

I.A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JEANINE B. by her next friend
Robert Blondis; ALINE H. by
her next friend Wesley Scott;
MAURICE R. by his next friend
Wesley Scott; DOUGLAS R. by
his next friend Wesley Scott;
CAROLYN D. by her next friend
Cynthia Lepkowski; JAMES B. by
his next friend Mary Protz;
MINDI D. by her next friend
Sheila M. Smith; ALAN A. by
his next friend Shelia
Hill-Roberts; DARREN C. by
his next friend Chris
Velnetske; ALISSA S. by her
next friend Anne Marie Abell;
ROXANNE F. by her next friend
Oshiyemi Adelabu; JOCELYN Z.
by his next friend Jane Moore;
KAREN M. by her next friend
Joan Zawikowski, individually
and on behalf of all others
similarly situated,

Plaintiffs;

vs.

TOMMY G. THOMPSON, in his
official capacity as
Governor of the State of
Wisconsin; GERALD WHITBURN,
in his official capacity as
Secretary of the Department
of Health and Social Services
of the State of Wisconsin;
F. THOMAS AMENT, in his official
capacity as the County
Executive of the County of
Milwaukee; THOMAS BROPHY, in his
official capacity as Director of the
Milwaukee County Department of
Human Services,

Defendants.

THE DIST. COURT EAST DIST. WIS.
FILED
O'clock
SOFRON B. NEDILSKY

JUN 11 1983

COMPLAINT 93-C-0547

Civil Action No.

INTRODUCTION

1. This is a civil rights action on behalf of children who may be or have been abused or neglected and are or should be known to the Milwaukee Department of Human Services ("Milwaukee County Department" or "DHS") and those children who have been placed in the custody of the Milwaukee County Department. The defendants in this action have systematically denied the plaintiff children their rights under the United States Constitution, federal statutory law, and Wisconsin state law.

2. The child-welfare system in Milwaukee County is in crisis. Reports of suspected abuse or neglect of children are not properly investigated; virtually no services are provided to children and their families so as to avert the unnecessary entry of children into foster care; planning for children who enter foster care is perfunctory and ineffective, resulting in children spending many years in government custody; placements for children are often inappropriate and unsupervised; and services to children and their families that would allow children either to return home or be adopted are grossly inadequate. Milwaukee County social workers are saddled with dangerously high caseloads -- an average of 100 families per worker -- and are poorly trained and supervised. County and state officials long have known that the Milwaukee County foster-care system is endangering the children it is supposed to safeguard and is violating federal and state law, yet they have failed to move to protect these children and to cure the legal violations.

3. The Milwaukee County Department of Human Services and the Wisconsin Department of Health and Social Services (Wisconsin DHSS) are the county and state government agencies responsible for performing state and federally mandated functions for children at risk of abuse or neglect and for children in foster care.

4. Those functions include, among others, investigating reports of suspected child abuse and neglect in a timely and appropriate manner; providing necessary services to children and families to enable children to remain at home whenever possible and protecting children who are the subject of such reports; investigating and assessing requests for and referrals to child welfare services; managing cases accepted for service through the development, review, revision and implementation of written case plans; providing appropriate placement, care, and necessary services to children, their families, and foster families; avoiding the unnecessary movement of children among different foster-care placements; reunifying children with their families whenever appropriate; protecting children from harm while in state custody; ensuring that all children, regardless of handicap or disability, receive the benefits of the state foster care program; and providing children with permanent and stable family relationships either by returning them to their own homes or by providing them with adoptive or other permanent placements.

5. The Wisconsin DHSS is the state agency that receives and disburses federal funding that is provided to the state to

aid in the administration of its federal and state mandated functions. It is responsible for ensuring that county child welfare agencies, such as Milwaukee County DHS, comply with federal and state mandates.

6. Milwaukee County DHS is directly responsible for those Milwaukee children reported to the agency as being abused and neglected and those children in the Department's physical and/or legal custody and is responsible for ensuring that those children receive the services to which they are entitled under the law.

7. The defendants are systematically depriving Milwaukee children of their rights under state and federal statutory laws and under the United States and the Wisconsin Constitutions. The defendants long have been aware of the widespread failures in the Milwaukee child welfare system for which they are responsible and the resulting harm to children but have failed to take steps to remedy these violations of law and to halt the consequential damage to children.

8. Public officials repeatedly have gone on record documenting the failures in the Milwaukee foster-care program, which nevertheless continue and intensify. As one county official responsible for the child welfare system, Sharon Schulz, Administrator, Youth Services Division of the Milwaukee County Department of Health and Human Services, stated publicly on May 4, 1993, "The [child welfare] system does not appear to be working for anyone." Defendant Thomas Brophy has described the Milwaukee foster care situation as being in "a severe crisis

state."

9. The Milwaukee DHS's failure to deliver to plaintiffs and other Milwaukee children the services and protections to which they are entitled is exacerbated by the Wisconsin DHSS' failure to provide the Milwaukee County child-welfare system with the funding, support, and supervision that it needs to perform its duties adequately. The state has consciously chosen to underfund the operation of Milwaukee's foster-care system, even with the knowledge that services being provided to Milwaukee children are inadequate and that children are being harmed.

10. Milwaukee DHS caseloads are five times those recommended by nationally recognized standards. This prevents Department workers from providing even minimally adequate protection for children and constitutes gross and intentional neglect. Hundreds of children receive no caseworker supervision at all. Instead, their cases are assigned to a computer for monitoring. Workers do not receive the training or supervision necessary to fulfill the county's legal obligations to the children who are dependent on Milwaukee DHS for protection, supervision, and planning for their future.

11. Planning to insure a permanent placement for children in foster care is grossly inadequate. Many children in DHS custody fare little better than they did in the homes from which they were removed.

12. Once children enter government custody it is difficult for them to escape without being further damaged by their stay in

state custody, in which they are moved from one temporary home to another and often are neglected by those who removed them from their own neglectful families. The length of time that Milwaukee children spend in foster care is so high that many children are being permanently damaged by their prolonged and unnecessary stays in government custody.

13. Intended as a temporary and benign system to further the best interests of children, the Milwaukee foster-care program has instead become a government system that violates almost all of its legal obligations to the children unfortunate enough to be dependent upon it for their protection and care.

14. The United States and Wisconsin Constitutions require that when the state uses its parens patriae power to take custody of a person for that person's protection, the state is then under an obligation to provide the required protection. The children of Milwaukee County's chaotic foster-care system have no such protection.

15. Two federal laws, the Child Abuse Prevention and Treatment Act and the Adoption Assistance and Child Welfare Act of 1980, prescribe in detail the minimum requirements of the system of care a state is required to provide to children who are the subjects of reports of abuse or neglect or who enter foster care. The defendants, with full knowledge of the requirements of these laws, have accepted federal funding and yet have chosen to operate a system that they know, or should know, is grossly inadequate and far out of compliance with federal law.

16. Two other federal laws, the Americans with Disabilities Act and the Rehabilitation Act of 1973, require that a state or county accommodate the special needs of those with disabilities when operating a service system funded in part with federal funds. The underfunded and undersupervised foster-care system in Milwaukee County not only fails to accommodate the special needs of children with disabilities or handicaps, it actively exacerbates those conditions through the neglect and abuse to which these children are exposed in the foster-care system.

17. Not only does the failing child-welfare system in Milwaukee County violate federal constitutional and statutory law, it also violate state laws. The Wisconsin Children's Code requires the Department to assess the risk of harm to children referred to it for protection in a timely fashion; to develop a plan of care designed to meet the needs of the child and family; to implement that plan in the least restrictive environment; and to deliver those services needed for the protection of the child, the reunification of the family, or the placement of the child with another permanent family. The Wisconsin Constitution states that no person shall have a right without a remedy, yet Milwaukee County DHS consistently denies children and families the rights granted in the Children's Code and leaves them no recourse.

JURISDICTION AND VENUE

18. This is an action pursuant to section 1983 of title 42 of the United States Code alleging violations of federal statutes

and the United States Constitution as well as violations of state law. The district court has jurisdiction over the federal claims pursuant to sections 1331 and 1343(a)(3) of title 28 of the United States Code and has pendent jurisdiction over the state claims.

19. Venue in this district is proper pursuant to section 1391(b) of title 28 of the United States Code because the claims arise in the district.

CLASS ACTION ALLEGATIONS

20. This action is properly maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

21. The plaintiff class includes the nearly 5000 children who, as the result of abuse or neglect or as the result of their parents voluntarily placing them in foster care, are in the legal and/or physical custody of the Milwaukee County DHS. The plaintiff class also includes those additional Milwaukee children who are or should be known to the Department as the result of suspected abuse or neglect.

22. The named plaintiffs are adequate representatives of the class. The violations of law alleged by the named plaintiff children are typical and representative of violations of law that pervade Milwaukee's child-welfare system. In addition the harms suffered by the named plaintiffs are typical of the harms suffered by the class members.

23. The questions of law and fact common to the class include: (1) whether the defendants are responsible for a child-welfare system that conducts inadequate investigations of child abuse or neglect; (2) whether the defendants fail to protect children reported for abuse and neglect; (3) whether the defendants have implemented a preplacement preventive service program designed to help children remain with their families instead of entering foster care; (4) whether the defendants fail to provide appropriate placements and proper care to the children in their custody; (5) whether the defendants fail to create and implement appropriate plans for children to assure their proper care and permanent placement; (6) whether the defendants fail to offer necessary services to handicapped children to enable them to participate fully and receive the benefits of the state's foster care program; (7) whether the defendants' actions and inactions violate the plaintiffs' rights under the federal Adoption Assistance and Child Welfare Act of 1980; (8) whether the defendants' actions and inactions violate the plaintiffs' rights under the federal Child Abuse Prevention and Treatment Act; (9) whether the defendants' actions and inactions violate the plaintiffs' rights under the Fourteenth Amendment to the United States Constitution; (10) whether the defendants' actions and inactions violate the plaintiffs rights under the Americans with Disabilities Act and the Rehabilitation Act of 1973; and (11) whether the defendants' actions and inactions violate the plaintiffs' rights under the Wisconsin Constitution, statutes,

and foster care regulations.

