Tennessee are slightly lower than average salaries in most Southeastern states and much lower than the national average.

For FY 1999-2000, the base salary for caseworkers was increased slightly.

- **DCS needs to hire additional attorneys.**

According to the response given by DCS to the Fiscal Review Committee in September 1998 the Adoption and Safe Families Act will require additional legal staff to complete the termination of parental rights dictated by the federal act. In September 1998 DCS reported that up to 6,000 children in custody might require termination of parental rights under the federal act. These cases are in addition to the average caseload of over 400 active cases per attorney. DCS staff, the consultant representing the Child

Welfare League of America, and the Executive Director of the Tennessee Commission on Children and Youth all recognize the shortage of attorneys at DCS.

Funding for DCS for FY 1999-2000 included the creation of 36 new attorney positions. In addition, Public Chapter 508 adopted during the 1999 General Assembly shifted responsibility of paying for guardian ad litem from DCS to the Administrative Office of the Courts in hopes of more efficiently finding and paying for appointed attorneys for children in custody and their families.

Appendix A

Tommie F. Brown, DSW, ACSW
State Representative
SUITE 22 LEGISLATIVE PLAZA
TENNESSEE GENERAL ASSEMBLY
NASHVILLE, TENNESSEE 37243-0128
(615) 741-4374

House of Representatives
28th Legislative District

Chattanooga

Secretary
CONSERVATION AND ENVIRONMENT

Member of Committees
CHILDREN AND FAMILY AFFAIRS
FINANCE, WAYS AND MEANS

March 6, 1998

Mr. William R. Snodgrass
Comptroller of the Treasury
State Capitol
Nashville, TN 37243-0260

RE: Study relating to the placement of children who are in the custody of the
Department of Children's Services

Dear Mr. Snodgrass:

The placement of children who are in state custody is of vital concern to many citizens throughout Tennessee, as such issue has a significant impact on the lives of numerous children and their parents.

As you know, the Department of Children's Services is charged with the difficult task of placing these children in appropriate foster home, group home and institutional settings. We must ensure that the department employs the most competent professionals, the soundest policies and most appropriate resources to carry out this most important duty. The best interests of a child must be of paramount concern when the Department of Children's Services considers placement of such child. It is often in the best interests of a child for whom family visitation is desirable to be placed locally, to ensure that family visitation is feasible. For those children who are not placed locally, but for whom family visitation is desirable, the Department of Children's Services should provide transportation assistance for the parents to the foster or group home or institution where their child is residing.

It is also important to carefully consider the setting in which a child is placed, and to ensure that such setting is sensitive to the cultural needs of the child.

Mr. William R. Snodgrass
March 6, 1998
Page 2

The oversight of group homes should also be of paramount concern to the Department; these homes should be of the highest quality and their staffs should exhibit the highest degree of professional competency and cultural sensitivity.

Because the placement of children who are in the state's custody directly affects their chances to live healthy and productive lives, we should work assiduously to address the myriad and complex issues surrounding their placement.

The division of State Audit of the Office of the Comptroller is hereby requested to conduct a performance evaluation of the Department of Children's Services' policies and practices governing the placement of children in state custody. The Division of State Audit is requested to report its findings and recommendations no later than January 5, 1999.

Thank you for your assistance in this matter. I look forward to reading your report of findings and recommendations.

Very truly yours,



Tommie F. Brown, DSW, ACSW
State Representative

TFB/sn

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Appendix B

Department of Children's Services Response to Report

June 9, 1999

Ms. Ethel Detch, Director
Comptroller Office of Research
505 Deadrick Street, Suite 500
Nashville, TN 37243-0268

Dear Ms. Detch:

I appreciate the opportunity to respond to the report prepared by the Office of Research under the direction of the Comptroller of the Treasury. Most of the concerns outlined by your staff are consistent with those also identified by the department management, committees of the legislature, child advocacy groups, foster parents, and concerned citizens. Your report examined a number of areas in the department, primarily the "complex issues surrounding placement of children in state custody".

