

For the Love of Children: Is juvenile system too closed?

Some suggest laws meant to protect kids result in too much secrecy.

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By the time Travis Thieneman discovered that his girlfriend was pregnant with his child, the two had already split up.

The 26-year-old southern Indiana man says he was worried enough about their infant that he called the state's child abuse hot line twice in late 2010.

The first call — on Dec. 7 — was the day Baby Gaven was taken home from the hospital after having gone through **methadone** withdrawal, the father said in a recent phone interview. Thieneman told the intake specialist with the Department of Child Services that the baby's mother had apparently taken so much medication that she was slurring her words and that he was worried about her ability to care for a newborn and her 6-year-old disabled child.

The Pekin, Ind., man said the child's mother would call him to take the baby or stay with him as she needed help. He said he placed the second call for help on Dec. 15, on one of those days she'd asked for baby-sitting, after he was looking for diaper rash cream and discovered that furniture in the tiny home — including the baby's crib — had apparently been burned by dropped cigarettes.

He said he was told the first time he called that there did not appear to be imminent danger; in the second, the DCS operator told him they'd likely wait to act when there were "actual burns" on the child.

Gaven died a week later, at 18 days old. An autopsy showed multiple skull fractures, four broken ribs and hemorrhaging up and down his spine, his father said.

No one has been charged in the baby's death, but Thieneman filed suit last fall against the baby's mother and DCS.

"I've played that over and over in my head so many times," Thieneman said of his attempts to gain full custody and to alert authorities. "I would have thought at some point someone would have stood up for Gaven."

It was only after the lawsuit was filed that he and his attorney discovered that the baby's mother had actually had her older child taken by DCS for five years, he said, and that the older child had recently been returned when Gaven was born. The mother "had a whole other life I wasn't aware of," he said.

The young man said that until this happened, he had no idea how DCS works, and Thieneman hopes the lawsuit helps lessen the amount of confidentiality that envelops the system.

"I think in cases where there's been a child removed in the past, there should be some sort of

access to it," he said. "All that's sealed, and (people) could have the darkest past ever as far as child abuse and neglect."

'Confidential is really secret'

When the current juvenile system was being developed and its laws first written, St. Joseph Probate Judge Peter Nemeth said, the world was different.

In 1962, for instance, only 5 percent of children were born out of wedlock. Now, the national figure is closer to 42 percent, and that stigma is gone.

"If I were in the legislature, I would be in favor of losing that confidentiality," Nemeth said recently. "I think what you lose in keeping it confidential is the accountability factor."

According to state law, all child-protection information is confidential, except in cases of a fatality or "near-fatality," where a judge can decide what relevant DCS records can be released to the public.

Indiana has a child fatality review team that studies and reports on deaths of Indiana children. But the team's public reports, released online, do not delve into specifics of what happened — or did not happen — in those deaths. Instead, they provide broad recommendations and a general overview.

Legislators created a DCS ombudsman office in 2010. The ombudsman, who reports directly to the governor, investigates complaints involving DCS. But the ombudsman's public reports also contain only general trends and only non-identifying information about specific cases.

State Sen. Carlin Yoder, R-Goshen, introduced a bill this legislative session that would provide more staffing for the ombudsman office and introduce a "DCS evaluation committee," but it does not appear to be gaining much ground.

DCS Director James Payne, who was a Marion County juvenile court judge for 20 years, advocates for more openness.

While Payne was a judge, he opened his courtroom to cameras for a "Dateline" television special about the juvenile justice system. And he said he learned in that process that people generally aren't afraid to share their stories publicly.

"I'm not opposed to loosening up the confidentiality. I've said for years that 'confidential' is really 'secret,'" said Payne, who points out that his agency often updates its website with newly released reports and data. "The issue really is the degree of that."

Concern about that "degree" is echoed by others in the child protection system, who express the need for protecting parents against frivolous, unfounded tips, and a desire to not stigmatize children.

