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Office of the Child Advocate White Paper Series on Significant Policy Issues in Child Welfare
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Reducing the Foster Care Rolls: Are We Using the Right Tools?

A Report on and Recommendations for the Use of Safety Resources and Temporary Guardianships as Responses to Child Maltreatment Reports in Georgia

TOOLS TO KEEP FAMILIES TOGETHER AND OUT OF FOSTER CARE

Since 2004, the number of children in foster care in Georgia has dropped from approximately 14,500 to less than 10,000. At the same time, the number of child protective services investigations open in any given month has dropped from 22,000 in 2007 to less than 12,000 today.[1] These results are admirable ***if*** they are strong indicators of two important outcomes: first, that more children are being kept safely in their own homes or in permanent placements with family to whom they are attached; and second, that our child protective services agency is working more efficiently and effectively to weed out cases that do not require state intervention and quickly resolve problems for families when intervention is required. These broader outcomes mirror the outcome measurements by which the federal government judges our state's child welfare system: whether the system is promoting the safety and well-being of abused and neglected children and permanency for those children.

Two significant tools in DFCS' efforts to keep children safely with their families and out of the foster care system are (1) family preservation services and (2) the use of "safety plans" and "safety resources." These tools generally are used when the agency is investigating allegations of child maltreatment or when there has been a substantiated incident of child maltreatment in the family but the agency believes services can keep the family together and reduce the risk of a further incident. As described in policy, family preservation services "help families help themselves by preserving and strengthening a child's own family and promoting a family's self sufficiency, self determination and independence."[2] Such services may include providing assistance with

[1] DFCS April 2009 G-Force PowerPoint presentation.
[2] DFCS Policy 2107

housing, outpatient drug treatment, parenting classes, and other social services designed to keep the family unit intact. When working with a family that is receiving family preservation services, the agency may use a "safety plan" to reduce risks to the child. So, for example, a parent may agree to keep the child away from certain dangerous individuals; to make sure the child is attending appointments; or to take steps to improve the safety of the home.[3]

The "safety plan" may also involve the use of a "safety resource." According to DFCS policy, "[d]uring the investigation process, if a temporary out-of-home placement is indicated as a means to ensure a child's conditional safety, it is acceptable to discuss with the parent that the child needs to be out of the home until all aspects of the report can be investigated."[4] In such a situation, the child may be placed with a relative or friend until the issue that warranted DFCS' involvement is resolved. That same policy, however, cautions that parents must voluntarily agree to the plan, that DFCS must not "tell or … push a parent to place a child outside the home as a way to avoid court action," and that the safety resource placement "is never intended to become a permanent placement."

In its statutory role as an ombudsman for the child welfare system, the Office of the Child Advocate has over the past year received numerous anecdotal reports indicating that children were often placed in safety resources far from their homes for extended periods of time and without DFCS support and services for the safety resource; that parents were being "pushed" into using safety resources as a way to avoid juvenile court action; that neither parents nor safety resources were being given sufficient information about the terms of the safety resource agreement; and that safety resources were being used inappropriately in cases that should reasonably have been the subject of a juvenile court deprivation petition. To address these concerns, OCA undertook this review of DFCS' use of safety resources as part of its family preservation programs. That review led naturally to an exploration of the use of probate court temporary guardianships as an oft-used means of "solidifying" placements that began as safety resources.

METHODOLOGY

OCA began this review by looking into the cases of children who had been in safety resources in excess of 90 days. The number of children in such placements over three months is a significant statistic, as it indicates how quickly DFCS is resolving these familial issues. A child and his parents should not be separated with their relationship and living circumstances in limbo for long periods of time, and matters that cannot be resolved within 90 days deserve a more formal approach.[5] Thus, when we see children who have been away from their homes without juvenile court involvement for three months or more, we can anticipate there may be issues with the case.

OCA took its data directly from two DFCS sources. The first was a list of children in safety resource placements over 90 days as of April 20, 2009, compiled by DFCS Data Analysis and Reporting personnel. That report, whose methodology is used to create DFCS' "G-Force" data presentations, contains the names of 199

[3] See generally DFCS Policies 2104.17-.18
[4] DFCS Policy 2104.33
[5] While DFCS has no formal policy on the appropriate length of safety resource placements, by current practice these placements are to be reviewed if they are approaching 90 days.

children in these voluntary out-of-home placements over 90 days. OCA personnel then went into the SHINES system and used the "reports" function in SHINES to pull each county's reports of children in safety resource placements in excess of 90 days. There is no function in SHINES that allows OCA to pull a comprehensive statewide list, so 159 lists were pulled, a process that took from April 20, 2009 to May 13, 2009. Despite the fairly short time differential, the county reports OCA pulled contained reports of an additional 259 children in safety resource placements in excess of 90 days.

OCA personnel then picked 21 cases (20 of those at random) from the individual county lists and reviewed the entire file available in SHINES on each child. A chart showing the cases pulled, the counties from which they came, and the number of days the SHINES system indicated the children had been in safety resources is found in the Appendix. We have also given a brief description of each case below.

FINDINGS

While recognizing that the cases reviewed may not be fully representative of DFCS' intended practice, the Office of the Child Advocate has numerous concerns about these cases that can be generalized as follows. First, the agency appears to be using safety plans and temporary guardianships to avoid the involvement of the juvenile court in the child protection process, thereby depriving the child and family of the many legal and practical benefits the court offers and circumventing purposeful federal and state child protection schemes. Second, the agency's reliance on safety plans and probate court temporary guardianships can deprive the child of stability and permanency and may further delay resolution of the family's issues. Third, misuse of safety plans and temporary guardianships can leave the child drifting from home to home, exposed to risk, and separated from siblings, friends, and family for long periods of time. Finally, OCA questions whether the use of safety resources for long periods of time decreases the agency's incentive to provide the services necessary to fix the parental issues and reunite the family quickly.