To set the stage for this response, let me go back to a year long strategic planning session attended by regional administrators, CSA Executive Directors, and all of our senior management team. This group began meeting the end of 1997 and into 1998, identifying key areas in the department needing improvement. The specific problem areas identified at that time were:

- That contracts merged into the single department did not have a basis for rate or vendor selection, they did not have a system for approval of billing and did not have measurable outcomes.
- Contracted out of home services were not based on a needs assessment and were not regionalized; therefore, children were placed across the state wherever there was an opening.
- Intervention and diversion services were fragmented, with no departmental oversight of intake or service delivery.
- Training of all staff needed major improvement
- Foster Care, Adoption and all Child Welfare Services in general had been through numerous study groups in the past under the Department of Humans Services. Many of these recommendations were still awaiting implementation.
- There was no case review system or method of accountability for cases transferred from some departments into the Department of Children's Services.

Along this same time, the Adoption and Safe Family Act was passed in Congress in Nov, 1997 and came into effect in Tennessee in July, 1998. Along with this and having identified the major program areas which needed review, re-design and or complete change, the Department of Children's Services began seeking a consultant or group of consultants to facilitate the process. Where possible, such as contracts, needs assessment, policy changes, contract accountability, case file review and rates, immediate action was taken to correct problem areas. After interviewing and receiving several proposals, the Department began negotiations with Child Welfare League of America to review all reports and studies, interview

staff, foster parents, contract agencies, children, courts and birth families, review files, and review policy and procedure. The charge was to assist the Department with implementation of “Best Practice” in child welfare. The Department recognized that the system of service delivery has seen little change or updating in the past twenty years, and we would need a consulting group such as Child Welfare League of America to bring expertise to the State and also information from other states experiencing similar problems or issues regarding child welfare. The problems noted in the strategic plan and the reasons for hiring the Child Welfare League of America were, in fact, given to the Comptroller staff as issues recognized by the Department as needing review, and corrective action has been taking place over the last fiscal year in all areas.

The Office of Research identified the following as issues for study in your report and we are responding to those as you indicated.

#1 Quantity of placements: Tennessee lacks sufficient placements to meet the needs of children in state custody.

The department has had a shortage of certain types of resources. This has particularly been evident with younger children with mental health issues and with sex offender treatment availability for all ages. We recommended and received \$10.4 million dollars for FY 99-00 in new funds to address priority needs for emergency care, specialized treatment needs for children and expansion of Level 2 and Level 3 resources state-wide. We also requested and received funding totaling \$1.3 million dollars for additional services for dually diagnosed children and a 3% increase for all contract providers, including DCS foster homes. The Department completed a residential needs assessment in May, 1999 and is in the process of contracting for additional services based on these regional reviews and funding for 1999-2000. This process will be complete October, 1999.

#2 Quality of Placements: Overall, DCS appears to meet the basic food, shelter, and amenity needs of children in custody; however, detailed information evaluating the quality of the institutions, services available, and child performance is limited.

The report indicated fragmentation in the evaluating process but the Department has an extensive system of contract accountability and review. Contracts for services are based on a regional needs assessment, waiting lists, regional trends and service needs in a region. Contracts are outcome based and have a series of evaluations. First, all residential agencies have regional departmental staff assigned to oversee the youth in the program, review treatment plans, review quality of care and progress of the child and coordinate with the provider. Also a central office staff person is assigned to each grand region to assist with placements, unique care situations and trouble-shoot problems with providers. Contract agencies are reviewed by our licensing division and by the Department of Finance and Administration auditors on an annual basis. The F&A review includes interviews with staff, DCS staff, youth in the program, families and other coordinating agencies and departments. Each youth in foster care has a permanency plan developed with the family and as appropriate, the child. The treatment plans in the various agencies are developed on the permanency plan for the individual child. These plans are reviewed at least annually by the court and the Foster Care Review Board. Therefore, there is a highly accountable method for review of the quality of care in contracts. All contracts also have outcomes tracked and reviewed. This information is utilized in the consideration of the annual renewal of each contract.