Yet, Nemeth said, "Getting rid of this confidentiality would be helpful. It's the role of the press to be a watchdog. It can't all begin and end within the Department of Child Services."

'We're not perfect'

In December, the Court of Appeals of Indiana ruled in favor of three Hancock County parents who had appealed a circuit court judge's termination of their parental rights — while calling into question some DCS actions.

The mother had three children, one with an ex-husband and two with her present husband. The court documents say all three had various issues with instability when the DCS cases began in 2009, including drug use and incarceration.

The appeals court justices reversed the original decision, ruling that the parents had indeed been making progress on their issues and should be allowed more time to be reunited with their children.

But perhaps more notable were the justices' written opinions of how DCS employees behaved as the case unfolded.

Footnotes throughout point to missing and contradictory facts as the ruling describes the case, in one example referring to "the disturbing possibility that DCS intentionally delayed" a response to a foster home licensing issue.

"We need not resolve today whether DCS technically complied with the law; however," the court document states, "we wish to emphasize that DCS's actions were not consistent with its purpose and that we do not condone what happened in this case."

Nemeth, too, said more checks and balances are needed.

"I have to make decisions based on the evidence before me," the judge said, "and I'm not always sure that DCS is telling me everything."

In an interview last month with The Tribune, DCS' Payne bristled at a question about whether case managers need more oversight.

"If you're asking for perfect, I will admit we're not perfect," he said. "If you're asking about the case in Hancock County, I can say we don't always do the work that is expected. ... I suspect there are people who think we're doing a pretty good job. So why don't you look those people up?"

Asked about the possibility of the DCS evaluation committee proposed by state Sen. Yoder, Payne referred to the recent creation of the ombudsman's office, the agency's frequent filing of reports and data, and the availability of child advocates to provide checks and balances.

"I also find it interesting that at a time when Indiana is considered to be one of the better agencies for child protective services in the country," he said, "there's this thought that we need oversight. ... It seems to be motivated by something other than whether children are better, because the data is pretty clear. We have more children with fewer dollars and better results. That typically would not indicate you need more oversight."

'It's scary'

South Bend attorney Charles Lahey recalls a time several years ago when he stopped taking cases involving a Child in Need of Services, or CHINS.

He had represented a mentally retarded woman who had children of normal mental abilities. Lahey recalls that DCS took the children from her, saying that although the mother could care for their basic needs, she could not properly stimulate them.

“They came to the conclusion that she was doing the best that she could, but it just wasn’t good enough,” Lahey said. “You don’t know whether they’re going to find a decent home, but you know their mother loves them. ... You could have taken my kids away from me, too, and they might have done better, too.”

After some time had passed, Lahey said, he resumed working with cases involving children but recognizes how difficult those cases are.

“Mistakes are made whenever you leave it in the human arena,” he said. “Every case is so intrinsically individualized that doing it by the book isn’t going to work.”

Where confidentiality takes a back seat to openness is a significant issue, he said.

Regarding Judge Nemeth, for instance, “I respect him a lot, but not so much that he should operate in a vacuum with no checks and balances on him,” Lahey said. “The public has a right to know whether or not this confidentiality is a smokescreen.”

In fact, family law attorney Len Zappia of South Bend thinks juvenile judges, including Nemeth, are so overworked that they don’t have the time to question enough in every case.

Zappia thinks some sort of local, independent review system should be put in place to “fast-track” CHINS cases that now can linger.

“A lot of people don’t understand the system because it’s a closed system,” Zappia said. “They have little or no chance because it’s difficult to understand. ... Once you’re in it, you’re in it for the long haul.”

When child protection workers propose a plan for a child to be returned to parents, Zappia said, it’s often too long and complicated, and parents become frustrated and angry — setting up a cycle where CPS employees sometimes can react out of dislike for a parent.

Often, program managers and child advocates seem afraid to counter what a DCS employee recommends in court, the attorneys say.

“It’s one thing to go to court and lose your money. It’s another thing to go to court and lose your freedom,” Zappia said. “It’s a whole nother thing to lose your child. It’s scary.”

