

2006

Out-of-home Placements for Abused, Neglected, and Dependent Children in Minnesota: A Historical Perspective

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Saksena, Marian E. (2006) "Out-of-home Placements for Abused, Neglected, and Dependent Children in Minnesota: A Historical Perspective," *William Mitchell Law Review*: Vol. 32: Iss. 3, Article 10.
Available at: <http://open.mitchellhamline.edu/wmlr/vol32/iss3/10>

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OUT-OF-HOME PLACEMENTS FOR ABUSED, NEGLECTED, AND DEPENDENT CHILDREN IN MINNESOTA: A HISTORICAL PERSPECTIVE

Marian E. Saksena[†]

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I. INTRODUCTION

The traditional view of the origins of the juvenile court in Minnesota focuses on legislation passed in 1905 establishing the juvenile court and delineating its jurisdiction. The 1905 legislation created the juvenile court in Minnesota and gave it “original and exclusive” jurisdiction in cases involving dependent, neglected, or delinquent children.¹ A different perspective on the origins of

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1. 1905 Minn. Laws 418, 418-19; A SOCIAL JUSTICE FRAMEWORK FOR CHILD WELFARE: THE AGENDA FOR A NEW CENTURY app. B at 1 (Esther Wattenberg ed.,

juvenile court considers juvenile court “as the result of the evolution during the nineteenth century and before of a variety of systems for handling juvenile justice and child welfare matters.”²

Juvenile law in Minnesota has distinguished between two classes of children: those deemed to be delinquent and those deemed to be dependent, abused, or neglected. Historically, the out-of-home placement options for such youth usually followed those distinctions: delinquent youth were placed in reform schools, correctional facilities, and facilities for “wayward” youth, while dependent, abused, or neglected youth were placed in orphanages, foster homes, or adoptive homes.

This Article examines the social response to child welfare matters in Minnesota by reviewing out-of-home placement options for children who were deemed to be dependent, abused, or neglected prior to and after the establishment of the juvenile court. The legal definitions of “dependency,” “abuse,” and “neglect” have evolved over time, but during the 1800s and early 1900s, they were relatively broad terms used to describe a needy child. During this era, a child deemed to be “dependent” could refer to a child born out of wedlock, or a child without parents who were willing and able to provide for the child’s support.³ A child deemed to be “neglected” could refer to a child who was abandoned, orphaned, physically abused, or whose parents were somehow “depraved” or failed to provide the child with necessary medical care, education, or training.⁴

While this Article reviews historic out-of-home placement options for dependent and neglected children in Minnesota, it does not examine out-of-home placement options aimed at children deemed to be delinquent. By examining the historical antecedents of the modern foster care system, this Article strives to provide an alternative perspective for consideration of the evolution of the juvenile court in Minnesota and the current social

2001) [hereinafter Wattenberg]. See generally, Wright S. Walling & Gary A. Debele, *Private CHIPS Petitions in Minnesota: The Historical and Contemporary Treatment of Children in Need of Protection or Services*, 20 WM. MITCHELL L. REV. 781, 802-04 (1994) (describing legislative developments in Minnesota in the first decade of the twentieth century).

2. Sanford J. Fox, *The Early History of the Court*, THE FUTURE OF CHILDREN, Winter 1996, at 29.

3. See generally Walling & Debele, *supra* note 1, at 806-07 (describing the legislative distinctions in the 1910s between “dependent” and “neglected” children).

4. See generally *id.*

response to, and options for, Minnesota children who are living in out-of-home placements due to abuse and neglect by their parents.

II. SOCIAL BACKGROUND

Colonial America's response to needy children was shaped by the Elizabethan Poor Laws from England, including the principle of institutionalization as a response to dependent, abandoned, or poor children.⁵ The Poor Laws were "premised on the notion that poverty was a sin of the parents that also affected children."⁶ The colonial system of "poor relief" included almshouses, workhouses, and indentured servitude of dependent children with the goal of protecting children and punishing "sinful" parents.⁷ However, with placement in almshouses or poorhouses, children were often "mixed indiscriminately"⁸ with adults who were "insane, drunk, and venereal paupers."⁹ Early nineteenth century reformers were critical of this practice of mixing vulnerable children with adults in institutional settings, but the number of children in almshouses nonetheless increased during this era.¹⁰

By 1830, however, an increasing number of orphanages for children were established in the United States as an alternative to placing children in almshouses and other such institutions.¹¹ Indeed, the increased focus on children in need became a hallmark of nineteenth century social welfare endeavors.¹² With urbanization, industrialization, and immigration on the rise, many families became "enmeshed in a web of poverty, desperation, and squalor, and the devastating effects" of these problems were especially visible in children.¹³ Social commentators from the mid-nineteenth century noted the phenomenon of bands of urban children, "destitute of proper parental care, wandering about the

5. Wattenberg, *supra* note 1, at 4.

6. Walling & Debele, *supra* note 1, at 786.

7. Wattenberg, *supra* note 1, at 4; *see also* Walling & Debele, *supra* note 1, at 786 (discussing how parental conduct affected colonial society's views of needy children).