#3 Cultural Sensitivity: Corresponding to the nationwide trend, African-American children in Tennessee are overrepresented in the juvenile court system and in the proportion of children in state custody.

The state Juvenile Courts are responsible for commitment of youth to the custody of the Department of Children's Services; therefore the Department cannot address minority representation in the custodial numbers. What we can do is to ensure that all children in the custody of the Department are given a thorough assessment and appropriate and timely treatment. In seeking permanency for African-American children in foster care, the department will continue to work with all families on reunification when possible, and seek appropriate numbers of African American families for foster care and adoption of custodial children. New DCS staff receive cultural sensitivity training in the Department's pre-service. The Department's Title VI report specifies diversity training for staff, cultural sensitivity training for staff and contract agencies.

#4 Issues relating to overall organizational functioning of DCS: Differences in organizational culture between the former staff of the Department of Youth Development and the Department of Human Services are causing problems in the development of DCS. When the department was formed, the entire Department of Youth Development was folded into the new Department of Children's Services. Only a portion for the Department of Human Services was moved. Also, the Department inherited employees from the Department of Health, the Department of Education, the Department of Mental Health and Mental Retardation, and the Department of Finance and Administration. Meshing cultures, policies, procedures for six different departments has been one of the major challenges over the past 2 years. The Commissioner and senior staff have recognized the diversities of cultures and in fact have had to learn to work and appreciate each other as many key DCS staff from the central office have also come not only from other departments but from outside state government.

The Department of Children's Services in collaboration with the University of Tennessee has redesigned the training delivery system over the past year, adding twenty-four trainers through the University of Tennessee to focus on improved regional training. Through re-allocating funds, the training budget was increased from \$800,000 to \$2.3 million to increase pre-service training, foster parent training, training for foster parents with medically fragile children, and formulation of in-services and supervisor training component.

Another item previously identified by our Department and addressed in your report is the need for staff attorneys. Funding for an additional 36 attorneys was approved 2 weeks ago by the Governor and the General Assembly.

I would like to add two more items which are crucial to this review. The first is not having an accurate information system. A majority of the report compiled by the Comptroller's office was review of data from the Department of Children's Services CORS database. Over the last 2 years, the department has been working toward a comprehensive, non-duplicative information system, TNKIDS. Prior to this, the department operated with 3 antiquated, undependable and inaccurate data systems. As efforts toward this new system has moved forward, there has been a transfer of data from multiple databases into CORS, then a transfer of data, beginning this month (June, 1999) into the new TNKIDS system. The department cautioned the Comptroller's office that the CORS data was sometimes inaccurate, duplicative and that there was a high risk of faulty conclusions based solely on the CORS data. The Department has had to rely on a variety of methods to evaluate and check information on a daily basis, due to the conversion to

TNKIDS, especially in the past fiscal year. It has not been possible to solely use CORS to determine outcome measures, assessments, review records, complete needs assessments, target service gaps, or otherwise review programs.

And lastly, DCS has taken several significant steps towards addressing concerns with access to medical and behavioral services for children in custody. The Department and the TennCare Bureau are under a consent order addressing services that determine children's physical, behavioral and developmental needs. The implementation of a multifaceted program for children has begun in response to the consent order and the recommendations from the strategic plan and CWLA review.

DCS has implemented a Health Unit in each of its twelve regions to provide programmatic supports in the areas of behavioral and medical services for children in state custody. They are assisting in the access of services or needed referrals for services by communicating behavioral or medical concerns to MCOs, the BHO, or to providers. They are a resource for case managers on behavioral or medical concerns for the children on their case load. Units are comprised of a DCS TennCare representative, a Nurse Practitioner or other Nurse appropriately licensed and educated, and a part-time Clinical Psychologist. (In 4 rural regions, Psychologists were not located; recruitment for LCSWs has begun). Health Units have taken the lead to educate case managers on E.P.S.D.T, and are providing administrative assistance in monitoring compliance with departmental goals on screenings for children in custody.