‘Aliens, criminals and freaks’

South Bend attorney Vincent Campiti represents a father and child in a lawsuit he filed at the end of October against DCS, among others, claiming that a caseworker pressured the mother — also a plaintiff in the lawsuit — to leave the couple’s South Bend home with her son after a reported domestic violence incident.

For various reasons, the father had custody of the child, but the lawsuit quotes the caseworker as saying, “The State of Indiana favors the Mother no matter what’ and asked her who Father’s attorney was. At the name of the attorney, (the DCS worker) replied, ‘I hope he rots in hell.’”

The child was made a CHINS, the lawsuit says, and the mother was threatened with losing her child if she did not take him to a shelter with her. At the shelter, the mother and son were exposed to disturbing experiences, the lawsuit alleges, and until the child was returned and the DCS case ultimately dismissed, the father was denied his child for more than four months.

The agency’s mindset seemed to be, “We don’t like this guy and we don’t like his attorney,” Campiti said. “I think that was a part of it.”

“I think any parent should be concerned that anybody can make an allegation up and these people can enter your lives, and if you don’t do what they want you to do, they can take your child away from you,” Campiti said.

“Parents are made to feel like they’re aliens, criminals and freaks,” he said. “It clearly sets up an adversarial process.”

Both Campiti and Zappia point out that if a parent feels pressure to admit a wrongdoing in the hopes of having a child returned, it often backfires — and parents don’t understand the system well enough to overcome the layers of bureaucracy that can follow.

No easy answers

When Susan Hoppe was appointed Indiana’s first DCS ombudsman in December 2009, she knew she had her work cut out for her.

Hoppe, who had worked in the child welfare system for more than 30 years, said she spent the first few months studying similar ombudsman offices and setting up a system for her and her one assistant.

Hoppe has filed year-end reports for 2010 and 2011 on her website detailing the types of cases the office has handled so far, a large number originating in central Indiana, where the office has been better publicized.

Anyone can file a complaint on the website, she said, and the majority are from parents and other relatives. The reports also detail such data as how many cases have found to have merit, and statistics on how they were resolved.

Hoppe points to some major changes in DCS practice since her office has become involved in the last two years, such as shoring up “child-family team meetings,” addressing more directly the question of “What could go wrong?” in family plans, and stressing more exact child interviewing policies.

She said the state’s extra caseworkers and strengthening of data collection have been improvements, too.

Hoppe wants people to know her office is available as an independent resource.

“Oh, the misinformation out there is absolutely incredible,” she said. “DCS is so complicated, the public thinks there are easy answers, and there aren’t. Things to weigh are equally not a good choice sometimes.”

More sunshine?

State Sen. **John Broden**, D-South Bend, introduced an amendment this session to change DCS record-keeping rules to store records of “unsubstantiated” reports for at least three years.

The issue arose here when prosecutors seeking information on the beating death of 10-year-old Tramelle Sturgis in November discovered that earlier reports to DCS had already been destroyed. By state law, DCS is asked to destroy such records after 120 days.

Broden, a former DCS attorney himself, sees the argument that some unsubstantiated reports could be falsely accusing parents, but “it’s a very tight circle of who can get access to the reports.”

Broden said he applauds a lot of the changes in DCS over the years, such as adding caseworkers and dramatically shortening the length of time between when a child is removed from a home and the matter is heard in a courtroom.

But as a legislator, he said he’d like to see more information about how the changes are working.

“I think we are worse off since the state took over CPS,” Broden said. “I think we had a stronger statewide system when each county had control of the funding.”

Broden advocates easing the system’s confidentiality requirements, to a point.

“If the press wants to come and look at various cases and orders, I’d have no problem with that,” he said of the possibility of better analyzing the system’s success rate. But he’d also suggest that names of children and parents in those cases remain confidential.

“I’m certainly in favor,” Broden said, “of opening that up with plenty of sunshine.”