The agency received a draft of this report, and we are pleased to announce that DFCS Director Mark Washington has let us know he has already directed implementation of some of our suggestions. His communication back to OCA is reproduced in the Addendum.

Avoiding Juvenile Court

First, it appears that many of the cases we reviewed should have been considered for juvenile court action from the beginning. Under existing policy 2102.1, DFCS managers are directed to "[i]ntervene to protect a child, with assistance from law enforcement and the courts, in the following situations if evidence indicates that the child should not remain in the home or be returned to the parents":

- "A child has experienced life-threatening maltreatment or serious permanent injury at the hands of a parent;"
- "Parents have a significant mental illness, untreated illness or significant mental disability that renders them unable to care for their children;"
- "A parent has caused the death of one child through maltreatment;"
- "Either a newborn infant or the mother, as reported by medical personnel, tests positive for drugs;"

- "Parents have a significant history of drug or alcohol addiction that is persistently denied or untreated and that renders them unable to care for their children;"
- "Parents have repeated, serious criminal activity or a conviction of a felony and imprisonment which has a demonstrable negative effect on the quality of the parent-child relationship;" or
- "Parents deny serious maltreatment and are unwilling to participate in the case plan, thus leaving children at risk of serious maltreatment."

DFCS policy also states that a safety resource is not an acceptable placement when "any of the conditions that require juvenile court involvement are present."[6] Those conditions include the above situations as well as situations in which there are "grounds for termination of parental rights."[7] It should be emphasized that these policies are based in large part on the legal definition of what constitutes a deprived, abused, or neglected child.

Of the safety resource cases OCA pulled for review, several meet the DFCS policy criteria requiring juvenile court action. Randomly selected safety resourced cases from two of these counties both involved children who had suffered fairly significant abuse at the hands of parents but who were nevertheless placed in safety resources with no juvenile court involvement. In the west Georgia case involving **J.P., J.K.N.**, and **J.D.N,** mother apparently intentionally burned her child with an iron and was charged with felony cruelty to children (and later put on probation), yet DFCS did not originally involve the juvenile court. Only after several safety resource placement attempts failed did the agency request the juvenile court's assistance. After the first two children had been in foster care over a year and was making little progress toward regaining custody of those children, mother had another baby. Surprisingly, rather than ask the juvenile court to become involved with the infant's case, DFCS placed the infant with a safety resource. Now, although the agency is moving toward terminating the mother's rights on the first two children, the infant remains without court protection in a voluntary safety resource placement separated from her siblings. Two cases selected from a single metro county likewise involved physical abuse. In one instance (**T.N.)**, mother – apparently suffering from mental instability and angry with her little girl – squeezed the child's hand until she broke her finger. In the other (**K.J**), the little girl was in foster care for almost two years due to physical abuse, came home for several months, and following another incident of physical abuse by the mother was "safety resourced" to the home of the woman who had served as her foster parent.[8]

While the case of **J.S.** was not one of those randomly selected in the course of our review, that case has recently come to OCA's attention and further illustrates how the agency appears to be using safety resources to avoid juvenile court involvement. In May 2009, DFCS and law enforcement were looking for J.S.'s mother at her home. She appears to have been hiding from them, and when police and social workers finally entered the home they found the mother and an infant child hiding in the closet. The mother had smothered the baby, who later died. Although the mother is in jail charged with murder and DFCS determined the father is not a fit

[6] DFCS Policy 2104.33
[7] DFCS Policy 2102.20
[8] We note that DFCS considers the foster care re-entry rate to be a significant performance measure, as it is indicative of DFCS' success in rehabilitating the parent and restoring the child to safety with his or her own family. OCA observes that if a child such as K.J. who has recently been in foster care for physical abuse is returned home and re-abused, only to be placed in a "safety resource" with the former foster parent, that placement presumably does not count as a "foster care re-entry." Given that circumstance, OCA expresses concern that such measures can be easily manipulated to make the agency's success rate appear artificially high.

parent, the metro county DFCS involved has refused to petition the juvenile court for assistance with the surviving child.

Safety Resources and Temporary Guardianships as Substitutes for Permanency

In several cases OCA has reviewed, including those cited above, safety resource placements are merely a step toward a probate court temporary guardianship. The agency appears to be further avoiding the juvenile courts and is actively assisting families in going to probate court to obtain temporary guardianship of the children who were "temporarily" placed with these relatives or friends.

A clear example of this practice comes in the case of **K.S., M.G., J.H,** and **G.G**. These children, who had earlier been in foster care, again became involved with DFCS because one of the children suffered burned fingers and both parents were apparently involved in drug activity. The children were separated and placed in different safety resources. Since the parents did not complete substance abuse treatment, the various relatives have obtained temporary guardianship of the children. According to the county DFCS that is the lead agency on this multi-county case, the case will now be closed since the guardianships are finalized. In many of these cases, DFCS actively suggested to the parents and safety resources that guardianship be pursued. A prime example of this activity comes in the **J.S.** case discussed above, where the case manager actually took probate court guardianship papers to the jail so the mother, charged with murder, could grant temporary guardianship of her surviving child to the father's parents.

