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class action lawsuit on behalf of tennessee's most vulnerable children seeks reform of failing child

PRESS RELEASE

Legal Action Charges State With Violation of Civil Rights and Failure to Protect Children From Harm.

(Nashville, Tennessee, May 10) - A federal civil rights lawsuit filed today in the U.S. District Court for the Middle District of Tennessee charges that the Tennessee Department of Children's Services (DCS) has placed thousands of children under its care in danger and at risk of harm. The lawsuit, *Brian A. v. Sundquist*, seeks to stop ongoing violations of children's rights and to ensure that DCS adequately cares for and protects foster children in the state's custody.

Brian A. v. Sundquist was filed on behalf of eight named plaintiffs - children who have suffered serious physical and psychological harm while in the care of DCS - and on behalf of the approximately 9,000 foster care children who are currently dependent on DCS for their care and protection. Defendants in the class action are Governor Donald Sundquist and

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George Hattaway, Commissioner of DCS.

The lawsuit was filed by Children's Rights, a national advocacy group for children, along with co-counsel David L. Raybin and Jacqueline B. Dixon of Hollins, Wagster & Yarbrough PC in Nashville, and Richard B. Fields in Memphis, John W. Pierotti and Robert Louis Hutton of Glankler Brown PLLC in Memphis, and Wade V. Davies of Ritchie Fels

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& Dillard in Knoxville.

"As repeatedly reflected in the state's own reports, and asserted in the lawsuit, Tennessee's Department of Children's Services is a grossly mismanaged and overburdened child welfare system," said Marcia Robinson Lowry, Executive Director of Children's Rights. "Tennessee's failure to protect foster care children in its custody and provide them and their families with appropriate placements and services has endangered their lives."

Ira P. Lustbader, lead attorney for Children's Rights on the lawsuit, stated that "children in Tennessee are often placed for over six months in overcrowded, emergency shelters and other temporary holding facilities without services or treatment, because DCS has nowhere else to place them. Monitoring and supervision of children in DCS custody is inadequate, so children often suffer additional abuse and neglect while in state custody. Children are not receiving desperately needed services and treatment and get bounced around from one inappropriate home to another. Efforts to reunite children with their families or place them in a permanent home are routinely inadequate."

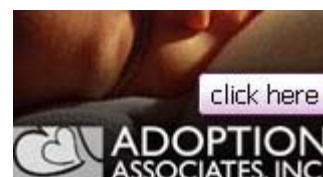
The lawsuit asserts that for at least ten years, the state has been well aware of its pervasive failure to serve the children who depend on DCS for their basic safety and most fundamental needs, and has failed to provide the leadership, support and resources necessary to protect and care for children. According to the plaintiffs' complaint, the state's attempt at reform in 1996 by creating DCS "has failed to improve children's lives or improve the efficiency of the system," creating deprivations that "have only worsened over time, resulting in the dangerous and unlawful conditions that exist today."

Children's Rights responded to requests from local advocates to investigate Tennessee's child welfare system and over the past two years has conducted extensive interviews and spoken with hundreds of people involved in all aspects of the state's child welfare system. They consistently identified system-wide failings that pointed to the need for a lawsuit to force reform of DCS practices.

The lawsuit requests that the court permanently stop defendants from subjecting the children in the plaintiff class to harm and from threatening their safety and well-being through practices that violate their rights. On behalf of these children, the court is being asked to order appropriate remedial relief to ensure that defendants comply with the law and provide children with legally mandated services.

Tennessee's foster care system is marked by the following grim facts, among others:

- *Children are routinely placed in emergency shelters and other temporary holding facilities for upwards of six months because the state has nowhere else to place them. In April 1999, 400 children were on waiting lists for needed services and placements.
- *The average number of placements for foster care children is 3.4, and 23% -- over 2,000 children based on the statewide foster care population -- have experienced 10 or more foster care placements.
- *An estimated 800 foster children, for whom parental rights have been terminated, were awaiting adoption, according to an August 1999 state report. The state estimated that federal law requires termination of parental rights and efforts toward adoption for an additional 1,100 children, but these steps have not been taken.



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*At least 36% of foster care children -- approximately 3,250 children -- have been in foster care for over two years and 17% have been in custody for over four years. The actual percentage of foster children in DCS custody for over two and four years is significantly higher, because the state's estimate includes delinquent children who, as found by the state, spend less time in custody.

*Children 13 years and older -- over 4,000 children -- comprise the largest segment of the foster care population. They experience the greatest number of placements, often suffer additional abuse in foster care and face the poorest prospects for adoption or a permanent home.

*Defendants make even less effort to secure rights to appropriate placements and services, and to permanent homes for African-American children than they do for Caucasian children.

Plaintiffs in today's suit include, among others:

Brian A., a nine-year-old boy who has been in foster care for four years, currently lives in an emergency shelter in Shelby County, where he has lived for the past seven months because DCS has failed to provide him with an appropriate placement. Brian waits indefinitely for a home, without any social work plan or goal to get him out of foster care and into a permanent family. He is without necessary treatment, case worker services or appropriate schooling, in a grossly inappropriate and overcrowded facility meant for extremely short stays of under 30 days. He has little or no contact with any of his five siblings. Brian wants desperately to get out of the shelter and into a safe home, and to spend time with his brothers and sisters.

Tracy B., is a 13- year-old girl who currently lives in a foster home in Coffee County. Her current home is her fifteenth foster care placement since she was taken into DCS custody in May 1999. At a DCS "staffing" in January 2000, DCS first determined that after thirteen placements and continued emotional and behavioral problems, Tracy should be placed in a specialized foster home. No such foster homes were or are available, so Tracy remains on a waiting list for an appropriate placement.

Jack and Charles C., are brothers who are ages 14 and 7, respectively. They are part of a sibling group of 11 children from the same biological mother, all of whom were removed from her custody because of abuse and neglect stemming from her crack cocaine addiction and abuse. Jack lives in a group home in Shelby County, his twenty-third foster home as a result of DCS's failure to provide appropriate placements and services for him while in custody. Jack wants desperately to be adopted and recently wrote poems about being "tossed around" and "stepped on." Charles, who was addicted to cocaine at birth and placed into DCS custody, was returned to his mother briefly by DCS, without finding out if it was safe to do so, ingested his mother's drugs, and was left permanently brain damaged and physically and mentally handicapped. He currently lives in a therapeutic group home in Davidson County.

Amy D., is a 16-year-old girl from East Tennessee who currently lives in a specialized facility in Knox County. Since entering DCS custody in 1997, Amy has been in and out of fourteen foster care placements because DCS failed to provide an appropriate assessment of her needs when she entered custody and has failed to provide appropriate placements and services to address her serious emotional problems. Amy is an intelligent girl but is poorly prepared to take care of herself once she reaches 18 and is discharged from DCS custody.

Children's Rights works throughout the United States in partnership with national and local experts, advocates and government officials to document the needs of children in the care of child welfare systems. Children's Rights helps develop realistic solutions and, where necessary, uses the power of litigation to ensure that reform takes place.

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