

Testimony of
Richard Wexler
Executive Director, National Coalition for Child Protection Reform
Before the Committee on Children and Youth,
Pennsylvania House of Representatives
August 28, 2007

Madam Chairwoman, members of the committee. I am honored to have the opportunity to testify today.

My name is Richard Wexler and I am Executive Director of the National Coalition for Child Protection Reform. Because time is short, I will omit the usual boilerplate about what a wonderful organization we are – it's in my written statement.

That statement also includes a list of specific programs and policies that are national models of best practice in child welfare. I've also listed systems across the country that are, relatively speaking, models.

I must emphasize that term – relatively speaking. If you want to discredit a model system it's easy: Just point to the latest horror story there. Because every system has them, and no system is where it should be. But a system is a model if it does better than most.

Rather than go through the list now, I'd like to take this time to discuss the things that model programs and systems have in common.

The most important thing they have in common is the last thing you're ever going to read about in the *Philadelphia Inquirer*: They focus their efforts on safe, proven programs to keep families together. That frees up time and resources for workers to find the relatively few children in real danger who really must be taken from their homes.

One year ago, the Philadelphia child welfare system had very serious problems. Today, Philadelphia's vulnerable children are less safe than they were a year ago. That's because the initial response to the *Inquirer* revelations was a foster-care panic, a huge,

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sudden surge in the number of children torn from their homes. That only further overloaded the system, leaving workers with less time to make good decisions. And over and over again around the country, we've seen that this leads to more mistakes in all directions – more children left in dangerous homes, even as increasing numbers of families are torn apart.

The good news is that the panic now reportedly is largely under control. It says a lot about the leadership of Arthur Evans and the dedication of frontline staff at DHS that the panic has been curbed. That means DHS has the chance to create a system that, in another five years, will leave children safer than they are now.

The bad news is that even before the panic, Philadelphia was taking away children at a far higher rate than other big cities. Philadelphia takes children at a rate about three times higher than Los Angeles County, more than three times higher than New York City, and six times the rate of metropolitan Chicago. The overall average for the State of Pennsylvania is not much better than Philadelphia.

How can taking away more children put them in danger, while taking fewer can improve child safety? After all, gut instinct says: The children whose cases made the front page died because caseworkers did not take them from dangerous homes, so if we just take far more children far more easily then children will be safer. But if you really want to fix a child welfare system, you have to listen to your gut instinct – and do the opposite.

Every city has cases in which children die even after their plight is known to the system. And in some of those cases, in every city, the decision to leave the child in the home seems inexplicable. These are the cases in which you open up the case file and find more “red flags” than at a Soviet May Day parade.

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But the reason for that is almost always because a caseworker who is often underprepared undertrained and, most of all, desperately overwhelmed, didn't have the time to evaluate the case properly. She may have had time for no more than what's been called drive-by casework. A foster-care panic only overwhelms these workers even more.

There have been foster-care panics in three of the very few places large enough to detect patterns from fatality numbers: Illinois, New York City, and Florida. In all three cases, the panics were followed by increases in child abuse deaths.

Illinois and New York City learned from their mistakes. Thanks in part to class-action lawsuits they reversed course and embraced safe, proven programs to keep families together.

But how do we know those cities are right and Philadelphia is wrong? After all, deaths of children known to the system have been much in the news in New York City.

Here's how we know: When it comes to child abuse deaths the only acceptable goal is zero. But we must seek that goal knowing that our reach always will exceed our grasp, and that no system ever will prevent every such tragedy. We also know that it's hard to detect patterns in fatality data for a reason for which we all should be grateful: Though each is a terrible tragedy, in all but the very largest jurisdictions, the number is low enough for it to fluctuate from year to year due to random chance.

There are better measures – most notably the rate at which children left in their own homes are reabused. By that measure, New York City and Illinois improved as they reduced the number of children taken from their homes. Furthermore, when New York City backtracked on reform in 2006, in the wake of another high-profile fatality, deaths of children known to the system once again increased.

Why are children often safer in places that take fewer of them from their parents?

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In part it's because workers in these places have more time to find the children in real danger. But it's also because most of the children seen by caseworkers are not who we think they are.

Contrary to the common stereotype, most parents who lose their children to foster care are neither brutally abusive nor hopelessly addicted. Far more common are cases in which a family's poverty has been confused with child "neglect." Several studies have found that 30 percent of America's foster children could be home right now if their parents just had decent housing.

That's why in Allegheny County, there is a housing counselor in every CYF office to make sure families are not torn apart for lack of decent places to live. Why doesn't every Pennsylvania county do that?

And single parents, desperate to keep their low-wage jobs when the sitter doesn't show may have to choose between staying home and getting fired, or going to work and having their children taken on "lack of supervision" charges.

Other cases fall between the extremes, the parents neither all victim nor all villain. There are a wide variety of proven programs that can keep these children in their own homes, and do it with a far better track record for safety than foster care.

And we must never forget how harmful, and how dangerous, foster care itself can be, particularly foster care with strangers.

- When a child is needlessly thrown into foster care, he is cut loose from everyone loving and familiar. For a young enough child it's an experience akin to a kidnapping. The emotional trauma can last a lifetime. One recent study of foster care "alumni" found they had twice the rate of post-traumatic stress disorder of Gulf War veterans and only 20 percent could be said to be "doing well."