The problem with using these safety resources and temporary probate court guardianships to avoid juvenile court involvement is not simply one of policy; rather, it is also a problem of denying due process to the children and families involved, denying permanency and stability for the child, and the practice may end up creating liability for the agency.[9]

Within the juvenile code, the Legislature has established numerous protections for children who have been subjected to abuse and neglect. OCGA § 15-11-28 (a) gives the juvenile courts "exclusive original jurisdiction" over children alleged to be deprived and provides many tools to address those children's needs ranging from protective orders to foster care and termination of parental rights or other permanent placement. Moreover, the Code presumes that those children and families will be given appropriate due process within the juvenile court system. Parents have the right to an attorney, and those who are indigent have the right to a free attorney.[10]

[9] After OCA raised its concerns over the temporary nature of the probate court guardianship, DFCS management in the county asked the case manager to "get information on permanent custody for [the grandparents] to file." The case manager was unable to obtain legal advice from the Superior Court clerk but was later told by DFCS management to "see if [the court clerk's office] had forms that would work for the grandparents to file for custody." DFCS officials later found "a custody form . . . that [would] work for the grandparents when filing," and the case manager directed the grandfather to a website where he could find a free attorney to help him. The case manager's notes from late June, 2009 show clearly that she is attempting to get the grandfather to file for permanent custody in Superior Court. She states in her June 25, 2009 note that she explained to the grandfather "the reason behind the urgency of getting the custody filed." Aside from issues of whether a case manager should be actively attempting to provide legal forms and guidance to the grandparents, the agency's actions again raise a critical question: rather than attempting to help the parents navigate a Superior Court custody filing, why didn't the agency itself file a petition in juvenile court asking that permanent custody be given to the grandparents?

[10] OCGA § 15-11-6.

Children have the statutory right to a guardian ad litem or CASA,[11] and a federal court in Georgia has determined these children have the right to an attorney.[12] Judges are required to determine whether DFCS is using reasonable efforts to keep the child with his or her family.[13] To justify DFCS involvement or removal of the child from the home requires proof by clear and convincing evidence that the child is without proper [14]parental care and control and is in imminent risk of harm.[15] If the child is removed from the home, the juvenile court monitors the agency as it works with the family to either fix the family's problems and return the child home or find the child a safe, stable, and permanent alternative home in which to live.[16]

In numerous conversations with DFCS personnel, the use of probate court guardianships has been cited as an appropriate tool to provide "permanency" for the child in connection with a "family preservation services" case. That interpretation is in line with current policy. DFCS Policy 1006.6 states that "[b]oth temporary and permanent guardianship meet Adoption and Safe Families Act (ASFA) requirements for `legal guardianship' as a permanency option outcome."[17]

Unfortunately, the policy is not in compliance with the various federal mandates through which Georgia receives funding for family preservation programs or for foster care funds.[18] For purposes of both family preservation services and foster care, "legal guardianship" is defined under the federal law as "a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking."[19] By its very nature and definition, a "temporary" probate court guardianship is *not* intended to be permanent. In fact, in 2008 the Legislature – at the joint urging of DFCS and OCA – recognized that we had a gap in our juvenile code because we did not have a permanent guardianship available through which the juvenile court could place children in compliance with the Adoption and Safe Families Act.[20]

The "safety resource to probate court" path offers neither protection for the family's due process rights nor permanency for the child. In several of the cases reviewed, the parents were told little or nothing of their right to reject a safety resource placement and require the agency to take the case to juvenile court. The case of **M.C.** provides a good example. There, although the original charges against the mother had been dropped, she had tested negative for marijuana, was working to support her child, and was living with and sharing childcare responsibilities with her own mother, DFCS made her move out of her own home simply because she had not followed through on a case plan requiring drug counseling. Moreover, according to the mother, DFCS told her she had no choice: either she left, the child left, or the agency would place the child in foster care. While the

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[11] OCGA §§ 15-11-9, 15-11-9.1.
[12] See Kenny A. v. Perdue, 356 F. Supp. 2d 1353 (N.D. Ga. 2005)
[13] OCGA § 15-11-58.
[14]
[15] E.g., In the Int. of B.H., 295 Ga. App. 297 (2008)
[16] OCGA § 15-11-58.
[17] The Adoption and Safe Families Act, P.L. 96-272, as amended, requires the states take specific steps toward permanency for children who are in foster care. Among the approved steps are adoption and guardianship. Georgia receives in excess of $100 million annually pursuant to this law. The federal government regularly audits our compliance, and our failure to meet the guidelines has, in the past, resulted in fines totaling millions of dollars.
[18] See generally 42 USC § 629 *et seq* and 42 USC § 670 *et seq.*
[19] 42 USC § 675 (7), applicable to family preservation programs pursuant to 42 USC § 629a (b).
[20] HB 1040 (2008 Legislative Session), Ga. L. 2008, p. 1175, § 1, codified at OCGA § 15-11-30.1.

agency may differ with the mother in its account of how the safety resource plan was explained, one thing is clear: in none of the cases reviewed by OCA is there any documentation that the parents were fully informed of their rights and of the fact that a proceeding in juvenile court would allow them the assistance of an attorney and would require the state to prove deprivation at a hearing.

Additionally, a probate court guardianship offers the child no permanent placement. By its very nature, the temporary guardianship offered by Georgia's probate courts is *temporary* and can be dissolved at the request of the parent if the temporary guardian does not object.[21] Furthermore, there are generally no provisions in letters of temporary guardianship for child support or visitation with the child by parents or siblings, and the probate court lacks (and likely does not desire) the authority to determine whether and when the parent has done "enough" to regain custody of the child. The juvenile court, on the other hand, possesses all those powers and is the appropriate court in which these matters should be heard.[22]

Juvenile Court judges interviewed for this report raised another issue with temporary guardianships: too often, these matters do end up in juvenile court but only after a long, convoluted process. If a probate court temporary guardianship is established and parent later attempts to dissolve the guardianship over the objection of the caretaker, the matter is generally referred to juvenile court.[23] Experience shows they often show up in the juvenile court without attorneys for either parent, caretaker, or child, requiring the court to either appoint counsel or require the parties to proceed *pro se*. But if the matter had been handled in juvenile court from the beginning, the agency, parent, and child would have all had access to legal assistance.