24. The named plaintiffs will fairly and adequately protect the interests of the class. The named plaintiffs are represented by attorneys employed by the Children's Rights Project of the American Civil Liberties Union Foundation, a privately funded, national organization with extensive experience in complex class-action, child-welfare litigation and by an attorney who is employed by the American Civil Liberties Union Foundation of Wisconsin and who has litigation experience and familiarity with Wisconsin and federal law and practice. Counsel have the resources, expertise, and experience to prosecute this action. Plaintiffs appear by next friends who are state-court attorneys, social workers for those attorneys, or responsible and respected Wisconsin citizens. Counsel for the plaintiffs know of no conflicts among members of the class.

PARTIES

The Named Plaintiffs

25. Plaintiff JEANINE B is a twelve-year-old child who has been in the custody of Milwaukee DHS for six years.

26. Plaintiff Jeanine B appears by her next friend ROBERT BLONDIS. Mr. Blondis is an attorney who has practiced in Milwaukee for over twenty years and who has extensive experience representing children in the Milwaukee foster-care system.

27. Plaintiff ALINE H is a twelve-year old girl who has been in DHS custody since May 1988; her brothers plaintiffs DOUGLAS R and MAURICE R are eight and six and have been in

custody since July 1988.

28. Plaintiffs Aline H, Douglas R, and Maurice R appear by their next friend WESLEY SCOTT. Mr. Scott is a former Director of the Milwaukee Urban League and of the Social Development Commission, agencies that provide services to disadvantaged youth.

29. Plaintiff CAROLYN D is a five-year-old girl who has been in the custody of Milwaukee County DHS for two years.

30. Plaintiff Carolyn D appears by her next friend CYNTHIA A. LEPKOWSKI. Ms. Lepkowski is the court-appointed attorney for Carolyn D in the Milwaukee County Children's Court.

31. Plaintiff JAMES B is an eight-year-old boy who has been in the custody of Milwaukee County DHS since shortly after he was born.

32. Plaintiff James B appears by his next friend MARY PROTZ. Ms. Protz has served as the social worker for the court-appointed attorney for James B in the Milwaukee County Children's Court.

33. Plaintiff MINDI D is a twelve-year-old girl who has been in the custody of Milwaukee County DHS since she was eleven months old.

34. Plaintiff Mindi D appears by her next friend SHEILA M. SMITH. Ms. Smith is an attorney who has extensive experience representing children in foster care in Milwaukee.

35. Plaintiff ALAN A is a ten-year-old boy who has been in the custody of Milwaukee County DHS since 1988.

36. Plaintiff Alan A appears by his next friend SHELIA HILL-ROBERTS. Ms. Roberts has served as the court-appointed attorney for Alan A in the Milwaukee County Children's Court.

37. Plaintiff DARREN C is a two-year-old boy who has been in the custody of Milwaukee County DHS since he was five months old.

38. Plaintiffs Darren C appears by his next friend CHRIS VELNETSKE. Mr. Velnetske has served as the court-appointed attorney for Darren C in the Milwaukee County Children's Court since October 1991.

39. Plaintiff ALISSA S is eight years old and has been in the custody of Milwaukee County DHS for six and one-half years.

40. Plaintiff Alissa S appears by her next friend ANNE MARIE ABELL. Ms. Abell has served as the court-appointed attorney for Alissa S in the Milwaukee County Children's Court.

41. Plaintiff ROXANNE F is a seven-year-old girl who has been in the custody of Milwaukee County DHS since October 1987.

42. Plaintiff Roxanne F appears by her next friend JULIA VOSPER. Ms. Vosper has served as the court-appointed attorney Roxanne F in the Milwaukee County Children's Court.

43. PATRICIA S is a nine-year old girl who has been in Milwaukee foster-care custody since October 1989.

44. Plaintiff Patricia S appears by her next friend OSHIYEMI ADELABU. Mr. Adelabu is the President of the Milwaukee Black Firefighters Association and is a co-founder of the Milwaukee branch of 100 Black Men. His work with children has

been recognized in the media and includes his activities with Planned Parenthood teen peer counselors.

45. Plaintiffs JOCELYN and DERRICK Z are a brother and sister who are eight and six years old, respectively and who originally entered foster care in February 1987.

46. Plaintiffs Jocelyn and Derrick Z appear by their next friend JANE MOORE. Ms. Moore has served as the social worker for the court-appointed attorney for Jocelyn and Derrick in the Milwaukee County Children's Court.

47. Plaintiff KAREN M is a sixteen-year-old girl who has been in Milwaukee DHS custody since February 1992.

48. Plaintiff Karen M appears by her next friend JOAN ZAWIKOWSKI. Ms. Zawikowski has served as Karen's court-appointed attorney in the Milwaukee County Children's Court.

Defendants

49. TOMMY G. THOMPSON is sued in his official capacity as the governor of the State of Wisconsin. Governor Thompson is responsible for ensuring that government agencies in the state operate in compliance with applicable provisions of state and federal law.

50. GERALD WHITEBURN is sued in his official capacity as the Secretary of the Wisconsin Department of Health and Social Services. Gerald Whitburn is responsible for the policies, practices, and operation of social services agencies in the state and for ensuring compliance by those agencies with applicable provisions of state and federal law.

51. F. THOMAS AMENT is sued in his official capacity as the County Executive of the County of Milwaukee. F. Thomas Ament is responsible for ensuring compliance with applicable provisions of state and federal law by all government agencies within the county.

52. THOMAS BROPHY is sued in his official capacity as Director of the Milwaukee County Department of Human Services. Mr. Brophy is responsible for the policies, practices, and operation of the Milwaukee County Department of Human Services and for ensuring compliance by the Department with applicable provisions of state and federal law.

APPLICABLE STATUTES

53. In addition to alleging that the defendants are violating their constitutional rights, the plaintiff children allege that defendants are violating federal and state statutory rights. The federal rights arise under the federal Adoption Assistance and Child Welfare Act of 1980 ("Adoption Assistance Act") (codified as amended at 42 U.S.C. §§ 670-679a and 42 U.S.C. §§ 620-628); the federal Child Abuse Prevention and Treatment Act ("Child Abuse Act") (codified as amended at 42 U.S.C. §§ 5101-5106a); the Americans with Disabilities Act ("ADA") (codified at 42 U.S.C. §§ 12121-12150); and the Rehabilitation Act of 1973 ("Rehabilitation Act") (codified at 29 U.S.C. § 794). The plaintiff children also allege that defendants are depriving them of state law entitlements created by the Wisconsin Children's

Code (codified as amended at Wis. Stats. §§ 48.01-48.995 (1992); Wis. Admin. Code §§ HAA 42.01-42.06 (May 1992); 49.01-49.08 (June 1989); 50.01-50.10 (September 1992); 52.01-52.55 (October 1988); 54.01-54.04 (June 1986); 56.01-56.10 (August 1990); 57.01-57.08, 59.01-59.07 (June 1986); 65.01-65.08 (January 1987)); and by the Wisconsin Constitution.

54. The federal Adoption Assistance Act requires that there be a preplacement preventive service program designed to help children remain with their families; that all children in foster care have written case plans developed and reviewed within specified time periods; that these plans contain specified elements; that there be a service program designed to help children, where appropriate, return to their families or be placed in adoptive or other permanent homes; that appropriate services be provided to children, their parents, and their foster parents to address each child's needs and to assure each child's permanent placement; that each child receive proper care; that the homes or institutions in which children are placed conform to national standards and that foster care payments are appropriate; that children be placed in the least restrictive, most family-like setting; that children receive periodic judicial or administrative reviews; and that there be an adequate information system.

55. The federal Child Abuse Prevention and Treatment Act requires that prompt investigations be initiated into reports of abuse and neglect and that appropriate steps be taken to protect

children who are the subjects of such reports. The Act also requires that the governmental agency responsible for investigating complaints of abuse or neglect have in place procedures, personnel, and facilities adequate to "deal effectively with child abuse and neglect cases."

56. The Americans with Disabilities Act and section 504 of the Rehabilitation Act prohibit discrimination against handicapped individuals in federally funded programs and require that federally funded programs such as child welfare and foster care administer services and programs so as to enable those children with handicaps, including physical and emotional handicaps, to participate fully and receive the benefits of such programs.

57. Wisconsin law imposes specific obligations on the defendants concerning the plaintiffs and the members of their class. The explicit legislative purpose of the Wisconsin Children's Code is to "provide for the care, protection and wholesome mental and physical development of children, preserving the unity of the family whenever possible," to "respond to children's needs for care and treatment through community-based programs," "to promote the adoption of children into stable families rather than allowing children to remain in the impermanence of foster care," "to provide children . . . with permanent and stable family relationships," "to allow for termination of parental rights at the earliest possible time after rehabilitation and reunification efforts are discontinued

and termination of parental rights is in the best interest of the child," and to ensure that "[t]he best interest of the child shall always be of paramount consideration." The code contains specific mandates governing the manner and time periods in which abuse and neglect reports should be investigated; the services that must be provided to children and families to avoid the need for foster care placement; the timing and content of written "permanency plans" that must be developed for children; the evaluations necessary to determine appropriate placements; mandated time periods for the provision of medical care; time periods and processes for ensuring adoption for children; and detailed procedures and standards for the licensing and supervision of placements. Finally, state law provides for hearings within twenty-four hours of a child being taken into custody and for dispositional and extension of placement hearings before the Children's Court.

GENERAL FACTUAL ALLEGATIONS

Named Plaintiffs

58. Plaintiff JEANINE B is a twelve-year-old girl who has been in Milwaukee DHS custody for six years. Jeanine was reported to the Department in 1986, based on her mother's neglect and the possibility that her mother's boyfriend was sexually abusing her. After being moved among relatives and briefly returning to her mother's care, Jeanine was placed by the Department with her grandmother in October 1986. Jeanine was placed in foster care in June 1988, when her grandmother moved to

Puerto Rico and indicated that she was no longer willing to care for her granddaughter.

59. Although Jeanine has been experiencing increasing emotional problems, Milwaukee DHS has failed to do necessary evaluations or assessments to determine the causes of those emotional problems or to develop a plan to treat those problems. Indeed, the language of Jeanine's plans from one year to the next is virtually identical.

60. The Department has long been aware that Jeanine has special needs because of her emotional problems and disabilities but has failed to place her in an appropriate foster home that can address those needs or provide her with necessary supervision and services. Since she has been in Milwaukee DHS custody, Jeanine has been in six different foster homes.