8. Walling & Debele, *supra* note 1, at 786.

9. Priscilla Ferguson Clement, *With Wise and Benevolent Purpose: Poor Children and the State Public School at Owatonna, 1885-1915*, MINN. HIST., Spring 1984, at 12.

10. Walling & Debele, *supra* note 1, at 790.

11. *Id.* at 791.

12. Joan Gittens, *Friendless Foundlings and Homeless Half-Orphans*, CHI. HIST., Spring 1995, at 40, 46.

13. *Id.*

streets, committing mischief, and growing up in mendicancy, ignorance, idleness, and vice.”¹⁴

Beyond the problems of “street children,” other children were affected by social and familial disruptions.¹⁵ There was little in the way of legal protection for children born outside of wedlock in nineteenth century America; so-called “illegitimate children” and their mothers often became the responsibility of locally operated poorhouses when they were without the benefit of support from their fathers.¹⁶ Some desperate mothers abandoned their children—“little ‘foundlings,’ as they were called”—in the anonymity of the city.¹⁷ The overall number of orphans and “half-orphans” (the term for children who had lost one parent) increased as well, as “[a]ll the dangers of disease were compounded by crowded city life, by filthy tenements and equally filthy and dangerous work places.”¹⁸ Additionally, scores of children lost one or both parents to war or disease as waves of cholera, smallpox, and tuberculosis epidemics swept across the country in the 1800s.¹⁹

By the early nineteenth century, the colonial system of poor relief for children and families was beginning to collapse.²⁰ At the same time, the institution of slavery was well-entrenched,²¹ and federal policies emerged that eventually led to massive removal of Native American children from their families and placement in mission schools and federal boarding schools.²²

By the middle of the nineteenth century, public attitudes toward child abuse and neglect began to shift. For example, while physical cruelty to a child was once viewed as a private, family matter, state intervention in such matters was becoming increasingly accepted.²³ With a heightened public concern for the well-being of children, many citizens took matters into their own hands and established numerous private charity organizations concerned with children and destitute families, especially during the last three decades of the 1800s, the period of American history

14. *Id.*

15. *Id.*

16. *Id.* at 46-47.

17. *Id.* at 47.

18. *Id.* at 47-48.

19. *Id.* at 47.

20. *See* Wattenberg, *supra* note 1, at 4-5.

21. *Id.* at 4.

22. Linda LeGarde Grover, *From Assimilation to Termination: The Vermilion Lake Indian School*, MINN. HIST., Winter 2002-03, at 225.

23. Walling & Debele, *supra* note 1, at 790-91.

known as the Progressive Era.²⁴ During this era, most child-welfare workers agreed that abused, neglected, or needy children should be placed in specialized children's asylums or family farm homes rather than almshouses and public poorhouses.²⁵

By 1883, Minnesota had established the State Board of Corrections and Charities,²⁶ which, among other things, established guidelines for giving full guardianship of a child to private child-caring institutions.²⁷ The name of this state agency has changed over the years from the State Board of Corrections and Charities (1883), to the State Board of Control (1901), to the Department of Social Security (1939), to the Department of Public Welfare (1953), and most recently, to the Department of Human Services (1983), which currently oversees the county-based child protection system.²⁸

During the Progressive Era, reformers and social justice pioneers such as Lucy Flower and Julia Lathrop identified the need for "a special 'parental court' to hear cases of all dependent, neglected, and delinquent children."²⁹ Lobbying for the State to assume its responsibilities as *parens patriae* for needy children, the social justice pioneers' vision of a "parental court" was realized in 1899 in Chicago, when the world's first juvenile court legislation went into effect, establishing the Juvenile Court in Cook County, Illinois.³⁰ Minnesota established its own juvenile court in 1905 and vested in it original and exclusive jurisdiction over cases involving dependent, neglected, and delinquent children.³¹

III. ORPHANAGES

In the nineteenth century, the number of orphanages, or "orphan asylums," increased dramatically.³² Minnesota was no

24. *Id.* at 794.