Finally, there is the question of liability. Without expressing any opinion as to the potential liability of the Department or its employees for placing children in safety resources or encouraging and facilitating temporary guardianships, we note that there has been civil rights litigation holding that when the State forcibly intervenes in the family relationship, it has a duty of care to protect the child and can be liable for acting with deliberate indifference.[24] Given the claims of some parents that DFCS "gave them no choice" in using a safety resource or actively pushed a probate court temporary guardianship, a court might determine that these placements are not truly "voluntary."[25] Given this possibility, the agency should tread cautiously, following its own policy and following the statutorily-approved juvenile court process rather than relying on long-term safety resource placements and untested probate court procedures.

Transient Children and Broken Relationships

Crucial to children who have suffered abuse and neglect deserve stability and attachment. These children need to be with those relatives, siblings, and friends to whom they are bonded. Theoretically, the use of safety resources could promote those ingredients of a healthy childhood. In several of the cases OCA reviewed, however, the loosely-monitored and inappropriate use of safety resources appeared to have the opposite effect.

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[21] OCGA § 29-2-8 (b).
[22] See In the Int. of K.B., 188 Ga. App. 199 (1988) (court has right to order visitation); 15-11-28 (c) (2) (A) (child support); 15-11-58 (judicial review of reunification case plans).
[23] OCGA § 29-2-8 (b).
[24] Taylor v. Ledbetter, 818 F.2d 791, 797 (11th Cir. 1987)
[25] See, e.g., Croft v. Westmoreland County Children & Youth Servs., 103 F.3d 1123, 1126 (3d Cir. 1997) (father claimed he was forced out of his home by child protective service workers without adequate grounds)

One obvious issue is the length of time during which children remain in safety resources. As noted above, OCA found 458 cases in which children remained out of their homes in excess of 90 days, and a significant number – 144 -- were out of their homes in excess of 200 days.[26] OCA acknowledges and appreciates DFCS' efforts to reduce the length of stay in safety resources. Currently, according to DFCS statistics, there are approximately 1,200 children in safety resources, and they stay out of their homes an average of 91 days.[27] That is a dramatic improvement over November 2007, when children were staying in safety resources an average of six months and more.

In several cases, children in safety resources were moved from home to home in ways that would never be tolerated were the children in foster care.[28] Take, for example, the case of **M.P**., an infant, and her sister **S.B**., who is seven. In September 2008, these children were placed in a safety resource with the paternal grandmother of the infant's father. The county agency chose a safety resource placement despite the fact that the mother had already lost three other children to placements in other states.[29] Mother drifted in and out of the picture, at one time living in a shelter in Macon. In May 2009, a stepgrandmother suggested the children go live with her daughter in southeast Georgia. But recently, because the older child has been acting out sexually, those relatives have informed DFCS they cannot keep the children. "It looks like she is going to be placed in foster care in our county, since I cannot find a placement for her," the case manager wrote on June 12, 2009. OCA recently learned that the children have now entered foster care. Thus, in an effort to avoid foster care, the agency allowed these children to drift from home to home for almost a year, only to determine finally that foster care was necessary.

As with the case described above, many safety resource placements involve moving the child to another county and a different school system. Such was also the case with cases OCA reviewed from two suburban counties. In the first case, a grandfather who had received permanent custody of two children from a metro Juvenile Court in 2007 decided in 2008 that he didn't want them any more, so they were placed in a safety resource with an aunt and uncle in Fulton County. Recently, the aunt and uncle decided to divorce and told DFCS they cannot keep the children. Similarly, in another case two children were placed in a safety resource in Bibb County, and the older child enrolled in elementary school there. Within a month, the safety resource determined she could no longer care for the children, so they were returned to their home county.

Then, too, while foster care policy and practice encourages keeping siblings together, there are no such policies limiting safety resource placements or temporary guardianship placements. Thus, in the case of siblings **M.S.** and **Z.R.**, the children were placed in temporary guardianships with different relatives in different counties. The same result obtained in the case involving **K.S., M.G., J.H, and G.G**, who were placed in custody or guardianship with three different relatives.

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[26] The figures provided by DHR showed that of 199 children who were in safety resources over 90 days, 45 were in safety resources in excess of 200 days. OCA found an additional 99 children who were classified by SHINES as being in safety resources over 200 days.
[27] April 2009 G-Force PowerPoint presentation.
[28] In the Kenny A. case, for example, the State agreed to a court order limiting foster care moves to no more than two in 12 months. See Kenny A. Period V Monitoring Report, p. 9, available at http://www.childwelfare.net/activities/kennya/kenny_a_monitorreport5.pdf

[29] While the facts do not clearly indicate whether those children were removed involuntarily by a court due to abuse or neglect, such a finding would raise the presumption under state and federal law that these children should not be reunited with their parent. See, e.g., OCGA § 15-11-58 (h)(2).

Finally, safety resource policy includes no explicit provisions for providing visitation between parent and child or between separated siblings. OCA's experience with safety resource placements over the past year has revealed numerous situations in which the safety resource caretakers of the children were confused on the issue of visitation. In some cases, the caretakers were under the impression that they were to allow the parents no contact with the child, or the parents had no idea that contact was allowed. These issues seem primarily to arise from the fact that the agency has no consistent means of providing information to parents or safety resources of their respective roles, obligations, rights, and limitations.

