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CHILD WELFARE

AUGUSTA, MAINE

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL

TO: James E. Tierney, Attorney General
THROUGH: Gerald F. Rodman, Acting Deputy Attorney General *cl*
FROM: Child Welfare Assistant Attorneys General
for York and Cumberland Counties
SUBJECT: Impact of the Increasing Lack of Foster Care and
Alternative Placement Resources on the Enforcement of the
Child Protective Law
DATE: December 29, 1988

The purpose of this memorandum is to outline the position of the Assistant Attorneys General representing the Department of Human Services in child protection proceedings, particularly with respect to York and Cumberland counties, in regard to the increasing lack of foster care and alternative placement resources. It is the consensus of those attorneys that the quality and availability of placement resources for children of whom the Department seeks custody in protection proceedings has a direct impact on our ability to effectively handle cases and on compliance with the child protection statutes. Although Assistant Attorneys General in other counties have experienced difficulties relating to the lack of placement resources, the greatest problems have been observed in York and Cumberland counties. This memo therefore reflects primarily the concerns of the York and Cumberland Assistant Attorneys General.

At the end of this memorandum there is attached a brief description of several actual cases which illustrate the types of problems discussed below.

STATUTORY FRAMEWORK

The Department of Human Services' legal authority and responsibility in regard to protecting children at risk is set forth in the Child and Family Services and Child Protection Act, 22 M.R.S.A. §§4001-5005. That Act is premised on a careful balancing of two, sometimes competing, concerns: the right of a family to the preservation of its integrity free from the intrusion of government, and the individual right of a child to be protected from physical, sexual, and emotional harm. Nowhere is this more

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clearly set forth than in §4003 of the Act. That Section recites the Legislature's directives that the Department act to protect and assist abused and neglected children and their families, remove children from the custody of their parents only when failure to do so would jeopardize their health or welfare, accord family rehabilitation and reunification a priority for the protection of children, and forge a permanency plan for children who cannot safely be returned to their family within a time which will meet the needs of those children.

Clearly, the Act does not protect every child from every harm. To justify the State's intrusion into the family, the Department must persuade the district court, by a preponderance of the evidence, that the child is in circumstances of "jeopardy" to his health or welfare before the court can enter an order designed to protect that child. The term "jeopardy" is defined in the Act, in part, as serious abuse or neglect evidenced by serious physical, mental or emotional injury or the threat thereof, sexual abuse or exploitation, or deprivation of adequate food, clothing, shelter, supervision or care when such deprivation causes the threat of such harm. 22 M.R.S.A. §4002(6).

If the Court makes the necessary finding, it may then fashion a protective order by choosing among the dispositional alternatives authorized by the Act. Those alternatives range from no change in custody to the placement of the child in the custody of the Department or third party, to the requirement that the parents accept specified treatment or services to ameliorate the circumstances related to the jeopardy. The Act itself provides some guidelines to the Court in how best to fashion such an order.

In determining the disposition, the court shall apply the following principles in this priority:

- A. Protect the child from jeopardy to his health or welfare;
- B. Give custody to a parent if appropriate conditions can be applied;
- C. Make disposition in the best interests of the child; and
- D. Terminate department custody at the earliest possible time.

22 M.R.S.A. §4036(2).

The Department's role in assisting the Court in fashioning the most appropriate disposition is as important as its role in bringing forth the original Petition for the child protection order. Both the Department and the Court are hampered in their ability to carry out the legislative purposes of the Act due to the current foster care problems.

THE IMPACT OF THE PROBLEM ON LEGAL PROCEEDINGS

There are many facets to the difficulties which the Department is now experiencing in finding appropriate placements for vulnerable children. One facet is that there are not sufficient foster home slots for a number of children who need to be removed from their home. Although there may be a substantial number of openings in currently licensed foster homes, many of those homes will not or cannot accept children who are older than 5 years old, or who have serious disruptive behaviors such as aggression towards others, sexual acting out, or fire starting. It is not unexpected that a large percentage of those children who can only be protected by removal from their home are exactly those children whose behaviors are most severe. Even those foster care providers who are willing to take on the challenges of such children are often ill-equipped to accept and work with those children in a therapeutic situation. Many of the homes are distant from services and family members which complicates treatment and reunification efforts. In short, it is not simply an issue of the quantity of foster home openings. It is a question of the quality of those openings that do exist and the fact that those limited resources are being stressed. This situation directly impacts the prosecution of child protection cases in the following ways:

1. Many cases that should be taken to protect abused and neglected children are not taken. This results from the fact that children who are in jeopardy are determined not to be in jeopardy because there are not adequate available alternatives for these children. This calls into question whether or not the Department is taking "appropriate action" within the meaning of 22 M.R.S.A. §4004(2)(d).
2. The best dispositions are not always being requested of the courts because the Department is aware at the time of the dispositional hearing that it cannot provide such placement or services. As a result, it may advocate for an order with which it feels

it can comply although such an order may not fully meet the child's and family's needs. This also calls into question whether or not the Department is taking "appropriate action" within the meaning of 22 M.R.S.A. §4004(2)(d).

