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Audit: DCFS removal of 2 children flawed

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If Utah's Division of Child and Family Services (DCFS) was justified in taking custody of two of Lisa Bierly's children, a recent legislative audit found no proof.

The audit, ordered by legislative leaders in March, highlights "procedural errors" made by the DCFS during the removal of Bierly's "brittle diabetic" son and his sister in 2000 - such as the failure to thoroughly investigate and to first offer help with parenting skills. It echoes previous investigations by pointing to a breakdown in communication and personality clashes among the groups responsible for shepherding the case through juvenile court.

And it points to trouble spots in the child welfare system - such as a lack of adequate legal representation for parents - that may warrant a second look.

The seven-page report was completed about two months ago, but was classified as protected because it contained confidential information on Bierly's case. *The Salt Lake Tribune* obtained a copy this week.

Bierly's children, now ages 12 and 6, have been adopted. But she said the state owes her and her family and the public an explanation.

"We need to know the truth of what happened, so we can avoid it happening again," Bierly said.

DCFS Director Richard Anderson notes Bierly's case began as Utah's child welfare system was in flux, following a federal lawsuit that put the troubled system under the review of a federal judge. Since then, he said, checks and balances have been added to ensure children are protected without treading on parents' rights.

"Today we would have handled this case differently," admitted Anderson. "But that may not have changed the ultimate outcome, because that was up to the parent."

Once the children had been removed, it appears the state "acted reasonably in its decision to terminate [Bierly's] parental rights," the audit concludes, because her "behavior was often erratic and uncooperative."

She failed to comply with court-ordered steps to regain custody, such as skipping visits and court hearings, not keeping a stable home, and becoming involved in domestic violence, the audit said.

But Bierly and parental rights advocates say the audit proves her rights were terminated as a result of overly aggressive prosecution by state attorneys and a refusal by state agencies to acknowledge they shouldn't have taken her children.

"It's time somebody told the truth. The state knows it made a mistake and has been covering it up for years," Bierly said on Wednesday.

Bierly said her son was taken in the fall of 2000 because the state believed she was failing to manage his diabetes. A month later, the boy's younger sister was taken into custody as a "sibling at risk," according to Bierly, who denies neglecting her children.

The audit does not state Bierly's children were unjustly taken. But, after 230 hours reviewing DCFS files and interviewing caseworkers, auditors could not "definitely conclude" that the removals were warranted.

The audit lists procedural missteps made by DCFS caseworkers, who, according to the probe, failed to offer preventive services, do a thorough investigation or consider placing the children with a next-of-kin before taking them.

Also, mandatory medical examinations were slow in coming and Bierly was not given adequate notice of shelter hearings.

"Some senior DCFS staff told Ms. Bierly that her children never should have been removed," the report notes.

In addition, Bierly was given conflicting messages from DCFS caseworkers who were fighting for her to keep her children and the assistant attorney general who pushed to terminate Bierly's parental rights, the audit found.

Her own private attorneys were also at fault and may have actively discouraged her from complying with the court's correction plan, the audit found.

Anderson said since the Bierly case, DCFS has limited the influence of assistant attorneys general and appointed a parent czar to help parents wend their way through a confusing and often intimidating system.

Tomorrow's challenge, said Anderson, is to find more money to enable parent czar Alicia Davis' office to begin offering legal services to parents. Currently, all she has the budget to do is act as a resource for defense attorneys.

Defense attorneys regularly appointed by juvenile judges "are in juvenile court on a regular basis and are very accustomed to these cases," said Davis.

"But private attorneys are more accustomed to adversarial forms of defense and often that works against clients."

Lawmakers, who ordered the probe and will debate at least two bills aimed at expanding parental rights during the coming legislative session, haven't seen the report.

Background:

* Child welfare workers took custody of two of Lisa Bierly's children in fall 2000. In 2002, a juvenile court judge terminated her parental rights because she did not follow a treatment plan to reunite the family.

* She continued to lobby lawmakers and litigate for the return of her children, who have since been adopted.

What's new:

* A legislative audit finds policies were not followed in the removal of her children and documents miscommunication by the attorneys and child welfare workers involved in the case.

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