Adequate Provision of Services to Families and Children

While conversations with DFCS case managers from across the state reveal that family preservation services are generally being provided to families whose children are in safety resources, our review of these cases raised the question whether the use of a safety plan or agency family preservation case plan instead of a juvenile court-ordered case plan resulted in a lower level of service to the family. In many of the cases reviewed, because the child was out of the home in a safety resource, the agency seemed content to allow the parent to carry the burden of fixing his or her problems. In the **M.C.** case, for example, the mother was told she would have to pay for her own drug treatment and provide her own transportation. Her failure to have transportation, she claims, resulted in her failing the drug counseling program and resulted in the agency's directive that she move out of the home. In the east Georgia case of **J.T., G.T., and L.T.**, on the other hand, the agency worked with the mother and helped her obtain drug treatment, and as a result she was soon reunited with her children. With no juvenile court involvement, there sometimes seems to be little incentive to take the steps necessary to solve the family's issues.

Take into consideration also that in some of the cases OCA reviewed, the juvenile court could have provided services that would have sped permanency for the child. In the case of **D.P., T.P., G.P.**, and **S.P,** the children have been placed with their father as a "safety resource" for many months because the mother is unfit and is not working her case plan. The only reason the agency remains involved is that they encouraged the father to go to Superior Court instead of Juvenile Court to legitimate the children, and the father has had difficulty getting a court date. Had the agency taken this case to juvenile court and asked for a protective order and legitimation, the case would likely have been completed long ago. A similar awkward scenario played out in the **J.S.** case, where a county DFCS alerted by OCA to the possibility that the child in a temporary guardianship was not in a "permanent" placement began attempting, through its own case managers, to negotiate the superior court custody process on behalf of the grandparents.[30]

A related issue may be whether DFCS is choosing the appropriate kinds of cases in which to use safety resources. Many of the cases we reviewed involved families with long histories of DFCS involvement, multiple drug and mental health issues, and other chronic problems that are not easily solved with a simple fix. As children are supposed to be placed in safety resources only for short periods of time, this tool may not be appropriate for a case in which the parent has a chronic problem requiring long-term intervention to make the home safe enough for the child to return.

[30] See supra n. 9.

A DESCRIPTION OF THE CASES REVIEWED

A full critique of OCA's work on this project requires, at a minimum, a summary of the cases we pulled and evaluated. While we have included a brief description of the case here, we will be more than happy to provide DFCS with the actual SHINES identification numbers for these cases. County of residence data is omitted to preserve the confidentiality of the children. Where relevant, we included in parentheses the number of days the child or children remained in safety resource placements. Some of the children remain in such placements, so the number of days and other descriptive information is as of approximately June 23, 2009.

- **A.S** and **J.S.**: (302 days) In November 2007, a metro county juvenile court transferred custody of these girls, now six and eight, from foster care into the permanent custody of their grandmother and grandfather in a suburban county. Within a year, the grandmother had died, the grandfather had remarried and had decided he could not keep them, so they were safety-resourced to an aunt and uncle in a different metro county in October, 2008. Between grandfather's waffling on whether he wanted them back and problems with the metro county's DFCS making contact with the aunt and uncle, the case drug on. DFCS discussed the aunt and uncle's possibly taking temporary guardianship of the girls. Then, in early June 2009, the aunt notified DFCS that she and her husband are divorcing and that they will not be able to provide the girls a permanent home.
- **T.N.** (203 days). This child came to the attention of a metro county DFCS when, reports stated, her mother squeezed her hand so hard she broke the five-year-old's finger. DFCS arranged for the mother's mother to take the child in as a safety resource. Family members said the mother had a long history of erratic behavior. Mother apparently did not comply with her needed therapy, so DFCS has requested the juvenile court hear a deprivation petition on the case in June, 2009.
- **J.J.** and **B.A.** (215 days). Following reports of mother's meth use in June and October, 2008, these North Georgia children were placed in a safety resource with the paternal aunt and uncle in a different north Georgia county. The mother, who had earlier admitted chronic meth use, was asked to work a case plan. After she failed to comply and failed a drug test, DFCS finally filed a deprivation petition. Court was scheduled on this case for late June, at which time DFCS would ask for transfer of custody to the aunt and uncle.
- **C.P.** (301 days)**.** On August 19, 2008, this infant was part of a group of siblings who were placed via safety resource with different grandparents due to parental drug abuse. According to DFCS, C.P.'s parents had "an extensive CPS history." The grandparents of **C.P.**'s three half-siblings filed a private deprivation petition on their behalf and on September 23, 2008 were successful in getting the juvenile court to grant them custody of those children. C.P., on the other hand, remained in a safety resource placement with a paternal grandmother while the parents were given the opportunity to work a family preservation case plan. Their failure to comply led DFCS in January to obtain a juvenile court order requiring they work the case plan. Still, they continue to test positive for drugs, and in early June the case manager had to warn the grandmother that she might "lose" C.P. because she had allowed the mother and father to be around him. DFCS is taking the case to juvenile court in June for a contempt hearing against the parents.
- **J.T.** (142 days) **G.T.** (93 days) **and L.T.** (100 days). This east Georgia case arose when the father, an alcoholic, pulled a gun on the mother, a drug addict, and the children pulled out knives to protect themselves. They went to stay with their paternal grandmother pursuant to a safety plan, and mother

apparently did a good job of addressing her addiction issues. Her husband cursed at the case managers when asked in March to work a case plan, but he eventually agreed to participate. The children went home, but very shortly after that the mother moved out and DFCS helped her establish an independent new residence with the children