61. In one of her foster homes, she was placed by Milwaukee DHS with a family that was responsible for twelve children, six of whom attended a day-care program in the home. In November 1989 this foster father struck Jeanine with a plastic container and stitches were necessary to close the wound. The foster mother referred to the then ten-year-old Jeanine as a "whore."

62. In July 1990 Jeanine's therapist expressed concerns that Jeanine was regressing in her current foster home placement and warned that "current conditions at the foster home are unacceptable" and that Jeanine was in need of a treatment foster home. At this time, however, Milwaukee DHS made no efforts to locate a treatment foster home to meet her needs nor to find an

adoptive home for her, even though the Department's goal for her was adoption. Jeanine remained in that foster home for another two years.

63. Jeanine is now living in her sixth temporary foster home.

64. During at least part of the time Jeanine has been the responsibility of Milwaukee DHS there has been no worker assigned to handle her case, to supervise her placement, or to plan for her.

65. Milwaukee DHS, which has not known the whereabouts of Jeanine's mother for most of the time Jeanine has been in foster care, reported in 1989 that Ms. B had a serious drug and alcohol problem and had never followed through on a drug treatment program. Nevertheless, their goal for Jeanine in 1989 was to return her to her mother's custody. Milwaukee DHS did not have any concrete plans for how this goal was to be accomplished or what responsibility DHS would take in implementing plans to achieve this goal.

66. In 1990 the DHS goal for Jeanine was to have parental rights terminated so that she could be adopted. That goal has remained the same in Milwaukee DHS's 1991, 1992, and 1993 plans. Despite this, Milwaukee DHS has never tried to locate an adoptive home for her.

67. In the 1992 plan DHS reported "The target [sic] date for achieving this plan is March 26, 1993. At this time we have not found major obstacles for achieving this plan for the target

date."

68. In 1993 DHS reported, "The target date for achieving this plan is March 26, 1994. At this time we have not found major obstacles for achieving this plan for the target date."

69. Milwaukee DHS has still failed to seek a court order terminating parental rights for Jeanine or to find a permanent adoptive home for her.

70. The defendants have violated Jeanine's constitutional and statutory rights by failing to protect her from harm and to provide her with proper care, by failing to develop and implement a case plan that contains the elements required by law, by failing to obtain and supervise an appropriate placement for her, by moving her from one foster home to another, and by failing to take steps to assure her a permanent placement.

71. Because of the defendants' actions and inactions, Jeanine B has been and continues to be irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and a normal childhood.

72. Plaintiff ALINE H is a twelve-year old girl who has been in DHS custody since May 1988; her brothers plaintiffs DOUGLAS R and MAURICE R are eight and six and have been in custody since July 1988. At the time they entered foster care, Aline was seven, Maurice was three, and Douglas was eighteen months old.

73. Aline, Douglas, and Maurice entered Department custody after they were physically and sexually abused in the home of

their mother. At the time of the abuse, the Department had custody of their sister Caroline. Despite the fact that the Department thus knew or should have known of Aline, Douglas, and Maurice, it failed to protect these children from the abuse they suffered, which has resulted in serious emotional trauma for these children.

74. In March 1988 the Department learned that Aline had been missing from school since November 6, 1987. According to an internal Department document, a Department social worker met with school officials on March 14, 1988, about the problem. The worker then visited the children's home, as a result of which the worker reported on March 16, 1988, "I did substantiate this as a case of neglect."

75. Two months later the Department received new reports of suspected neglect of the children. At that time, Aline had still not returned to school, and the Department had failed to follow up on the March 1988 substantiated neglect. According to a petition filed on May 27, 1988, Department workers visited the children's house on May 24, 1988, and "smelled an odor of urine, mustiness, and dirt." The report continued, "[T]he kitchen [was] cluttered with dirty dishes, old food, and numerous debris on all of the available counter space and table top. . . . Upon opening the refrigerator, they found some juice and some fresh milk but other than than [sic] there was vegetables and old food with mold dried on it and a dead roach lying on top of one of the pans in the refrigerator. . . . Mr. B [the DHS social worker] reports that

in early March upon doing the home visit at that time, he observed two bedrooms and in each there was a mattress on the floor."

76. Following the May 1988 visit, the Department sought and obtained custody of Aline. At the same time Maurice and Douglas remained in the home.

77. Two months later a Department worker returned to the home in which Maurice and Douglas were still living. According to a Department report, the visiting worker, on July 28, 1988, "found the conditions to the home [sic] to be unchanged and, in fact, had deteriorated." Specifically, the electricity had been cut off, something about which the Department knew but had done nothing to correct. Maurice and Douglas were then removed from their mother without the Department having offered or provided any services to the mother.

78. Since they entered the Department's custody, Aline, Maurice, and Douglas have been assigned to three different workers. The frequent change of workers has disrupted permanency planning for these children and has resulted in unnecessary and harmful delays in obtaining permanent homes for them.

79. Maurice, who is experiencing progressively worse emotional problems, is the in the foster home of Mrs. R. Mrs. R, who lives outside of Milwaukee County, informed the Department many years ago that she would like to adopt Maurice and recently told the Department that she would move to Milwaukee County to assure that he receives the special education he needs; she even

has gone so far as to purchase real estate in Milwaukee County so that she could enroll Maurice in special-education classes. However, in April 1992, the Department changed Maurice's planning goal to long-term foster care, and it has refused to take any steps that would permit Mrs. R to adopt this eight-year-old boy.

80. Aline and Douglas are in the foster home of Mrs. G, who is the daughter of Maurice's foster mother. Mrs. G. has informed the Department that she would like to adopt Aline and Maurice, and the children have told their worker that they would like to be adopted by Mrs. G.

81. Three years ago a Department adoptions worker visited Mrs. G's home. Mrs. G has never heard back from the worker or anyone else about adoption. The Department has refused to proceed with adoption and instead has chosen long-term foster care as the planning goal for these two children.

82. Since at least 1989 Aline's therapist has recommended that Aline be adopted and has recommended that Aline not visit with her mother. Despite this and despite Aline's request that she not visit with her mother, the Department has forced Aline to continue frequent visitation with her mother.

83. Maurice and Douglas are both experiencing serious behavioral problems, many of which are attributable to the abuse and neglect they suffered in their mother's home. Even though adoptive placements are available for these children, the Department has refused to make efforts to allow these children to be adopted because of their disabilities.

84. Because of the Department's failure to take timely and meaningful steps towards having these children adopted, Aline, Maurice, and Douglas are being deprived of being their opportunity of being adopted and instead are at risk of becoming long-term wards of the state.

85. The defendants have violated the constitutional and statutory rights of Aline, Maurice, and Douglas by failing to protect these children from abuse or neglect, by failing to provide preventive services that might have averted their entry into foster care, by failing to develop and implement a case plan that contains the elements required by law, by failing to provide planning and services to these children that would permit them to be placed in a permanent adoptive home, and by denying Maurice and Douglas of government benefits because of their disabilities. As a result of the defendants' actions and inactions, these children have been and are being irreparably harmed.

86. Because of the defendants' actions and inactions, Aline, Maurice, and Douglas have been and continue to be irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and normal childhoods.

87. Plaintiff CAROLYN D is a five-year-old girl who entered Department custody in 1991 and remains in custody to date.

88. She and her brother Stewart, who is four, have been the subject of several neglect reports. At least one of those

reports was substantiated in May 1991. The Department worker who investigated the case determined that the D family home was filthy, as were the children, that there was an absence of adequate food in the home, and that Stewart, a child with serious medical problems, was not being taken to scheduled rehabilitative treatment sessions.

89. Milwaukee DHS made these determinations, yet left the D children in their parents' home and made inadequate efforts to provide services to the D family so that the neglect would not continue.

90. After the death of Mr. D in July 1991, Ms. D moved Carolyn and Stewart to another family's home, in which the man had a history of substance abuse and violence toward his wife and children. This family was under a court order of supervision related to the man's physical abuse of a child.

91. In August 1991 a DHS worker visited Ms. D at this home to assess what medical services the children were receiving, and to investigate why Stewart's attendance at rehabilitative therapy was so infrequent. In October 1991 the Department removed Carolyn and Stewart from Ms. D's custody under a neglect petition and placed them in the home of a paternal aunt.

92. In September 1992 Carolyn was moved into a new foster home with a Milwaukee DHS foster parent because her paternal aunt, the original caretaker, felt she could not adequately address the special needs of both Carolyn and Stewart while caring for her own two children. Although Carolyn was removed

from her aunt's home, Stewart was not moved and lives there at the present time. The children see each other at occasional family gatherings, but visits between these two children are never arranged by Milwaukee DHS.

93. Carolyn suffers from asthma, and it is suspected that she is developmentally delayed.

94. Regular, separate visitation is scheduled between Ms. D and Carolyn once a week. Carolyn stays overnight on weekends in her mother's home where Ms. D's live-in boyfriend, a man with a substantial criminal record who was released from the House of Correction in the fall of 1992, also resides. No Department worker has supervised any of Carolyn's visits in Ms. D's home. Carolyn recently stated that, during one home visit, she and her mother were locked out of the house with no money by the mother's live-in boyfriend. Ms. D was recently evicted and has moved to a new residence, which the Department has not inspected.

95. Carolyn becomes upset and hostile and regresses into bed-wetting after visits with her mother. After the DHS worker increased visitation to weekend overnights in April 1993, Carolyn suddenly began displaying sexually inappropriate behavior. In May 1993 this five-year old child displayed her genitals to her religious school classmates and spread her legs in the presence of an adult male saying "kiss my pee-pee."

96. Carolyn has told her foster mother that she no longer wishes to spend weekends with her mother. Milwaukee DHS has done nothing to address this problem. Nor has the Department made any

individualized assessment of what kind of support and services Ms. D needs to be able to provide adequate care for her children to ease Carolyn's transition back into Ms. D's home or to determine whether Ms. D can provide adequate care for Carolyn if she is returned.

97. The Milwaukee DHS plan for Carolyn is to return her to Ms. D, but Department workers have done nothing to help Ms. D address the problems that led to the neglect of her children or that would enable them to return to her care.