Another initiative towards improving medical and behavioral services is training for access and advocacy. In conjunction with its contractor, the University of Tennessee College of Social Work, DCS has developed a curriculum on TennCare for DCS case managers on access and advocacy to TennCare. Training began in May, 1999 and will continue until all staff has been trained. It is anticipated that training will be completed in July, 1999. DCS case managers are receiving technical assistance with TennCare. DCS will implement mental health case management services for children in foster care. Mental health case management is a service available on a 24 hour/7 day a week basis and provides for crisis management for high needs children, facilitates the planning of and implementation of behavioral health services, assist with referrals, and provides support to the child's placement. This service will be provided to those children for whom it is medically necessary in addition to the case management services already provided by DCS case managers for children in custody. DCS expects this service to be implemented within the next six months. DCS will implement a health form that will provide basic health information on the child. This health form will "travel with the child." DCS continues to work with the Bureau of TennCare on initiatives to improve access to services, including enrolling children who come into custody sooner so that services can be obtained on a timely basis. DCS will continue to implement the provisions set forth in the proposed Remedial Plan, and will continue to work with the Bureau of TennCare to find ways to improve medical and behavioral services for children in custody.

Three pieces of legislation were passed in the General Assembly this year which addresses areas of concern noted in your report. 1) **TCA 37-5-105** was amended to expand the information included in the department's annual report. This added information will include caseload information, attorney case loads and representation, number of custodial children by commitment types, average lengths of stay, and racial compositions. 2) **TCA 37-1-116** was amended to address separation of children who are alleged to be delinquent and considered dangerous from children who are dependent/neglected in shelter or temporary placements.

3) **TCA 37-1-130** was amended to encourage and support access of services to a child as soon as possible after entry of the court's orders and to not detain a child in shelter care longer than 30 days.

In closing, I want to re-emphasize my commitment and my staff's commitment to improving the lives of children who are placed in the custody of the state. The review of the Office of Research seemed to be a point in time, predominately late 1997 and early 1998. A review of the Department's plans for corrective actions and or responses to other Comptroller's audits, the consent order remedial plan and corrective action steps, responses to the Select Committee on Children and Youth, House Committee on Child and Family Affairs, the House Special Task Force on Foster Care, the Departmental Strategic Planning and key performance indicators formulation process would demonstrate that the department has taken substantial steps in rectifying many of these issues. These steps and plans were well underway at the time of the report and addressed all areas of concern. Also, a review of the "system" prior to the creation of a single Department, would recognize monumental changes, successful re-design or improvement from the poorly managed, fragmented services prior to the new Department. We are determined to carry out the recommendations of the Child Welfare League, to report timely and appropriately to all legislated oversight committees, to appropriately expend funds which were allocated to improve and impact these problems and needs of the department and to most of all, improve and impact the lives of vulnerable children in our state. If I or anyone on my staff may be of any further assistance, please feel free to call me.

Sincerely,

George W. Hattaway
Commissioner

cc: Bo Irvin, Deputy Commissioner
Christa Martin, Director of Internal Audit
Marilyn G. Hayes, Assistant Commissioner
Sandra Burke, Assistant Commissioner
Dottie Hagood, Assistant Commissioner
Randy Griggs, Assistant Commissioner
Terry Bassham, Assistant Commissioner

Appendix C

List of Individuals Interviewed for Report

Department of Children's Services

George Hattaway, Commissioner
Sherry Abernathy, Director of Child Protective Services
Vasu Bodugum, Software Development & Support
Leonard Burton, Director of Foster Care
Jane Chittick, Director of Adoption
Lisa Faehl, Director of Research and Planning
Ed Cole, Director of Information Systems
Jerry Hughett, Director of Residential Licensing and Interstate Compact
David Reeves, Director, Oak Ridge Group Home
Ken Steverson, Director of Regional Services, Department of Children's Services
Field Staff from two DCS Regions including case managers, front line supervisors, and regional administrators