- **K.J.:** (285 days). This child had been in foster care from 2006 to March, 2008 due to physical abuse. She had been back with her mother only a few months when a caretaker – a "virtual" grandparent who had been the foster parent for the child during her earlier stay – reported another incident of physical abuse. This time, instead of opting for foster care, DFCS advocated for a safety resource placement with this caretaker. For months thereafter, DFCS encouraged mother to have a psychological evaluation and obtain stable housing. They also encouraged the caretaker to seek guardianship of the child. In May 2009, mother picked the child up at school and absconded with her to Mississippi. As DFCS told law enforcement, there was no legal order preventing her from taking the child – only a "written agreement" with the agency. Since that time, the child's father in Mississippi has come forward and the metro county DFCS involved has taken the matter to juvenile court.
- **A.A.** and **T.B.** (587 days). This case from south Georgia was recently closed on May 28, 2009, after the grandmother obtained temporary guardianship of T.B. A.A. had earlier gone to live with her father. Prior to the case being closed, T.B. had been in a safety resource placement with this grandmother since November, 2007 following substantiated allegations that her stepfather had fondled her and her mother's deciding to remain with the stepfather.
- **M.C. (**325 days). This case from a county in southeast Georgia involved a two-year old and a mother who was arrested during a drug raid on a house where she and the child were living. She later tested positive for marijuana. The original charges were dropped against the mother and she moved in with her own mother and thereafter tested negative for drugs and held down a job. Still, because she did not complete her drug treatment, DFCS informed her either she or the child would have to leave her mother's home. The Department encouraged the grandmother to obtain temporary guardianship of the child through probate court and offered to pay for it. That guardianship was finalized in June, 2009. When contacted as part of this review, the mother said that DFCS told her that if she didn't leave the home or place the child elsewhere, that DFCS would take the child into foster care. She is not currently receiving any assistance from DFCS in completing her family preservation case plan, is staying with friends and has not been told whether or when she can move in with her mother again.
- **M.S.** (330 days) and **Z.R**. (358 days). The drug-addicted parents of these children, ages 1 and 4, had domestic violence issues and were living in the woods in a truck. The children were placed with different grandparents, one in one central Georgia county and the other in a different central Georgia county. DFCS continued to attempt to get mother to submit to drug treatment and obtain a stable living situation but in February, 2009 finally told mother she needed to "consider temporary guardianship else we take the case to court and the judge might give the children to the state." Mother consented to temporary guardianship of the younger child in March 2009 but later said DFCS was "forcing her and tricking her" to give guardianship of the other and backed out. The most recent notes in the file indicate she is now prepared to go to probate court for temporary guardianship of the second child.
- **A.A.** (310 days). This child from north Georgia was in foster care in a nearby county due to mother's drug use with her siblings and returned home in 2008. In August 2008, due to allegations that she was acting out sexually and concerns about proper supervision, she was placed with a safety resource. One of her siblings remained with the mother while two others were placed in a different safety resource.

The first two safety resources did not work out for A.A., so she was eventually placed again with the foster parent as a safety resource. She returned home in June, 2009.

- **K.S., M.G., J.H, and G.G**.: In this convoluted case, some of these children had earlier been in foster care, and another case was opened up when one of the children had burns on her finger and both parents were apparently involved in drug activity. The safety resource was actually opened in the name of the grandmother on the daughter of her 18-year-old daughter, but OCA went ahead and reviewed the cases of the young child as well as her older aunts and uncles. The children were separated and placed in different safety resources, and DFCS is currently working the case. Since the parents did not complete substance abuse treatment, the various relatives have obtained temporary guardianship of the children. According to DFCS, the case will now be closed since the guardianships are finalized.
- **D.P., T.P., G.P.**, and **S.P.** (240 days). This case originated in June 2008 with a report that the mother was out "partying" and leaving the children unattended. A subsequent report in September 2008 led to the children being placed with their biological father as a "safety resource," as he had not yet legitimated the children. The mother continues to have untreated substance abuse and mental health issues. As of June, 2009, DFCS is attempting to assist the father legitimate the children in Superior Court so he can obtain custody.
- **J.P., J.K.N.**, and **J.D.N**. (foster care for two; 300 days in SR for one). These west Georgia children are 9 months, 1, and 4 years old. In August 2007, the younger of two children presented to the hospital with non-accidental burns and the mother was charged with cruelty to children and forbidden by Superior Court order from having contact with the children. The mother, who is reported to have a low IQ, is now on probation as a result of the criminal charge. DFCS opened the case as "family preservation" and safety resourced the two older children to an aunt, who turned them back over to DFCS, and then to another relative. When those efforts failed, the agency successfully petitioned the juvenile court for foster care, where they remain today. On September 11, 2008, a third child was born. But instead of asking for foster care, DFCS placed that child in a safety resource with an aunt on the father's side. DFCS reports that it is seeking to terminate the parents' rights on the two children in foster care. The youngest child remains in a safety resource.
- **P.J, A.J. K.J, Pr.J., L.H.** (220 days). This case arose when the mother gave birth to a cocaine-positive baby on September 22, 2009. Two of her children had previously been in foster care; one grandmother already had custody of three of her children, and another grandmother had two. The case manager told her that since this child was the second born to her addicted to drugs, she had to complete drug treatment before she could regain custody, and that she could not reside with her mother or the children. The maternal grandmother obtained probate court guardianship of the children in early May 2009, and DFCS closed its case.
- **Y.J, D.J, M.J, J.J., D.J, G.C.B:** On August 27, 2008, the mother tested positive for drugs and was informed by DFCS in her south central Georgia county that she would need to place her children in a safety resource or have them placed in foster care. She suggested as a safety resource her boyfriend, who was living with her, and DFCS agreed until early September when the agency discovered his 20-year felony record and pending charges for terroristic threats. The agency then agreed that her boyfriend's daughter could move in and serve as a safety resource. That arrangement lasted only a few days, so DFCS then agreed the mother did not require a safety resource so long as she complied with drug treatment. This arrangement worked for about a month or so and then the three younger girls were safety resourced to the boyfriend's sister, while the other four children remained with the mother.