98. Milwaukee DHS's neglect of this case has been so noteworthy that on February 24, 1993, a Children's Court judge directed Milwaukee DHS to turn the case over to a private agency. However, Milwaukee DHS has failed to follow through on the transfer, has failed to provide services itself, and has failed to schedule Carolyn's court-ordered reevaluation and testing.

99. Although on February 24, 1993, the judge ordered Carolyn returned to her mother within six months, Milwaukee DHS has failed to provide the necessary reunification services or to arrange that the services be provided so that Ms. D will be able to provide adequate care to her children, has failed to address Carolyn's problems, and to determine the circumstances of Ms. D's present living situation and whether it is harmful to the children.

100. The Department's current permanency goal for Carolyn is "return home," but the Department has failed to assess whether such a plan is realistic and feasible, has failed to determine

the services and steps necessary to accomplish this goal, or set any realistic timetable in which to determine whether this goal can be accomplished or whether another permanent goal is in Carolyn's best interests.

101. The defendants have violated Carolyn's constitutional and statutory rights by failing to make reasonable efforts to avoid the need for foster care placement or to provide services necessary to reunify Carolyn with her mother, by failing to protect Carolyn from harm and to provide her with proper care, by failing to develop and implement a case plan that contains the elements required by law, and by failing to take steps to assure Carolyn a permanent, appropriate placement, with her mother if possible and appropriate, and with another permanent family if she cannot be returned to her mother.

102. Because of the defendants' actions and inactions, Carolyn D has been and continues to be irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and a normal childhood.

103. Plaintiff JAMES B is an eight-year-old boy who has been in Milwaukee DHS custody since shortly after he was born.

104. James's mother is a woman who has grown up in foster care. James was taken into custody when his mother had to be hospitalized at a mental health center shortly after his birth. The child was returned to her for five months and then returned to foster care in January 1986 because his mother was unable to

provide adequate care for him.

105. James's mother told Milwaukee DHS in 1986, after James reentered foster care, that she might not ever be able to care for him and that she wanted him to have a good permanent home. Rather than taking any steps to resolve the situation, Milwaukee DHS waited for James's mother to make up her mind.

106. In 1987 Milwaukee DHS noted that Ms. B's psychological condition was deteriorating and that she was still vacillating about whether she wanted to ever have James returned. However, Milwaukee DHS did not provide any services to Ms. B to enable her to resume custody of James. Nor did it act when James's foster parents expressed interest in adopting him. The Department's goal for James at that time was nevertheless to be returned to his mother, although the Department noted that "the Department will be seriously considering changing this plan to termination of parental rights and adoption of the child if the natural mother does not make any progress in the near future."

107. In 1988 the Milwaukee DHS changed James's plan to adoption but noted that action to terminate parental rights had been delayed "because of changing circumstances."

108. Although Ms. B.'s mental health problems remained serious, the Department's goal was changed to return home in 1989, after she married, even though she and her new husband, who was known to have violent behavior, had been repeatedly evicted from their home. The Department worker stated that James's plan was changed in part because the worker felt "she has not had

enough personal contact and data to successful [sic] gain a TPR at this time."

109. When Ms. B changed her mind again in 1990, and told Milwaukee DHS that she wanted to surrender James for adoption, the Department decided that Ms. B might not understand the implications of a voluntary surrender and that the Department's "next course of action would be possible involuntary TPR." A psychological report prepared at that time concluded that Ms. B did not have "sufficient emotional resources with which to meet the responsibilities of parenthood." In 1987, however, Ms. B gave birth to a child in Florida for whom her parental rights were immediately terminated.

110. Nevertheless, the Milwaukee DHS continued to arrange visits between Ms. B and James, even though Ms. B had once kidnapped the child from foster care and taken him out of state. Visitation has been sporadic and James's behavior after visits with his mother has been aggressive and agitated.

111. James has reacted so negatively to overnight visits with his mother that those visits have been stopped by the Department. The visits have been increasingly painful for James, who started to shake when questioned about them because of fear that he might be returned to Ms. B, whom this eight-year-old boy has stated he does not really believe to be his mother.

112. Throughout 1991 and 1992 Milwaukee DHS continued to maintain a plan to have James freed for adoption and placed in an adoptive home but continued to fail to act on this plan. To this

date, Milwaukee DHS has still failed to implement its plan to have this child adopted, has not yet referred him to the Adoption Unit, nor has a petition for termination of parental rights been filed.

113. James continues to have visits with Ms. B that are painful and upsetting to him and he is fearful about these visits and about his future.

114. James has lived with the same foster parents during most of the time he has been in Milwaukee DHS custody. However, this child receives only marginal care in the home, which is chaotic. There are five other children in the home, including four foster children, and James receives little attention and affection. Many different foster children have been in and out of this home, and one foster child has died. James has not received regular medical or dental care. The foster family is no longer interested in adopting James because of his family history of mental illness and alcoholism, and it is not likely that this would have ever been an appropriate adoptive home for him in any case.

115. This eight-year-old child is an essentially normal child who has been deprived of a loving, stable family relationship solely because of the Milwaukee DHS' own indecision in the face of Ms. B's vacillation, the constant changes in Department social workers assigned to his case, and the Department's failure to act on its own plans. Meanwhile, James is continuing to suffer the pain, uncertainty, and continuing

damage caused by Milwaukee DHS' inaction and from the unsuitability and transience in his foster home.

116. The defendants have violated James's constitutional and statutory rights by failing to protect him from harm and to provide him with proper care, by failing to develop and implement a case plan that contains the elements required by law, by failing to obtain and supervise an appropriate placement for him, and by failing to take steps to assure him a permanent placement.

117. Because of the defendants' actions and inactions, James B has been and continues to be irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and a normal childhood.

118. Plaintiff MINDI D, who is twelve years old, has been in foster care since she was eleven months old. She was placed with Milwaukee DHS after her mother tried to give her away to a man in a furniture store.

119. Mindi's mother has seen her only twice during the time that Mindi has been in foster care, in 1982 and 1983. Ms. D is presently serving a lengthy prison sentence.

120. Since shortly after Mindi entered foster care, Milwaukee DHS' plan for this child had been termination of parental rights and adoption although DHS has not taken necessary steps to implement this plan.

121. Milwaukee DHS reported in 1983 that termination proceedings might be initiated the following year, and this

statement was repeated in 1984. In 1985 the Department reported that termination proceedings had been initiated, a statement that was repeated in 1985, 1986, 1987, 1988, and 1989. In 1990 the Department reported that the permanent plan for Mindi was termination of parental rights and that Milwaukee DHS was arranging for termination on an ongoing basis. In 1991 the Department again reported that the permanent plan for Mindi was termination of parental rights and adoption and indicated that several obstacles had prevented Milwaukee DHS from achieving this goal, although there was no explanation as to the nature of the obstacles. The 1992 report from the Department contained identical language as that in the 1991 report. The Department's 1993 report contains absolutely no mention of the permanent plan for Mindi.

122. When she entered foster care, Mindi, who is African-American, was placed by Milwaukee DHS with a foster family who is white. They have provided good care for her and for the first several years after Mindi was placed with them made clear to Milwaukee DHS that they were interested in adopting her. In 1987 Milwaukee DHS told the foster family that they would not be considered as adoptive parents for Mindi. The Milwaukee DHS adoption worker stated that since the foster parents had adopted other children, the worker wanted Mindi adopted by someone who had never had the opportunity to adopt a child.

123. In addition Milwaukee DHS had a policy of discouraging trans-racial adoptions. Nevertheless, the Department failed

either to seek or to secure an African-American adoptive family for Mindi. Instead, the Department left her with her white foster parents for eleven years. She is now deeply attached to these parents who are the only family she has ever known. However, the family is no longer interested in adopting Mindi. They have stated that several of their family members are prejudiced and strongly object to the adoption. In addition, they are concerned about the behavioral problems that Mindi is now exhibiting and are fearful that these problems will increase in severity. Under these circumstances, they no longer wish to make a permanent commitment to this child.

124. Mindi is now exhibiting behavioral problems that are interfering with her schooling. She is very frightened about her uncertain status and with whom she will grow up. Her mother has asked to visit Mindi and, because parental rights have never been terminated, Ms. D pressed her request. Visitation has been refused thus far, based on psychological evaluations of both the mother and of Mindi.

125. Although Mindi is a bright child, her I.Q. score has been dropping, and a psychological report in 1990 described her as a very vulnerable and fragile child. The report noted that her learning problem "revolves around the child's knowledge of the potential, at some point in the future, for her to lose the most rudimentary underpinnings of her emotional stability, the basic availability of her 'mother' and her 'father,'" her current foster parents.

126. On the one hand, Milwaukee DHS refused to provide a permanent adoptive placement for this child because the child and the foster parents were of different races. On the other hand the Department failed to provide an alternative same-race family for this child and allowed the child to form a parent-child relationship with her foster family.

127. Mindi has already been severely emotionally damaged because of the impermanence in her life and continues to be damaged by Milwaukee DHS's failure to implement a satisfactory permanent plan for her.

128. Defendants have violated Mindi's constitutional and statutory rights by failing to protect her from harm and to provide her with proper care, by failing to develop and implement a case plan that contains the elements required by law, by failing to take steps to assure her a permanent placement, and by depriving her an adoptive home solely because of her race.

129. Because of the defendants' actions and inactions, Mindi D has been and continues to be irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and a normal childhood.

130. Plaintiff ALAN A will be 10 years old in June 1993. He was placed in foster care custody in December 1988 in Waukesha County when his mother disappeared on New Year's Eve. The case was transferred to Milwaukee County because Alan's mother resided primarily in Milwaukee County.

131. In July 1991 the Children's Court ordered that Alan participate in therapy with a specific therapist, who should also make a recommendation about Alan's future visits with his mother.

132. In November 1992 the Department returned Alan to his mother's home.

133. After Alan was returned to his mother in November 1992, Milwaukee DHS did not supervise the home or provide services to Alan or the A family to ensure that Alan was receiving proper care, was adjusting to his reunification with his mother, and was not in danger of further neglect or abuse.

134. In January 1993 the DHS worker responsible for this case, who had failed to follow-up after Alan was returned to his mother, was notified that Alan's mother had attended only one appointment for family therapy in November 1992, had missed appointments in December 1992 and January 1993, and had not scheduled any further appointments. The worker took no action in response to this information.