3. The Department has encountered increasing difficulties in complying with the court's directions in providing placements and services. Often dispositional orders will specify that the Department work with the parents to arrange services which will alleviate jeopardy. These services may consist of evaluations, counselling or substance abuse treatment. The Department's inability to arrange such services places us in the uncomfortable position of not fully carrying out the court's determinations.

4. There is substantial delay in meeting the statutory goals of reunifying children with their families and in promoting the early establishment of permanency plans for the care and custody of children who cannot be returned to their family. These goals are established by 22 M.R.S.A. §4003(3) and (4).

5. There are serious impediments to our being able to present coherent cases. High caseworker turnover creates a discontinuity among the witnesses necessary to present cases and creates "holes" in the evidence.

6. Cases are inefficiently handled. The shuffling of children from one less than appropriate placement to another forces a series of judicial interventions which requires legal input beyond that which should attend such cases.

Appearing below is a summary of some of the underlying factors which give rise to the above-listed legal problems.

A. The Redefinition of Jeopardy.

Protective workers are acutely aware of the lack of resources for children who are brought into the State's custody. Therefore,

many of them have been forced, as a practical matter, to redefine "jeopardy" in the field when making decisions on whether to file a Petition for a child protection order. This is due to the fact that classifying a child as being in jeopardy does not necessarily assist the child if the system is not prepared to provide meaningful alternatives to the child's current situation. Thus, workers will refrain from making determinations of jeopardy because, if they were to do so, it would require putting the child, and all of those involved with the child, through a potentially fruitless, if not counterproductive, process. To avoid this possibility, children who are in jeopardy are determined to be not in jeopardy. It has always been the policy of the Department, indeed, the implicit underpinning of the Act, that the Department should attempt to resolve situations which pose a threat to children without initiating a protective proceeding. In fact, the Department may work with a client family for several years providing services and assistance without reaching the point where legal intervention is sought. Such intervention should be sought, however, whenever the caseworker determines that the home situation has deteriorated to such a point that a child is in jeopardy within the definition provided in the Act. Currently, when making such an assessment, the worker cannot assume the presence of a foster care system which is adequate to meet the needs of a child who should be removed from the home.

Departmental workers have now reached the point where their decisions about the appropriateness of legal action necessarily take into account the possibility that a child might be placed in an out-of-home setting which would endanger the child more than allowing him to continue in an inappropriate situation at home. This is a balancing which was not contemplated by the Act. In part, such a reaction is based upon several documented cases in which children in the Department's custody who were placed in foster homes were more seriously injured than they had been while in their parent's care. This has caused veteran caseworkers to avoid petitioning the Court for other protective orders out of a conviction that the children could be at greater risk in the Department's placement system than they would be in their own homes. As a result, this administrative decision preempts an independent judicial assessment of whether or not a child is at risk.

B. The Best Disposition is Not Requested.

Once the Department has filed a Petition and persuaded the Court that a child is in jeopardy, it must be free to argue for the best disposition possible within the standards of the Act. The knowledge that it may be difficult or impossible to place a child in an appropriate foster home often leads the Department to avoid requesting from the court precisely what is needed both for the protection of the child and the rehabilitation of the family. As a result, the court, often at the very request of the Department,

fashions a dispositional order which does not fully protect that child. The order, for instance, may simply ask for the in-home provision of services, which, under certain circumstances, can be a suitable alternative under the Act, but which may not be sufficient in many cases to fully protect the child. Not infrequently, the Department is forced to accede to a parent's request that the child be placed with a relative identified by the parent because of the lack of alternatives. Again, such placements may not fully protect the child and often family conflicts undermine the utility of such a placement in regard to the Department's continuing obligation for family reunification.