Mother later checked into inpatient drug treatment with three of the children, while three others remained with her boyfriend's sister and one child was safety resourced to her putative father in Macon. Around December 2008, the boyfriend's sister decided the three children with her could not stay, so they were then placed with a safety resource in Macon. The children moved in with the relative in Bibb County and enrolled in new schools. Unfortunately, that relative decided in January that she could no longer keep them because of their behaviors, so those three children enter foster care and remain there as of June 2009. The mother completed drug treatment in May 2009 and returned home with three children. The final child remains with her father, who is seeking custody of her.

- **J.W., Ja.., D.W., Th.H., TiH.**: (369 days). In this southwest Georgia DFCS case, the family has had 8 prior referrals since 2003, three of them substantiated. Drugs continued to be an issue. Around June 2008, the mother voluntarily placed two of her children with grandmother and left town. She left her three boys with their putative father in a different County. When interviewed by DFCS, mother denied any drug use but agreed to attend MH treatment. DFCS documented that if the mother was unable to complete a drug assessment and a mental health assessment then the agency would assist her in signing guardianship of her children over to relatives. The mother refused to agree to sign over guardianship of the boys or the girls. The mother moved around from place to place and failed to work any case plan. She has no income, no job and no transportation. As of May 2009, the mother says she will give temporary guardianship of the boys to their father but will not give up guardianship of the girls, who remain with the grandmother.
- **D.S**. and **V.S.**: (165 days): In October 2007, a south Georgia county DFCS received a report that one these children, age 15, "was moving around from home to home asking others if he could live with them and smelling like a dead animal." The mother had drug issues, and DFCS had received 11 prior reports on the family. One child was placed in a safety resource with a grandmother, while the other – until he became involved with juvenile justice – was placed with a high school teacher as a safety resource. By March 2008, mother was doing much better with her issues and was able to regain custody of one child. The other child remained in safety resources with relatives or in detention until recently due primarily to his juvenile court issues.
- **M.P.** and **S.B**.: (220 days). In this case that originated in south Georgia, M.P. is an infant and her sister S.B. is seven. In September 2008, reports showed that the infant was underweight, had multiple flea bites, and was not bonding with mother, who had already had three other children placed with relatives in other states. DFCS determined the children should be placed in a safety resource with the paternal grandmother of the infant's father in another south Georgia county. A juvenile court hearing was held in April and a protective order was issued ordering the children to remain with the paternal grandmother of the youngest child. Mother made little to no progress and by early 2009 was living in a shelter in Macon, GA. In May, a stepgrandmother suggested the children go live with her daughter in a southeast Georgia county. But recently, because the older child has been acting out sexually, those relatives have informed DFCS they cannot keep the children. "It looks like she is going to be placed in foster care in our county, since I cannot find a placement for her," the case manager wrote on June 12, 2009. Around June 22, 2009, the oldest child was placed in foster care after the mother had removed her from the aunt's home in southeast Georgia.

DATA ISSUES

While working with these cases, OCA noted several concerns arising from gaps in the data. OCA has found some cases in which safety resources were being used which were not properly coded in SHINES. We also found cases in which one child would appear on the "+90" day list but further research would show that there were multiple children involved in the case. Case managers should be reminded to properly code safety resources and enter the names of all children who are placed in safety resources.

The most glaring issue is the difference in the number of cases over 90 days as reported by the DFCS data reporting unit versus those appearing on the individual county reports. While there may be a reasonable explanation for the differing results, we recommend that DFCS review our results and determine why the two similar queries netted such different results. As this statistic is significant, we must make sure the data behind the statistic is accurate.

Finally, OCA found numerous related cases in SHINES that were not properly "linked." In other words, one would have to look into every case involving "Jane Smith" in the system rather than clicking on "Jane B. Smith" and having access to all cases involving that parent or child. The failure to link these cases together can result in a case manager's failure to discover related cases in a different county or to miss important DFCS history on a client.

CONCLUSIONS AND RECOMMENDATIONS

The Office of the Child Advocate believes the use of safety resources and probate court guardianships can be a great tool in preserving the family structure without injecting the government too deeply in a family's private matters. But as our research demonstrates, the misuse of these tools and the neglect of other options, such as the juvenile court, can cause equal or worse damage. Therefore, OCA recommends DFCS consider the following recommendations:

1. Place strict time and geographic limits on the use of safety resources. Under current practice, safety plans accompanying a safety resource placement too often specify that the child will remain out of the parent's home "until DFCS determines otherwise." That vagueness is a problem. If a safety resource is to be used, it should never extend beyond 90 days, and the children involved should never be required to leave their current school system and the attachments and friendships they have there. If the potential safety resource lives in a different county, or if the problem is one that cannot be reasonably resolved within 90 days, the agency should petition the juvenile court for a protective order. If the child is to be moved out of his or her home community, the agency should ask that a CASA or guardian ad litem be assigned to ensure the placement will be in the child's best interests and to guide the child through the difficulties associated with moving.

2. Place limits on the types of cases in which safety resources can be used. If a parent has killed or severely abused one child; has a chronic drug addiction that will require long-term treatment; has lost numerous children to termination of parental rights; or already has children in foster care, chances are that a safety resource placement is inappropriate. While current policy already indicates that cases such as these are not appropriate ones in which to use safety resources, it appears that policy should be strengthened and

tightened so that safety resources are limited to cases that be resolved in quick fashion and in which the child and parent can be readily reunited.

3. Mandate that a clear written description of the rights, roles, and responsibilities of the safety resource process be given to both the parents and the caregivers. The simplest way to avoid a claim by parents that they were "coerced" into a safety resource placement is to ensure that they are given a document containing a clear description of their rights and responsibilities.