135. Had a Department worker properly supervised Alan's return to his mother's custody, the worker would have learned that Ms. A was not arranging therapy for Alan as required by the court, that Alan's 16-year-old sibling, Allison A, and his mother's live-in boyfriend, Dwight H, were residing in the home, that Ms. A was not participating in required AODA counseling, that she had been evicted from two different residences in the past year, and that she was to be evicted from her present residence on March 31, 1993.

136. In February 1993 Ms. A was arrested for forgery and "uttering." Subsequent to her arrest, her Probation Officer placed a "hold" on her because of the pending charges and because she had tested positive for drug use. She has been in custody since her arrest and the Division of Corrections is attempting to revoke her probation.

137. After his mother's arrest, Alan was left in the care of his sister, Allison, and his mother's live-in boyfriend Dwight H. Dwight H had not been investigated by the Department, to ensure that he was a responsible adult capable of caring for the two A children.

138. On March 9, 1993, a child protective service referral indicated that the West Allis Police Department had found that Dwight H. had struck Alan on the right leg with a belt, leaving a two-inch red mark. He had also struck Alan on the back with his hand, leaving a hand print.

139. Also on March 9, 1993, Alan's Children's Court guardian ad litem received a report that Alan's mother had been in jail since February, that Alan was being cared for by his sixteen-year-old sister, and that his mother's live-in boyfriend had physically abused him. The guardian ad litem also learned that Allison had been in foster care and had experienced drug and alcohol problems.

140. On March 9 and 10, 1993, the assigned Department caseworker and her supervisor received messages regarding the lack of a responsible adult caretaker in Alan's home and the

allegations of physical abuse. Neither of the Department employees responded to these messages.

141. A Department intake worker contacted Alan's guardian ad litem and told her that he had substantiated the Police Department's referral of Alan's physical abuse and that he had advised the caseworker and her supervisor that he did not believe that there was adequate adult supervision in the home while Ms. A was in jail. The intake worker stated that the decision to detain Alan was up to the assigned worker.

142. On the afternoon of March 12, 1993, Alan's guardian ad litem and the Assistant District Attorney on the case informed the Children's Court duty judge of Alan's living situation and of the physical abuse. The duty judge granted a pick-up order regarding both of the children in the home.

143. Although the Department received notice of the pick-up order on March 12, 1993, Alan was not taken into Department custody until March 16, 1993.

144. Alan was placed by the Milwaukee DHS in a temporary receiving home and remains in that home at the present time. He is not receiving any treatment for the emotional damage he has been experiencing since he was returned to and removed from his mother's custody.

145. The psychologist who had evaluated Alan in 1991 performed another psychological evaluation of Alan on May 12, 1993. During their interview, Alan indicated that since his return home, his mother and sister had been using drugs in the

home and that Dwight had hit him several times.

146. This psychologist has diagnosed Alan as suffering from Dysthymia (Depressive Neurosis) and indicated that the outlook for Alan's return to his natural mother was "poor" and "not appropriately the case in the foreseeable future, considering the damage that has already been done to the child by virtue of the natural mother's impact."

147. Alan's maternal grandmother has been accompanying Alan on visits with his mother at the jail since her March 1993 incarceration. During these visits, Ms. A has shown Alan her bruised arms and told him that the bruises were "track marks" resulting from past drug use. Ms. A also described to Alan incidents of oral sex occurring between female inmates in the jail. Alan has been very disturbed by these comments.

148. The Milwaukee DHS worker assigned to Alan's case received a written report from Alan's guardian ad litem describing the problems encountered during Alan's visits with his mother. It was requested that any future visitations between Alan and his mother be supervised by the worker because of the possibility of ongoing psychological harm to Alan. The worker responded by letter that she would be unable to supervise visits between Alan and his mother.

149. The Department's current permanency goal for Alan is "return home," but the Department has failed to assess whether such a plan is realistic and feasible, has failed to determine the services and steps necessary to accomplish this goal, or set

any realistic timetable in which to determine whether this goal can be accomplished or whether another permanent goal is in Alan's best interests.

150. Defendants have violated Alan's constitutional and statutory rights by failing to protect him from harm and to provide him with proper care, by failing to develop and implement a case plan that contains the elements required by law, by failing to obtain and supervise an appropriate placement for him, and by failing to take steps to assure him a permanent placement or to provide Alan and his mother with services and supervision necessary to enable him to be returned safely to her care.

151. Because of the defendants' actions and inactions, Alan has been and continues to be irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and a normal childhood.

152. Plaintiff DARREN C is a two-year-old child who was taken into Milwaukee DHS custody in October 1991, when he was five months old. His mother, Leona L, who was sixteen at the time, had left Darren with his maternal grandmother and could not be located. The grandmother could not care for Darren because of her own health problems, and she contacted DHS to take the baby.

153. On March 12, 1992, both Darren and Leona were declared children in need of protection and services due to parental inability to provide necessary care. Mother and son were initially placed together in the same foster home, but Leona was

moved to a different foster home sometime in June of 1992. Darren remained in the original foster home.

154. The Department has established Leona's plan as independent living, and Darren's plan as return home. Although Darren is to return to his mother's care, the Department has not provided independent living services for Leona to enable her to establish a home and to live on her own. Leona cannot reunite with her son until she accomplishes this, but she has not been provided with the skills or financial means necessary to do so. Without these services, she may never be able to assume custody of her son Darren.

155. Leona has maintained regular contact with Darren, including overnight weekend visits, and wants to regain custody of her baby. She is attending school and has taken parenting classes required as a condition of having the baby returned to her. She has also been employed for the past ten months at a local restaurant. The only court-ordered condition she cannot fulfill is to maintain a suitable residence for two-year-old Darren and to demonstrate an ability to manage a household independently. The Department has failed to provide her with the services necessary to achieve those goals.

156. Leona has turned eighteen, and Milwaukee DHS' custody over her has expired. She will remain in her foster home until the middle of June 1993, at which point she will be on her own. Leona has asked her Milwaukee DHS worker for assistance in finding a place to live, but the worker has refused to help,

suggesting that she move in with a relative or friend. Leona was never offered independent living services, yet the Department expects her not only to leave her foster home, but also to locate, establish, and maintain a suitable home for her two-year-old child.

157. Although Leona has a strong desire to make a home for her baby, she is having difficulty preparing to do so, and has not received the necessary support, services and guidance from Milwaukee DHS that will enable her to establish and maintain a household so that she can provide proper care and supervision to Darren.

158. Meanwhile, Darren is growing increasingly attached to his foster parents and the longer he remains with them the more painful it will be for him to be removed from their care and returned to his mother. Although it is critically important to provide services to implement Darren's return home plan as soon as possible to minimize further damage to this child, Milwaukee DHS is not taking any steps to do so.

159. The defendants have violated Darren's constitutional and statutory rights by failing to make reasonable efforts to avoid the need for foster care placement, by failing to protect him from harm by failing to develop and implement a case plan that contains the elements required by law, and by failing to take steps to reunify him with his natural mother and to assure him a permanent home.

160. Because of the defendants' actions and inactions,

Darren has been and continues to be irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and a normal childhood.

161. Plaintiff ALISSA S is eight years old and has been in the Department's custody since January 1987. She and her two siblings were removed from the home of their natural mother because of neglect. Their mother was not providing adequate food, supervision, or medical attention for the children.

162. Department workers suspected that Alissa had been sexually abused while in her mother's home.

163. Alissa was placed with the H foster family less than a week after her removal from her mother's home.

164. Yearly court reports for 1987 and 1988 indicate that the Department's permanency plan for Alissa was "return home," although Milwaukee DHS made no efforts to provide services necessary to implement such a plan and had no basis on which to believe that such a plan was realistic or likely to be implemented.

165. Ms. S has not visited or contacted Alissa since June 1988.

166. In June 1989 the Administrative Review Board changed Alissa's permanency plan to Termination of Parental Rights.

167. In February 1990 the District Attorney's office notified Alissa's Milwaukee DHS caseworker that her case should be referred for termination of parental rights.

168. One year later, in February 1991, a Children's Court judge found that the Department had done little to ensure that the permanency plan, established in 1989, was successfully accomplished. He ordered the Department to provide a written update on the steps being taken to execute immediately the plan of termination of parental rights.

169. In response to the judge's order, the Department transferred the S family case to the adoption unit in March 1991.

170. Since 1991 the Department has failed to locate an adoptive family for Alissa. It has not yet listed her on any Adoption Exchange, nor has it taken any other steps to locate an adoptive family for this nine-year-old child. Nor has Milwaukee DHS taken any steps to initiate proceedings to terminate parental rights.

171. Alissa currently lives in the H foster home, as she has done for more than five years, and is very attached to her foster parents. However, the H foster parents have never had any interest in adopting Alissa. Nor does the Department consider the family a suitable adoptive home. Nevertheless, Milwaukee DHS has allowed this child to spend more than five years in this family's home.

172. Alissa has two siblings with whom she has no contact because the children have been in separate foster homes since they were placed in foster care.

173. The defendants have violated Alissa's constitutional and statutory rights by failing to protect her from harm and to

provide her with proper care, by failing to develop and implement a case plan that contains the elements required by law, by failing to obtain and supervise an appropriate placement for her, and by failing to take steps to assure her a permanent placement.

174. Because of the defendants' actions and inactions, Alissa S has been and continues to be irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and a normal childhood.

175. Plaintiff ROXANNE F is a seven-year old, Hispanic girl who entered DHS foster-care custody in October 1987 when she was two. Roxanne entered foster care because her mother was homeless and was unable to support Roxanne financially.

176. According to the Department, Roxanne's mother "has a chronic history of problems with drugs and alcohol and not being able to care for her children." Despite knowing about these problems, the Department made no meaningful effort to provide Roxanne's mother with services that would allow her to overcome these problems and to reassume responsibility of Roxanne.

177. Even though the Department failed to offer or provide services that would allow Roxanne to return home to her mother and even though the mother was making no meaningful progress, the Department's planning goal for Roxanne remained "return home" for over four years after she entered DHS custody.