C. Inappropriate Foster Home Placements of Children in the Department's Custody.

Perhaps nowhere is the foster care problem more compelling than in those situations which have arisen from the Department placing children in its custody in inappropriate foster home slots. The placement may be inappropriate because it overburdens a foster home either by sheer numbers of children or by the heavy emotional and logistical difficulties of a severely troubled child. Although it may be axiomatic that children engaged in sexual acting out not be placed together, too frequently that is done because there is no other place to put a child. Also, a placement may be inappropriate because the children are too far geographically removed from their parents. It is virtually impossible for a parent residing in Portland and without transportation to maintain frequent, significant contact with a child who has been placed in Kezar Falls. Such a dilemma, in turn, further increases the burden on caseworkers who must assume some form of responsibility for ensuring that the necessary contact takes place.

Not only are unsuitable placements dangerous for the child, they are also more likely to result in frequent emergency demands that a troublesome child be removed from the home. As a result, a child already suffering from the twin trauma of abuse and separation must face a series of placements which provide neither physical or psychological refuge from his problems. Frequent moves also complicate the task of permanency planning for the Department. Without stabilizing a child, it is difficult to ascertain whether or not reunification is going to be viable and, if so, what services can be provided on a consistent basis to promote reunification.

D. Inappropriate Alternative Placements.

Caseworkers' frustration with the foster care situation has led to the utilization of other placements which, under better conditions, would not be recommended by the Department. Children in the Department's custody who would benefit from a stable foster home

may be placed initially in shelters as a temporary measure. For teenage children, initial placement in such shelters is more the rule than the exception. However, even a short stay at such a facility may undermine the child's confidence in the Department and expose him to individuals and situations which place him in further jeopardy. Such facilities are an integral part of any broad spectrum service plan; however, they were never designed to be utilized as long-term placements for troubled children. The Department has sometimes had to prevail upon residential treatment facilities and other temporary holding situations to retain a child beyond the anticipated discharge date while it desperately sought a foster home placement for that child.

It is not surprising that the Department has more and more frequently been in the position of actually licensing a relative for placement of a child under standards which are less strict than those that would apply in a foster home situation. It is difficult for the Department to argue against such a placement when it can offer the court no guarantees that it can provide any alternative, let alone one which is preferable to the relative identified.

E. Effect on the Child Protective System.

Both protective and substitute care caseworkers frequently express to us deeply seated frustrations with the child protective system. Those concerns are raised among experienced, dedicated workers who are throwing all their physical and emotional resources into fulfilling the spirit and letter of the Act. Without exception they are carrying caseloads which would strain their abilities even if there were sufficient resources. The problems are so pervasive that they affect the ability of the Department to follow through in all aspects of its statutory mandate. It impacts upon their decisions in the field, it fashions their presentations to the Court, and it undermines their professional pride. The rapid burnout and turnover of workers in Cumberland and York County is directly attributable especially to their realistic perception that there are insufficient resources for the Department to effectively carry out its job. Nowhere is this more keenly felt than at the caseworker level, by those individuals who are dealing on a daily basis with the children, families, service providers, and foster parents who are the integral components of this system. This turnover phenomenon has resulted in a lack of continuity in dealing with family reunification and in providing services to children and their beleaguered foster parents. The lack of continuity affects the quality of legal representation, not only because of the disjointed effect of having numerous caseworker witnesses, but because of the Court's perception that few families could deal with the bureaucracy which continually shifts beneath them.

Other components also feed into the equation. In some cases, parental rights are terminated and the children are available for adoption. However, severe under-staffing of adoption units has resulted in children, whose parental rights have been terminated, remaining in foster homes for substantial periods of time. As a result, these foster homes that could appropriately be used for other foster children are being utilized to maintain children who should have moved on to adoptive homes.

CONCLUSIONS

The problems described above have existed for some time but have intensified in magnitude and impact over the last year. The growing instability of the system has reached critical proportions and is undermining our ability to carry out our legal obligations.

Although we have been able to maintain a consistently professional level of representation both before the court and in interacting with our client, it has been so at an increasing emotional cost. Child protective litigation is, under the best of circumstances, an emotionally-taxing charge: there is the constant fear of the child at risk who is not found in time or at all, the family taken apart for the child's welfare which cannot, despite all our best efforts, be put together. The current foster care situation adds a new dimension to this burden. We now fear for children who have been given the benefit of judicial intervention but who remain at risk - without services, in the wrong homes or on the streets. We are acutely aware of the anger and turmoil of the workers and intimately familiar with the details of every placement that has failed.