   The parental document should contain, at a minimum:
   a. A specific statement of the issues DFCS feels necessitate the placement, the steps the parent must take to mitigate the problem, the length of time in which that can reasonably be accomplished, and the services DFCS will provide the parent and the children during this period.
   b. A clear statement that the placement is voluntary and can be rescinded by the parent at any time, along with specific instructions on how to rescind consent to the placement;
   c. A clear and legally accurate statement of what DFCS would be required to prove in juvenile court if the parent does not consent or withdraws consent to the placement, including a statement of the parents' and child's rights and responsibilities in a juvenile court proceeding: the right to a hearing within 72 hours of removal, the right to the assistance of an attorney, the responsibility to follow the court's orders, etc.
   d. The rules regarding visitation between parent and child, including a visitation schedule, details on who will supervise the visits, and where the visits will occur.
   e. A statement of any obligations the parents will have toward the caregiver for supporting the child during the term of the placement.

   The caretaker document should contain, at a minimum:
   a. A clear description of the obligations the safety resource has undertaken, including an estimated length of time before the child returns home;
   b. A description of the caretaker's rights to receive services from DFCS, support from the parents, and assistance for the child;
   c. A detailed visitation schedule, along with a description of any obligations the caretaker has to arrange visitation;
   d. Information on what the caretaker should do if he or she can no longer care for the child.

4. Place strict limits on the use of temporary guardianships. As noted above, our use of temporary guardianships as a method of giving an abused or neglected child "permanency" is neither wise nor compliant with the federal statutory scheme under which our child welfare services agency operates. If DFCS intends to achieve permanency through guardianship, it should use the permanent juvenile court guardianship process adopted by the Legislature in 2008. The use of temporary guardianships should be limited to those situations in which the only issue of "deprivation" is that the child is without a natural guardian or needs, temporarily, to have an adult who can enroll him or her in school, obtain medical assistance for the child, etc. Temporary guardianships should never be used as a tool to allow the agency to close its case on a family if the parents remain unfit to care for the child.

5. Use the Juvenile Court Process. Juvenile courts have the ability to issue protective orders, to legitimate parents, to order child support, to assess family capacity, to monitor case plans, to force compliance with

services, and to take many steps short of removing a child from the home. They also serve to protect the procedural and substantive due process rights of the children and parents who are involved with the child welfare agency and act as an appropriate check against the immense power of the state. By involving the juvenile courts, DFCS both ensures that the voices of all parties to the case are adequately heard and builds the confidence of the parties that they will be treated fairly and justly by the agency.[31]

6. Collect data on the use of temporary guardianships. OCA is not aware of any efforts by DFCS to keep track of the number of children whose cases are disposed of via temporary guardianship as opposed to reunification, placement with a fit and willing relative, or other outcomes that are regularly measured. Neither is OCA aware of any data regarding the number of these temporary guardianships that are later dissolved voluntarily or that are transferred to juvenile court when one parent seeks dissolution. These statistics are important because they directly reflect both the work DFCS is doing as well as the long-term results of that work. If temporary guardianship is to be treated as a permanency option, the agency should begin tracking and reporting this data.

[31] In giving OCA feedback on a preliminary draft of this report, DFCS officials noted that "there may as many good reasons to not use the juvenile court as to use it, depending on the circumstances." OCA fully agrees. All we ask is that the rules on when to use the juvenile court and when not to use it are clearly identified and consistently followed.

Appendix: Safety Resource Cases Reviewed

County/Region	Relationship of SR	# of Days in SR
Macon/8	GP	216
Houston/6	GP	138
Cook/11	GP	216
DeKalb/11	Bio-Father	180
Fulton/13	GP	164
Mitchell/10	Legal Father	294
Carroll/4	Friend	212
Whitfield/1	Aunt/Uncle	150
Spalding/4	GP	242
Walton/5	Aunt/Uncle	237
Emanuel /9	GP	126
Clayton/16	GP	138
Clayton/16	Friend	287
Tift/11	GP	571
Decatur/10	MGM	
Gwinnett/15	GP	Less than 30 (CDSI)
Jones/6	Great GP	310
White/2	Friend	263
Bartow/3	GP	238
Richmond/7	Other Non-Rel	188
Bulloch/12	GP	128
Douglas/17	Bio-Father	118

Addendum: Response of DFCS Director Mark Washington:

"Tom,

I've had Sharon Hill reviewing the report this week. I know Friday was your finalization date, but if some additional comments are acceptable, please allow me to add.

This communication is related to the Office of the Child Advocate White Paper Series on Significant Policy Issues in Child Welfare dated June 25, 2009, entitled Reducing the Foster Care Rolls: Are We Using the Right Tools? The information contained within this paper has been seriously considered and used to review our reporting procedures. Please know that your interest in and dedication to improving the lives of Georgia families is recognized and appreciated.

Based on an internal review within the Data Analysis, Accountability, Research and Evaluation (DAARE) section, it was discovered that a limited query was inadvertently used to extract the data for the list of placements over 90 days as of April 20, 2009. A full search of all safety resource instances was not conducted because an assumption was made that all would be listed in a particular SHINES table, however, that was not the case. The query has been redefined so that all children in safety resources are included in any extract.

Additionally, on July 13, 2009, a list of children in safety resources for 45 days or more will be sent to regional directors for review. Regional directors and county leadership will be expected to staff cases as necessary and to determine the most appropriate course of action.

In order to enhance our knowledge and understanding of the impact of safety resources on safety, permanency and well-being for children, DAARE will conduct an analysis by July 31, 2009 to determine:

* the number of abuse/neglect reports occurring within safety resource placements,
* stability of safety resource placements: (number of moves from one safety resource to another),
* the number of families with court involvement,
* rate of entry into foster care and,
* the number of children entering safety resources who have been in foster care.

If there are additional factors you would like for us to consider, please feel free to contact me and I can explore those.

Mark A. Washington
Assistant Commissioner DHS
Division of Family and Children Services"