178. Since she entered Department custody, Roxanne has been in four different foster homes.

179. On or about January 15, 1992, DHS changed Roxanne's planning goal to adoption. In the sixteen months since, however, the Department has taken no steps that would allow this little girl to be adopted. Her case has not been referred to the Adoption Unit, no work has been done towards legally freeing her for adoption, and the most recent court report identifies no steps that will be taken to permit her adoption to move forward. Indeed, according to that report, "The TPR has not been initiated because a potential placement has not been found."

180. Roxanne currently resides in a foster home in which she was placed in November 1988. Because she has spent four and one-half years in her current home, she has a close relationship with her foster mother yet her foster mother is not interested in adopting a child.

181. Because of the Department's failure to take timely action to have Roxanne adopted, it will now be very traumatic to remove her from her foster home and to place her in an adoptive home, thereby greatly reducing the likelihood that this seven-year-old girl will ever be adopted. This trauma is likely to be exacerbated by the fact that any placement in a prospective adoptive home would mark the fifth placement for Roxanne in the five years she has been in Department custody.

182. The defendants have violated Roxanne F's constitutional and statutory rights by failing to provide preventive services that might have averted her entry into foster care, by failing to provide her with stable and appropriate placements, by failing to

develop and implement a case plan that contains the elements required by law, and by failing to provide her with planning and services that would have allowed her to return home or to be adopted.

183. As a result of the defendants' actions and inactions, Roxanne F has been and is being irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and a normal childhood.

184. Plaintiff PATRICIA S is a nine-year old girl who entered DHS foster-care custody on or about October 3, 1989, when she was six years old. According to a Department report, Patricia came into DHS custody after Patricia and her mother "had been thrown out of the filthy, unfurnished attic of a drug house because [Patricia's mother] wanted to bring in men for money for drugs and the owner of the house wanted some of the proceeds."

185. At the time that Patricia was living in these conditions with her mother, DHS had custody of Patricia's two brothers and one sister; these three children had been in DHS custody since approximately October 1983. Notwithstanding the fact that DHS knew or should have known that Patricia was in a dangerous situation and was at risk of entering foster care, it made no efforts to protect this child or to offer services to her mother so as to avert Patricia's entry into foster care.

186. Between her entry into foster care in October 1989 and July 22, 1991, the planning goal for Patricia was to return her

to her mother. Yet, Department reports consistently document that the mother was making no progress towards reassuming responsibility for Patricia and that the Department was making no meaningful effort towards assisting Patricia's mother.

187. In an October 1990 report, the DHS worker stated, "The current worker was assigned to Ms. S[] in February 1990. Since that time, she has been essentially unavailable to this worker. In a couple of instances when the worker did have telephone contact with her, she did not inquire whatsoever as to [Patricia], in terms of either visitation or other court ordered conditions. Therefore, essentially no services were offered, provided, or referrals made" during that period of time. Nonetheless, the Department kept Patricia's goal as "return home," apparently on the basis of some last-minute contact with the mother.

188. In a follow-up report in July 1991, nearly two years after Patricia entered foster care, the Department observed that Patricia's mother "has a history of drug abuse and instability in her life. [Ms. S] has not followed through on any inpatient or outpatient treatment for her cocaine dependency She has been given a list of parenting classes to choose from, but she never signed up for any of the classes." The report later noted that Ms. S. had failed to appear for the most recent Administrative Review. Despite all this, the Department continued "return home" as the planning goal, listing a target date of September 25, 1992. After identifying the major

obstacles to that goal as the "mother's unstable living arrangement" and "inability to remain drug free," the Department identified the following as the services it would provide the mother to allow Patricia to return home: "family planning services," "parenting education," and "health services referral."

189. Between July 1991 and August 1992, the Department changed Patricia's planning goal to "long term foster care," thereby relegating this nine-year old to spending the rest of her childhood in state custody. The Department has made no efforts to have this child adopted or to find any other permanent, non-governmental placement for her.

190. The defendants have violated Patricia's constitutional and statutory rights by failing to provide her with appropriate protective services, by failing to provide services that might have averted her entry into foster care, by failing to develop and implement a case plan that contains elements required by law, and by failing to provide her with planning and services that would have allowed her to return home or that would allow her to be adopted.

191. Because of the defendants' actions and inactions, Pamela S has been and continues to be irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and a normal childhood.

192. Plaintiff JOCELYN Z is an eight-year-old girl, and plaintiff DERRICK Z is her six-year-old brother. They originally

entered DHS custody in February 1987 when Jocelyn was two and Derrick was twelve months old.

193. Jocelyn and Derrick were in Department custody from February 1987 to August 1988 after they were found in a parking lot without adequate clothing in forty degree weather. The children had wandered out of their apartment after their mother went out and left them alone.

194. In August 1988 Jocelyn and Derrick were returned to their mother, but only because the court order governing their custody expired and renewal was not obtained on a timely basis. The Department subsequently failed to provide services to help the mother provide proper care for the children and failed to monitor the home situation sufficiently to ensure that Jocelyn and Derrick were not being neglected or abused in their mother's home.

195. In July 1989 Jocelyn and Derrick returned to foster care when their mother signed a voluntary agreement and relinquished custody to the Department.

196. Since Jocelyn and Derrick reentered foster care in July 1989, the Department has maintained a planning goal of return home. Yet the Department has failed to make any meaningful efforts to assist the mother so that she will be able to reassume responsibility for these children, and Department reports consistently have documented the fact that the mother is making no meaningful progress towards that goal.

197. According to a March 26, 1991, Department report, the

Department worker "has had person to person telephone contact with [the mother] during the past year and has tried to assist her in meeting the court ordered conditions of return."

According to that same report, the "major obstacles" to returning Jocelyn and Derrick home at that time were "the mother's willingness and desire to work on completing the court order conditions for return." Notwithstanding these assessments, the only services identified in the report were "[v]isitation" and "[r]eferral to appropriate services as needed."

198. One year later, the Department reported to the Children's Court that the DHS worker "has had some telephone contact with [the mother] during the past year and has been available to assist her in meeting the court ordered conditions of return. Worker had several appointments with [the mother] that [the mother] failed to keep." Notwithstanding this, the Department stated, "The permanent goal for Jocelyn and Derrick is return home." The only services that the Department identified as being provided to the mother to allow the children to return home were "[v]isitation" and "[r]eferral to appropriate services as needed."

199. Another year passed with absolutely no progress. According to a February 12, 1993, Department report, "This worker has had some telephone contact with [the mother] during the past year and has been available to assist her in meeting court ordered conditions of return." Again, the Department continued with a permanency planning goal of "return home"; the only

services it identified as being provided to the mother were "[p]lanned unsupervised visitation" and "[r]eferral to appropriate services as needed."

200. Since a February 1993 overnight visit, after which Jocelyn and Derrick complained that they had not been properly fed, their mother has not visited or telephoned the children. The Department has not been involved with the children, the mother, or the foster parents since that time.

201. Since July 1989 Jocelyn and Derrick have been placed in a single foster home, which is the same home they were in when they were originally in foster care between February and August 1988.

202. An October 1992 Administrative Review Board Permanency Plan Compliance Report stated that Jocelyn and Derrick's "Parent/child bond is disintegrating [while their] bond with foster parents is strong," and that the "Mother's commitment towards re-unification needs to be assessed."

203. Jocelyn has expressed fears of being removed from the home of her foster parents and being returned to the custody of her mother. Both Jocelyn and Derrick have said that they understand the concept of adoption, that they wish to be adopted by their foster parents, and that they do not want to return to the home of their natural mother.

204. Jocelyn and Derrick's foster parents have expressed a desire to adopt these children. Despite this, the lack of progress made by the mother, and the fact that these children

have been in foster care for three and one-half years, the Department has made no effort to allow these children to be adopted.

205. Since they entered foster care, Jocelyn and Derrick's case has been covered by at least four different Department social workers, and this has hampered permanency planning in their case.

206. The defendants have violated Jocelyn and Derrick's constitutional and statutory rights by failing to provide preventive services that might have averted their entry into foster care, by failing to provide services that might have permitted them to return home, by failing to develop and implement a case plan with the elements mandated by law, and by failing to provide planning and services that would allow them to be adopted.

207. Because of the defendants' actions and inactions, Jocelyn and Derrick have been and continue to be irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and normal childhoods.

208. Plaintiff KAREN M is a sixteen-year-old girl who has been in DHS custody since February 1992. She entered custody after her mother abandoned her to Karen's maternal grandmother and the grandmother could not provide adequate care for Karen.

209. Karen's mother has a long history of instability in her life. She has moved frequently, often leaving Karen with

relatives or other caretakers. The mother also has a history of alcoholism and drug abuse.

210. According to a report provided to DHS, Karen's mother is "a basically emotionally immature individual who is primarily concerned with her own welfare. She lacks emotional depth or the ability to place the needs of her child above her own. Ongoing problems of substance abuse and a lack of willingness to accept responsibility for her behavior and life circumstances exacerbate other problematic tendencies." A psychological evaluation recommended that she be required to participate in a program of substance abuse intervention that included regular urine screening and therapy participation.

211. In February 1992 the Department submitted a report to the court acknowledging the mother's history and her problems. Though the Department set "return to the home of the mother" as the planning goal for Karen, it failed to provide any details as to how this was to be accomplished. Rather it simply listed in formulaic and generic fashion the following services to be provided: "[h]ousing," "[c]ounseling/therapy," "AODA counseling/evaluation," "[r]egular visitation per residential treatment center policy and mutual desire," and "[e]xploration of relative resources if needed."

212. Ten months later the Department prepared another report that revealed that it had provided no services to Karen's mother that would have allowed her to address the problems that resulted in Karen entering foster care. Under the report section

entitled "Services offered, provided, and referrals made to assist the parent" is the following entry: "Efforts to provide family therapy via teleconference with mother have been difficult as mother has not been in contact with [Karen's placement] and has not had a phone number."

213. According to a December 1992 report, the Department has abandoned its goal of returning Karen to her mother and has changed Karen's permanency planning goal to "long-term foster care." This means that Karen will remain in foster care until she becomes an adult and then "ages out" of the system. Yet the Department had made no effort to provide Karen with the independent living services she needs to be prepared to live on her own once she becomes eighteen.