Other State Officials

Fred Adom, Director of Financial Systems Monitoring Group, Department of Finance and Administration
Suzie Baird, Director of Programs, TennCare
Representative Tommie Brown
Janice Browne, Director of Disproportionate Minority Confinement Task Force, Tennessee Commission on Children and Youth
John Dunavant, Director, Ombudsman Program, Tennessee Commission on Children and Youth
Dr. Charles Glisson, Director of the NIMH Children's Mental Health Center, University of Tennessee, Knoxville
Alice Hamilton, Administrative Services Assistant IV, Appeals Division, Department of Health
Linda O'Neal, Executive Director, Tennessee Commission on Children and Youth
Cindy Perry, Executive Director, Select Committee on Children and Youth
Scott Pierce, Budget Analyst, Department of Finance and Administration
Pat Wade, Director of C-PORT, Tennessee Commission on Children and Youth
Nancy Whittemore, Director of the Resource Development and Support Division, Department of Finance and Administration

Contracted Agencies

Jamie Bergman, formerly Program Director, Community Service Agency, Chattanooga
Sue Nance, East Tennessee Region, Community Service Agency, Knoxville
Debbie Miller, Director, Richland Village, Nashville
Staff from Camelot, Harriman
Staff from Moccasin Bend Mental Health Institute, Chattanooga

Other Interest Groups

Susan Brooks, Associate Professor of Law, Vanderbilt
Judge Andy Jackson, Juvenile Judge, Dickson County
Michele Johnson, Attorney, Tennessee Justice Center
Mike O'Neil, Referee, Davidson County Juvenile Court
Michael McSurdy, Program Director, Social Work Office of Research and Public Service, Nashville

Appendix D

Department of Children's Services Improvement Items for FY 1999-2000 to Implement Recommendations from the Child Welfare League of America

| State Dollars | Federal Dollars | Other Funding | Purpose |
|-------------------------------------|--------------------------------------|------------------------------------|---|
| \$2,000,000 | None | None | Office Space for full DCS consolidations of Regional Offices |
| \$6,563,500 | \$621,800 | \$3,229,700 | Increases in the following: Emergency care placements, Level II and Level III placements, and Specialized treatment |
| None | \$1,000,000 *(TANF funds) | None | Pilot Project-Kinship Care (giving relatives of children in custody foster care payments to take children) |
| \$1,500,000 | None | None | Increased Reunification Services |
| \$1,837,100 | \$1,312,900 | None | For RFP for the establishment of 12 regional public/private partnerships to focus on adoption recruitment and placement. (Like the Center of Adoption in Nashville) |
| \$501,400 | \$125,400 | None | Doubling Pre-service training from 3 to 6 weeks, Increasing in-service and supervisory training, Establishing provider training, and Creation of a statewide adoption conference. |
| \$1,146,000 | \$108,600 | \$281,400 | 36 new attorneys (current budget request includes an improvement of 12 attorneys. The figure of 36 includes the 12 already requested and \$168,000 in non-recurring expenses) |
| \$3,481,900 | \$831,400 | \$1,472,700 | Reduction in caseloads to 25 cases per case manager resulting in: 122 new case managers Reduction in number of case managers per supervisor to 7 case managers per supervisor resulting in 21 new supervisors |
| Total State \$17,029,900 | Total Federal \$4,000,100 | Total Other \$4,983,800 | Grand Total \$26,013,800 |

Source: "Implementation of the Recommendations of the Child Welfare League of American in FY 1999-2000," Department of Children's Services.

**TANF-Temporary Assistance for Needy Families, federal funds from the Department of Health and Human Services.*

NOTE-The General Assembly appropriated and the Governor approved an additional \$15.4 million to DCS to implement some of these recommendations in FY 1999-2000.