To meet the minimum standards of compliance it is necessary to generate (1) more appropriate slots in foster homes which will accommodate older troubled children, (2) temporary detention facilities which support and protect children while better placements are being generated, (3) a mechanism for controlling and assisting those children who will accept appropriate treatment only under confinement, and (4) increased residential treatment facilities for children with serious behavioral and emotional problems. Such resources will enable us to move to protect those children who are in jeopardy, and seek dispositions which are better designed to protect that child while maximizing the possibility of family reunification.

ILLUSTRATIVE CASES
(Pseudonyms Used)

1. Al, a 13 year old boy in the Department's custody, has lived on the streets for the last 9 months, spending many nights at temporary shelters in Portland. The caseworker was unable to locate him to arrange psychological evaluation for him which is the prerequisite for designing treatment programs. A social service program has declined to accept Al, feeling his needs are so severe that he will be maintainable only at a secure facility.

2. Beatrice, now 15, came into the Department's custody 2 years ago due to minor physical abuse, compounded by her mother's substance abuse problem. Initially placed at a temporary shelter, she was evicted and moved to several foster homes, at the last of which she was sexually abused. She now refuses any placement the Department arranges, preferring to live with her boyfriend.

3. Carol turned 5 in the Department's custody where she was placed following physical and sexual abuse at home. Her first foster home placement lasted only 2 days due to Carol's aggressive behavior. Because no other placement could be found, she went home with a Departmental employee for several weeks. During that time, her behavior deteriorated. Subsequently, a teacher took her home where she now resides. That placement is not yet licensed by the Department.

4. In York County, there are at least three teenagers under the age of 17 who have each had at least 25 placements in the last four years.

5. Daniel, a 4 year old in the Department's temporary custody, remains at Jackson Brook Institute although he has been slated for discharge by that facility which relates that he has drained their staff resources. His behavior has included eating garbage and licking wall sockets. Although he needs a therapeutic foster home, none are available.

6. Elton, 6 years old, was abandoned by his mother and has been in foster care for one year. In that year he has been in 6 placements; no further placements are available due to his behavioral problems. His behavior led the first foster home, in which he attempted oral intercourse with the foster parent's child, to refuse placements for any child over 5 years old or any sexual abuse victims.

7. Frank, now 8 years old, remains in a foster home from which the parents asked that he be removed in August of 1988. In that home, he frequently misses necessary counselling sessions because

James E. Tierney, Attorney General
December 29, 1988
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his foster home fails to keep the scheduled appointments. The school has declined to work with the foster mother on special programs for Frank due to the lack of cooperation by that foster parent.

8. Gail has been in foster care since 1984; she is now 16 years old. She has moved 26 times, including placements at Augusta Mental Health Institute, shelters, and the Maine Youth Center. After she completed a substance abuse rehabilitation program, she was placed in a temporary shelter awaiting an opening at a residential program. When her shelter placement expired with no new opening available, she went to live at her sister's house where she has since resumed her drug use.

9. Hester and Ike have been in and out of Department custody since 1984. In 1986 they reentered the Department's custody due to neglect and deprivation. Although no progress was made on reunification, a Petition for Termination of Parental Rights could be filed until October of 1988 because there had been 4 case workers involved with these children during their latest stay in the Department's care. The children are now bonded to their foster parents who, due to several factors, cannot become their adoptive parents.

10. Jason, 13 months old, was removed from the custody of his 16 year old mother who is herself a ward of the State. He was initially placed in a foster home from which he was removed by the Department due to concerns about his safety in that placement. He was then placed in an unlicensed foster home at which his mother also resided. Jason was brought to the Portsmouth Hospital last week severely beaten and with a broken leg. He is now in a partial body cast and has been placed in yet another foster home. His mother's whereabouts is currently unknown.

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

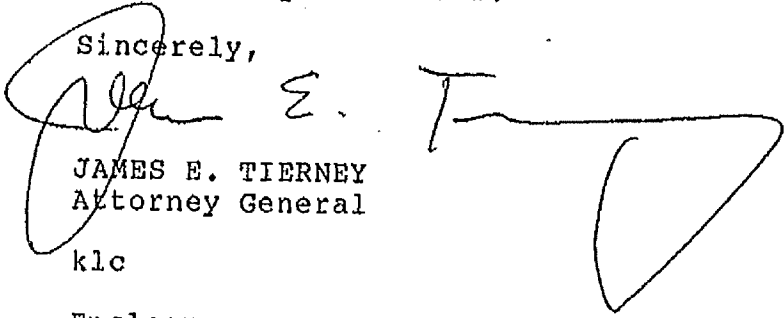
January 4, 1989

Dear Member of the 114th Legislature:

Last Thursday I received a report I had requested from the Assistant Attorneys General who represent the Department of Human Services in southern Maine. The report pointed to deteriorating conditions in our child protection system.