214. On or about September 10, 1992, the Department placed Karen in a residential treatment center -- a highly restrictive placement -- to assist her in addressing her own substance abuse problems. Karen completed that treatment program in late March 1993 but waited over two months to be discharged. The Department did not move Karen out of the residential placement because it did not have available any appropriate, less restrictive placement for her.

215. On or about May 28, 1993, the Department returned Karen to the home of her maternal grandmother because it had failed to secure an appropriate placement for her. This is a grossly inappropriate placement, as the grandmother lacks the training, the qualifications, and the resources needed to provide

Karen with the therapeutic setting that the Department knows Karen needs.

216. The defendants are violating Karen's constitutional and statutory rights by failing to provide her with planning and services that would allow her to return home or to be placed in some other permanent setting, by failing to implement and develop a case plan with the elements mandated by law, by failing to provide her with independent living services that would allow her to assume responsibility for herself once she becomes an adult and is discharged from foster care, by failing to place her in an appropriate foster-care placement, and by denying her government benefits because of her disability.

217. Because of the defendants' actions and inactions, Karen has been and continues to be irreparably harmed, to grow up without a permanent family, to be subjected to the uncertainty of foster care status, and to be deprived of an opportunity for healthy development and a normal childhood.

Systemic Failures

Failure to Protect Children from Harm and to Avoid Unnecessary Foster Care Placement

218. Federal law requires that complaints of child abuse and neglect be investigated promptly, that abused and neglected children be protected appropriately, that services be available to avoid the need for foster care placement whenever possible, and that state agencies maintain personnel trained in child abuse and neglect prevention and treatment as may be necessary or

appropriate to ensure that the state will deal effectively with child abuse and neglect cases in the state. Wisconsin law has defined a prompt child abuse or neglect investigation as one that is initiated within twenty-four hours and is completed within sixty days. Wisconsin also mandates the provision of crisis counseling, and, if a family is in need of services, requires Milwaukee DHS to provide or arrange for such services.

219. Milwaukee DHS routinely fails to follow applicable law and reasonable professional standards with regard to the investigation of child abuse and neglect reports and the provision of services in connection with those reports. Defendant Brophy has acknowledged that investigations are not initiated into "a goodly number" of the neglect and abuse complaints reported to the Milwaukee DHS within the time period mandated by state law.

220. Workers responsible for investigating reports of abuse and neglect have caseloads far above reasonable professional standards. These workers are usually unable to conduct thorough or timely child abuse investigations, to assess the child's and family's needs, or to provide services to them.

221. Many children are left at home in dangerous or deteriorating situations as the result of an inadequate child abuse investigation or the failure to offer services. Other children who could remain at home if the worker had the time to do an adequate assessment and if services were available are instead taken into foster-care custody. DHS does not have and

does not apply consistent standards for determining whether a child is at risk of abuse and neglect and needs services to remain in the home safely and whether the child must enter foster care.

222. There are virtually no services available to children and families to avoid the need for foster-care placement. Intake workers responsible for investigating abuse and neglect cases do not have access to necessary services and many children who enter foster care could have remained in their homes if adequate services and supervision were available.

223. At the early stages of placement, when some children can still be reunified quickly with their parents, most children's cases are handled by DHS court workers who, as a matter of Department practice, do not provide any services to either children or families. Cases remain with DHS court workers until an adjudication by the Children's Court that the child has been abused or neglected. These adjudications routinely take more than six months. Therefore, during the first six months of a child's placement, DHS does not even attempt to provide any services to reunify the child with his or her family, or to provide services to the family to enable the child to leave foster care.

224. Defendant Brophy has acknowledged that "[d]uring this six to eight month period [following the child's removal from the home and foster care placement] no services are being offered to the parents, nor is anyone from the Social Services Department

either formulating a case plan with the parents or shepherding the parents and the child through a service delivery pathway that could mend the family and return the child or begin to support the adoption pathway."

225. Defendant Brophy has also acknowledged that children in foster care are likely to change case workers as many as five times during their first year of placement.

226. Milwaukee DHS is required to make a recommendation to the court about the need for services in each case. Rather than individualizing the recommendations, however, DHS workers instead resort to virtually identical language with regard to most children and families.

Inappropriate Placements and Harm to Children in Foster Care

227. When children enter foster care, Milwaukee DHS workers place them in foster homes or facilities without any assessment of the child's individualized needs and with little knowledge of the particular placement. Placements are usually chosen based on whether the home will take the child, not on whether the home is appropriate. Milwaukee DHS does not maintain any systematized placement listings that contain updated information on vacancies and on the quality of the particular foster home or facility. Obtaining a good placement for a child is almost always a matter of luck.

228. There is a shortage of appropriate foster home placements. This problem could be remedied by conducting

effective recruitment campaigns, providing adequate screening of applicants, and providing adequate reimbursement, training, support, and supervision to foster parents. Instead, there are often long delays in screening potential foster parents because of staff shortages at Milwaukee DHS. Milwaukee DHS routinely violates professional standards and applicable legal provisions by licensing and maintaining foster homes that are unsuitable to care for children. In some instances foster homes are no better able to care for the children than the homes from which the children have been removed.

229. In many instances Milwaukee DHS workers have so little contact with the child and the foster family that they have little if any knowledge about the care and treatment the child is getting. In other instances children are left in clearly inappropriate and harmful homes even after the Milwaukee DHS learns of the problems because Milwaukee DHS has failed to develop either the number or range of appropriate foster homes and because there is simply no place else to put the child.

230. Children who enter placement in a sibling group often are separated from each other, compounding the trauma inflicted by the circumstances leading to their placement and undermining the children's family relationships.

231. Many children entering Milwaukee DHS custody are placed initially in an emergency placement because the agency does not maintain the necessary information on available placements to enable the child to be placed in a longer term setting. Although

emergency placements are intended to be temporary and to last no longer than thirty days, many children remain in these placements for a longer period of time because other placements have not been obtained.

232. While in foster care, many children are placed with foster parents who are untrained or unable to deal with their problems. The Department provides foster parents with almost no training, and DHS caseworkers rarely visit foster homes to ensure the safety of children, to determine whether they are receiving proper care, to identify problems they may be experiencing, or to provide assistance and support to maintain a good foster home placement.

233. Even foster parents who want to provide proper care for their foster children have difficulty reaching their worker on the telephone. Birth parents, foster parents, and community service providers often have similar problems learning the identity of the responsible worker.

234. Workers are usually too busy to arrange visiting between birth parents and their children or among separated siblings in foster care, and such visiting is usually dependent on the aggressiveness of the birth parents and the cooperativeness of the foster parents. However, workers are usually unavailable to supervise visits, when that is required, with the result that such visits are often delayed, do not take place, or are inadequately supervised by a foster parent or family member.

235. Many children in foster care experience frequent movement from one foster care setting to another, with some children being subjected to as many as twelve different placements.

236. Children's specific service needs often are not addressed by workers. Workers rarely have time to find out about children's school progress or to ensure that children are receiving an appropriate education with the result that problems are often left unaddressed until they reach a crisis level. Milwaukee DHS workers also fail to ensure that children receive necessary medical and dental care and treatment.

Planning to Secure a Permanent Placement

237. Reasonable professional standards and the applicable law require that a child remain in foster care for as short a time as possible and that children should either be returned to their parents as quickly as possible or parental rights should be terminated so the child can be placed in a permanent adoptive home. Nevertheless, the average length of stay for children in foster care custody in Milwaukee is thirty months. One recent study of selected Milwaukee DHS caseloads estimated that one-third of the children currently in foster care need not be in custody, but instead could either be returned home or placed for adoption.

238. Planning for children is haphazard. Although most children have written case plans, these plans do not conform to

reasonable professional standards or applicable law. Rather than being individualized, many of the plans and long-term goals for children and their families are simply taken from standardized checklists or contain boiler-plate language. Often, the same language about the steps that need to be taken to ensure permanency for a child is repeated year after year, with no action being taken to implement the plan.

239. Individualized case plans with specific goals, with timetables and steps necessary to accomplish goals, and with the clear delineation of which parties have responsibility to help ensure that the goals are met are critical to implementing a permanent plan for a child. Milwaukee DHS neither provides nor implements plans that will enable children to leave foster care custody within a reasonable period of time.

240. Parents who want to get their children back are not provided the services to enable them to do so. On the other hand, Milwaukee DHS workers often maintain planning goals to return children to their parents long after there is any reasonable expectation that the plan can be accomplished and even when the parents' whereabouts are unknown. In many instances Milwaukee DHS simply waits passively for parents to bring themselves to a level of functioning necessary to assume custody of their children, without either providing assistance to the parents or making the decision that the parent will not be able to achieve that goal.

241. Adoption procedures are so cumbersome that few

children get adopted. As a general matter, Milwaukee DHS does not even consider freeing a child for adoption until after the child has been in placement for two years, regardless of whether reunification with the parents is a realistic possibility. It is DHS practice not to seek to terminate parental rights for children who need to be adopted until an adoptive home can be identified and not to seek an adoptive home until parental rights have been terminated. Not surprisingly, few children are adopted, unless they are fortunate enough to have been placed with a foster parent who becomes interested in adopting them.

242. In many instances foster parents who may be interested in adopting their foster children during the first several years the child is placed with them receive no encouragement or decision about adoption from Milwaukee DHS and become discouraged and make other plans. Therefore, by the time that Milwaukee DHS determines that a child could be adopted, many foster parents are no longer willing to adopt their foster child. The children are thus in the position of having formed a significant relationship with their foster parents but, because Milwaukee DHS has failed to take necessary steps to make that relationship permanent -- through adoption -- of being deprived of any chance for a permanent family. Children who live for years with foster parents and then have to move to other foster parents often suffer serious, permanent damage to their ability to form relationships and to trust adults.

243. The result of all this delay is that children who

could have been adopted within a reasonable period of time after they entered Milwaukee DHS custody frequently become too old, or too damaged by their stay in foster care, to be acceptable to an adoptive family or to be able to adjust to an adoptive placement. Thus this delay deprives them of any chance for a permanent adoptive family.

Handicapped and Disabled Children

244. Many children in the custody of Milwaukee DHS are children with disabilities and handicaps who are entitled to the government benefits and services available to children placed in foster care. In some instances these children need special services, including appropriate treatment or specialized foster homes, to enable them to avail themselves of these benefits. In other instances these children, by virtue of their handicaps, are far more vulnerable to the harm caused by frequent moves among foster homes or by the absence of stability caused by having no permanent family.