Another study found that even infants born with cocaine in their systems did

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better when left with mothers able to care for them than they did when placed in foster care. For the foster children the separation from the mothers was more toxic than the cocaine.

And then, just this year, came the largest study ever done comparing outcomes for children placed in foster care and comparably-maltreated children left in their own homes. The study did not include the relatively small number of cases of brutality that any worker *with time to investigate* would agree required removal. Rather it focused on the overwhelming majority of far more typical cases.

The study found that, on average, the foster children were far more likely to become pregnant, get arrested, and be unemployed than the children left in their own homes. (And, by the way, still another study using different outcome measures found very similar results.)

So now, when I tell you that foster care is an extremely toxic intervention that must be used far more sparingly than it is used in Philadelphia, or in most of Pennsylvania, today – I've got 15,000 children backing me up.

- All that harm can occur even when the foster home is a good one. The majority are. But the rate of abuse in foster care is far higher than generally realized and far higher than in the general population. That same alumni study found that one-third of foster children said they'd been abused by a foster parent or another adult in a foster home. Switching to orphanages won't help -- the record of institutions is even worse.

In that regard, a recent story in the *Inquirer* noted how Philadelphia sent large numbers of children to an out-of-state institution with a poor track record – until, finally, a Philadelphia child died there. The story also noted that, in contrast, Illinois had brought almost all of its out-of-state children home.

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But the story neglected to mention how Illinois did it: Illinois did it by emphasizing family preservation, and making so much room in the state that it didn't have to export its troubled children anymore. If Philadelphia were taking away, proportionately, as few children as Chicago, you can bet Philadelphia wouldn't be exporting children either.

None of this means no child ever should be taken away. Of course there are children so brutalized in their own homes that the only option is to take the child and never look back. But there are far fewer such children than generally believed. And the odds of finding them go down during a foster care panic.

My written testimony discusses the other half of the equation – the urgent need for transparency. The best interests of children require both that agencies not be allowed to hide their mistakes behind claims of confidentiality, and that agencies be able to defend themselves when they are right. Court hearings need to be open, and most records should be open as well.

Over and over again, those who said openness would harm children were proven wrong. Over and over again, they became converts to the kind of accountability that is possible only in an open system.

I cannot guarantee you that, in a fully open system, no child ever will be embarrassed. But more children are likely to live long enough to blush.

The head of New York's highest court, the Court of Appeals, put it best when she ordered that state's Family Courts open a decade ago. Said Judge Judith Kaye: Sunshine is good for children.

I would be pleased to respond to any questions or comments. Thank you.

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STOP THE PANIC; OPEN THE DOORS

Written Statement of
Richard Wexler

Executive Director, National Coalition for Child Protection Reform
Before the Committee on Public Health and Human Services
City of Philadelphia City Council

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**National Coalition for
Child Protection Reform
53 Skyhill Road (Suite 202)
Alexandria Va., 22314
(703) 212-2006
info@nccpr.org
www.nccpr.org**

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Richard Wexler

Executive Director, National Coalition for Child Protection Reform

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ABOUT NCCPR

The National Coalition for Child Protection Reform is a non-profit organization whose members have encountered the child protection system in their professional capacities and work to make it better serve America's most vulnerable children. **Board of Directors:** President: *Martin Guggenheim*, former Director of Clinical and Advocacy Programs, New York University Law School, author, *What's Wrong with Children's Rights* (Harvard University Press: 2005). Vice President: *Carolyn Kubitschek*, attorney specializing in child welfare law, former Coordinator of Family Law Legal Services for New York City. Treasurer: *Joanne G. Fray*, attorney with extensive experience with litigation involving the care and protection of children and termination of parental rights, Lexington, Mass. Directors: *Elizabeth Vorenberg*, (Founding President) former Assistant Commissioner of Public Welfare, State of Massachusetts; former Deputy Director, Massachusetts Advocacy Center; former member, National Board of Directors, American Civil Liberties Union; *Annette Ruth Appell*, Associate Dean, William S. Boyd School of Law, University of Nevada, Las Vegas; former member of the Clinical Faculty, Children and Family Justice Center, Northwestern University Law School; Legal Clinic, former Attorney and Guardian ad Litem, office of the Cook County, Ill. Public Guardian; *Marty Beyer, Ph.D.*, clinical psychologist and consultant to numerous child welfare reform efforts; *Ira Burnim*, Legal Director, Judge Bazelon Center for Mental Health Law, Washington, DC; former Legal Director, Children's Defense Fund; former Staff Attorney, Southern Poverty Law Center; Prof. Paul Chill, Associate Dean, University of Connecticut School of Law; Prof. Prof. Dorothy Roberts, Northwestern University School of Law, author *Shattered Bonds: The Color of Child Welfare* (Basic Civitas Books: 2002); *Witold "Vic" Walczak*, Legal Director, Greater Pittsburgh Chapter, American Civil Liberties Union Foundation of Pennsylvania; *Ruth White*, Director of Housing and Community Development Policy, Catholic Charities US; former Director of Housing and Homelessness, Child Welfare League of America. Staff: *Richard Wexler*, Executive Director. Author, *Wounded Innocents: The Real Victims of the War Against Child Abuse*. (Prometheus Books: 1990; 1995).

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