Because of the seriousness of the situation, I am enclosing the report for your review.

Sincerely,


JAMES E. TIERNEY
Attorney General

klc

Enclosure

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

December 30, 1988

Commissioner H. Rollins Ives
Department of Human Services
State House Station #11
Augusta, Maine 04333

Dear Rollin:

In 1984, Maine was faced with the tragic murders of two innocent children at the hands of members of their own family. Because the memory of little Garrianna Quinn and Angela Palmer will always live with me, I promised never to remain silent when the welfare of children is at stake.

Enclosed you will find a report I requested from the lawyers on my staff who represent the Department of Human Services in Cumberland and York counties. I requested the report because I am aware that our child protection system in southern Maine is deteriorating without a high level governmental response.

The report is not based on my personal observations. Rather, it has come directly to me from the lawyers in the field. The report states the situation is critical.

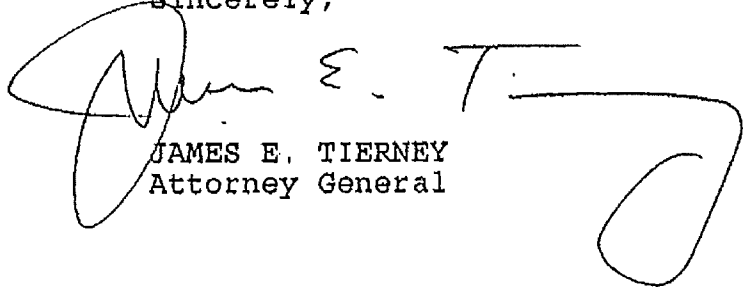
I urge you to personally review the findings and recommendations of this report. I am sure that after you have done so you will acknowledge the seriousness of the problem and advocate strongly with me during the upcoming months for the resources necessary to improve a deteriorating situation.

These children have little or no organized constituency to speak on their behalf. That is why parents such as ourselves, who hold positions of public trust, must speak for them. I am

confident that after you have reviewed the situation in its entirety, you will join with me in working to make life better for those children less fortunate than our own.

Together with my staff, I remain available to discuss the implications of this report with you at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney". The signature is stylized with a large, looping initial "J" and a long horizontal stroke extending to the right.

JAMES E. TIERNEY
Attorney General



John R. McKernan, Jr.
Governor

Rollin Ives
Commissioner

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES
AUGUSTA, MAINE

December 30, 1988

James E. Tierney
Attorney General
State House Station 6
Augusta, Maine, 04333

Dear Jim,

Thank you for your letter of 30 December and your expression of concern for the health and safety of Maine's children; particularly our children who are at risk. I also appreciate your interest in the ability of our child protective, substitute care and legal systems, particularly in Southern Maine, to adequately respond to the changing needs presented by those children. The perspectives of your attorneys are valuable as they are an indispensable part of the protective system.

The Governor and I are glad you are joining us in our concern. Please know we will continue to aggressively advocate for both public and private resources as we work together to meet the multi-systems needs of these children.

I will look forward to reviewing your report in detail and working with you and other concerned citizens to make sure we're doing all we can to protect some of our most vulnerable citizens.

Thank you again for your interest in this very important matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rollin Ives", written over a light-colored background.

Rollin Ives
Commissioner

RI/ml

CC: Governor John R. McKernan

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

FOR IMMEDIATE RELEASE
December 30, 1988

Attorney General James E. Tierney today forwarded to Commissioner of Human Services H. Rollin Ives a report prepared by his legal staff relating to the child protection process in southern Maine. The report, prepared by those Assistant Attorneys General who handle child protection cases in Cumberland and York counties, concludes that "the growing instability of the system has reached critical proportions."

The report points to a shortage of foster care placements so severe that children are being left in potentially dangerous living conditions and remain "at risk." The report also supports earlier statements concerning overloaded case workers and deteriorating working conditions.

Acknowledging that these problems have "existed for some time," the report concludes they "have intensified in magnitude and impact over the last year."

In his cover letter to Commissioner Ives, Attorney General Tierney called on him to remember the tragic deaths of Garrianna Quinn and Angela Palmer to "advocate strongly with me during the upcoming months for the resources necessary to improve a deteriorating situation."