245. These children are entitled to the services necessary to enable them to participate fully in the foster-care program and to not have their disabilities exacerbated by defendants' actions and inactions so that their handicaps worsen and they become difficult to adopt or to maintain in a foster home.

246. However, the defendants fail to provide necessary services or stability to these particularly fragile children, moving them from home to home when their behavior deteriorates or

when their handicaps or disabilities become too difficult to manage or, in some instances, failing to find appropriate foster homes for them with parents specially trained to address their handicaps.

247. Federal and state law, Department policy, and reasonable professional standards also require that a child in foster care have a stable foster-home placement and receive timely decision-making and the implementation of a permanent plan either to return a child to his or her birth family in appropriate circumstances or, if that is not appropriate, to have the child legally freed for adoption and placed in a permanent adoptive home. While defendants do a poor job of securing permanent homes for most children in foster care, there often is not even any effort to find permanent homes for children with handicaps, solely because of these children's handicaps.

Periodic Reviews

248. When cases are presented to the court, Milwaukee DHS often provides incomplete, misleading, and sometimes false information to the court. This often happens because the worker responsible for preparing the court report has only third-hand and fourth-hand information, if the worker has any information at all. Court reviews are perfunctory, often lasting less than fifteen minutes, because of overcrowded court calendars.

249. Reasonable professional standards and applicable law require that children's circumstances be reviewed periodically by

the court to ensure that children have an appropriate permanent goal and that the child-welfare agency is taking necessary steps to accomplish that goal. In Milwaukee this process is nothing more than a rubber-stamp procedure and provides no meaningful safeguards to children. Even when court orders are issued, Milwaukee DHS routinely ignores the recommendations of the court, thereby rendering these orders largely ineffective.

Systemic Failures

250. The Milwaukee defendants operate a child-welfare system that violates both the letter and the intent of applicable federal statutes, state law, and reasonable professional standards. The defendants have organized and provided resources to the system in such a way as to make these violations of law, and the resulting harm to children, both foreseeable and inevitable.

251. Caseloads are so high, averaging 100 cases and often exceeding that, that mandated services simply cannot be provided. Many positions within the Milwaukee DHS are unfilled, with children's cases assigned to "vacant zones" where no worker at all is responsible for the case. It is impossible for workers to develop and implement appropriate plans for children with caseloads that require them to spend all their time in court and addressing emergencies, rather than ensuring adequate care and permanence for children.

252. High caseloads affect both the handling of individual

cases and the development of necessary resources. Milwaukee DHS lacks adequate staff to recruit and screen foster and adoptive homes and to move children in need of adoption through the process of termination of parental rights. The absence of a useful and reliable computerized information makes the process of matching a child with a foster home totally haphazard and dependent on workers' memories and index card files. It also makes it impossible to plan for children properly, to track their progress, and to determine the need for additional resources.

253. The problems within the Milwaukee child-welfare system have long been well known to both the county and state defendants. The county defendants are directly responsible for the administration of this system and for the damage that is being inflicted on children as a result of these continuing and widespread violations of the law. The state defendants are responsible for ensuring that county child-welfare systems follow the mandates of applicable law and adopt rules and guidelines and are further responsible for providing necessary supervision to counties such as Milwaukee in which legal requirements are being violated and children are being harmed. Although additional federal dollars have been made available to the state as reimbursement for Milwaukee foster care costs, the state has diverted these funds to non-child welfare programs.

254. Defendant Brophy, Milwaukee County's Director of the Department of Social Services, stated in his 1989 Budget Statement to the County Executive that Milwaukee County faced "a

crisis in the public child protection system. The system has been so overloaded by the number and severity of child protection cases that abused and neglected children are starting to 'fall through the cracks' of a stressed out system. . . . The evidence of the crisis in child protection is all too evident -- burnt out staff, lack of treatment resources, waiting lists for institutional placements, and high caseloads."

255. In 1990 defendant Brophy stated that under existing circumstances, some child abuse referrals would not be investigated or would be investigated superficially; children placed in foster homes, group homes, and shelters would not be monitored properly; the number of children in the Department's custody who would be returned to dangerous homes would increase because higher caseloads would prevent completion of court work; foster parents would not get the support they need to care for physically and emotionally abused children; and the inability to fill existing vacancies in the Department "reduces services" to children who depend on the Department life-sustaining and life-saving services.

256. In 1991 defendant Brophy gave sworn testimony before a judicial fact-finding tribunal, stating how the Department is failing to provide mandated services:

What happens is that with that kind of caseload what the workers are largely in the situation of doing now is that they are hopping from crisis to crisis to crisis. On a given day, if 10% of their caseload is in crisis, the worker could have anywhere from 10-12 families and kids that they may have to deal with. That means that the other 100 cases are left to languish. And it means that the orders of the court

which can be very prescriptive relative to getting a mother into parent education classes, getting a mother into mental health assistance, helping a mother to get alcohol and drug assistance, maybe helping the child get some special programming, schooling, is simply not being carried out. . .

[O]n the real extreme end, [children] may go into a home, they may stay there for long periods of time. Their behavior may deteriorate. And they may home hop to a point where in a child's life they could be in six to eight to ten foster homes before . . . they reach age 18 and then just leave the system to the adult world. And even in some rare cases, but still too many, they may be abused and neglected in their own home, removed, put in a foster home and abused and neglected in that home and have to end up going into an institutional environment. . .

257. Circuit Judge Christopher Foley testified in 1991 that the problems in the Milwaukee child-welfare system raise "significant issues about high levels of noncompliance with federal requirements" as well as high levels of noncompliance with state court orders to provide services to children.

258. Notwithstanding the public recognition of these problems, the inadequacies of the Milwaukee child-welfare system have continued and have gotten worse.

259. Despite knowing that children have been and continue to be irreparably damaged by the failure to provide mandated services and protection to these vulnerable children, the defendants have failed and refused to take necessary action. As a result, plaintiffs and members of their class have been and are being deprived of their legal rights, are being irreparably harmed as a result, and are being deprived of the opportunity for safe and healthy childhoods.

CAUSES OF ACTION

260. As a result of the actions and inactions of the defendants, the plaintiff children are being deprived of the rights conferred upon them by the First, Ninth and Fourteenth Amendments to the United States Constitution. These rights include but are not limited to their right to protection from harm; their right not to be deprived of a family relationship absent compelling reasons; their right not to be harmed -- physically, emotionally, developmentally, or otherwise -- while in state custody; their right not to remain in state custody unnecessarily; their right to placement in the least restrictive, appropriate placement; their right to treatment; their right to equal protection of the law and not to be discriminated against by virtue of their handicap or disability; their right to care that is consistent with competent professional judgment; and their right not to be deprived of state or federally created liberty or property rights without due process of law.

261. As a result of the actions and inactions of the defendants, the plaintiff children are being deprived of the rights conferred upon them by the federal Adoption Assistance and Child Welfare Act of 1980. These rights include but are not limited to the plaintiff children's right to have defendants implement a preplacement preventive services program designed to help children remain with their families or be returned to their families; their right to timely written case plans that contain mandated elements and to the implementation and review of those

plans; their right to placement in foster homes or facilities that conform to nationally recommended standards; their right to appropriate services; their right to placement in the least restrictive, most family-like setting; their right to proper care while in custody; their right to planning and to services that will assure their permanent placement; their right to regular judicial or administrative reviews; their right to dispositional hearings within eighteen months of entering custody and periodically thereafter; and their right to receive services in a child-welfare system with an adequate information system.

262. As a result of the actions and inactions of the defendants, the plaintiff children are being deprived of the rights conferred upon them by the federal Child Abuse Prevention and Treatment Act. These rights include but are not limited to the plaintiff children's right to prompt and appropriate investigation of reports of abuse or neglect; their right to protection from those who endanger their health and welfare; and their right to such administrative procedures, trained and qualified personnel, programs and facilities that are necessary to deal effectively with child abuse and neglect in Milwaukee.

263. As a result of the actions and inactions of the defendants, the plaintiff children who are handicapped or disabled by their physical or emotional conditions are being deprived of their rights under the Americans with Disabilities Act and the Rehabilitation Act of 1973 to participate fully and receive the benefits of the state foster care and child-welfare program.

264. As a result of the actions and inactions of these defendants, the plaintiff children are being deprived of the rights conferred upon them by state laws and regulations. These rights include but are not limited to their right to protection from abuse; their right to reasonable efforts to avoid the need for foster care placement or to be reunified with their families; their right to appropriate and timely case records and plans; their right to services in community-based programs; their right to permanent and stable family relationships; their right to care, protection and wholesome mental and physical development; their right to adoption into stable families rather than remaining in the impermanence of foster care and to specified adoption procedures; and their right to appropriate services in accordance with their best interests.

RELIEF REQUESTED

265. The plaintiffs respectfully request that the court grant the following relief:

A. Certify this action as a class action pursuant to Rule 23(b) (2) of the Federal Rules of Civil Procedure.

B. Enter declaratory and injunctive relief necessary and appropriate to remedy the defendants' violations of the plaintiffs' rights under the United States Constitution.

C. Enter declaratory and injunctive relief necessary and appropriate to remedy the defendants' violations of the plaintiffs' rights under the federal Adoption Assistance and

Child Welfare Act.

D. Enter declaratory and injunctive relief necessary to remedy defendants' violations of plaintiffs' rights under the federal Child Abuse Prevention and Treatment Act.

E. Enter declaratory and injunctive relief necessary to remedy defendants' violations of plaintiffs' rights under the federal Americans with Disabilities Act and the Rehabilitation Act of 1973.

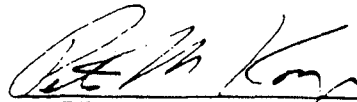
F. Enter declaratory and injunctive relief necessary and appropriate to remedy violations of plaintiffs' rights under state law.

G. Award to the plaintiffs the reasonable costs and expenses incurred in the prosecution of this action, including but not limited to reasonable fees and costs pursuant to section 1988 of title 42 of the United States Code.

G. Retain jurisdiction of this matter to insure adequate and effective implementation of the relief ordered by the court.

Respectfully submitted,

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Dated: June 1, 1993