25. Clement, *supra* note 9, at 3-4.

26. See Wattenberg, *supra* note 1, at app. A.

27. See ELIZABETH VANDAM, *THE DOORS OF TANGLETOWN* 15 (2002).

28. Wattenberg, *supra* note 1, at 6-7 app. A.

29. David S. Tanenhaus, *Justice for the Child: The Beginning of the Juvenile Court in Chicago*, CHI. HIST., Winter 1998-99, at 4, 10.

30. *Id.* at 14; see also Wright S. Walling & Stacia Walling Driver, *100 Years of Juvenile Court in Minnesota—A Historical Overview and Perspective*, 32 WM. MITCHELL L. REV. 883, 892-93 (2006) (discussing the *parens patriae* goal of the nation's first juvenile courts).

31. 1905 Minn. Laws 418, 418-19.

32. ALFRED KADUSHIN & JUDITH A. MARTIN, *CHILD WELFARE SERVICES* 673-74 (4th ed. 1988); DAVID J. ROTHMAN, *THE DISCOVERY OF THE ASYLUM* 207 (1971).

exception to this national trend, with orphanages being built around the state in the late nineteenth century and well into the early twentieth century.³³ During this time, the orphanages began bringing in a wide variety of children, and not just children whose parents were deceased.

[T]hey admitted the abandoned as well as the orphaned child, and those whose widowed or deserted mothers, hard pressed to make ends meet, had little time for supervision. They accepted minors whose parents were quite alive but very poor, and those from families that seemed to them morally, if not financially, inadequate to their tasks.³⁴

Thus, privately funded orphanages emerged across the state offering out-of-home placement for children, often based in part on their religious and cultural identification.³⁵ In addition to private, non-sectarian orphanages, Minnesota also had Catholic, Jewish, Episcopal, Lutheran, and Protestant orphanages, as well as orphanages aimed at serving children from particular racial, cultural, and ethnic groups.³⁶ The practice of placing children in orphanages based on religious affiliation continued even after the establishment of the juvenile court in 1905.³⁷ The juvenile court was required by statute to place children, as far as practicable, in institutions “controlled by persons of like religious faith of the parents of said child,” or with individuals holding the same religious beliefs as the parents of the child.³⁸

Against this backdrop of private orphanages, Michigan developed what was known as the “Michigan Plan” whereby “the state assumed primary responsibility for dependent children, not by warehousing them in local poorhouses” or placement in private orphanages, “but by placing them in state-run, central institutions from which they were placed out into foster and adoptive homes.”³⁹ Child advocates praised the Michigan model as being a more efficient and humane system for caring for dependent and

33. See Clement, *supra* note 9, at 3-4 & n.1.

34. ROTHMAN, *supra* note 32, at 207.

35. Cf. Gittens, *supra* note 12, at 58-59 (describing a similar trend in Illinois).

36. Irish Genealogical Society International, *An Early History of Orphanages in Minnesota*, http://www.rootsweb.com/~irish/igsi_published/orphanages/orphans.htm (last visited Feb. 18, 2006).

37. 1905 Minn. Laws 418, 424.

38. *Id.*

39. Gittens, *supra* note 12, at 63-64.

neglected children.⁴⁰ This model of centralization via establishment of state institutions for dependent children was thereafter adopted by Minnesota and Wisconsin and then spread to other states around the nation.⁴¹

Children came to be placed in the orphanages through a variety of means. Some children were voluntarily placed in orphanages by their parents or relatives, some parents were evidently coerced into assenting to such a placement, and sometimes the State intervened and the child was placed in the institution without parental consent.⁴² For example, in its early years of operation, the Minnesota State Board of Corrections and Charities (later renamed the Board of Control) provided private orphanages with full guardianship over the children placed there.⁴³ When the State Public School for Dependent and Neglected Children was established by Minnesota law in 1885, the pre-juvenile court statute provided that the situation or condition of the child must belong to one of the classes enumerated by the statute to qualify for admission to the school.⁴⁴ A qualified child could therefore be placed in the state school, with or without parental consent, by transferring guardianship and custody of the child to the Board of Control of the state public school.⁴⁵

Prior to the establishment of the juvenile court in Minnesota, a transfer in guardianship and custody was effectuated when the county probate court judge granted a petition or application for guardianship, signed by two county commissioners, that alleged that the child

. . . is dependent upon the public for support, or that [the child] is in a state of habitual vagrancy or mendicity [sic], or that [the child] is ill treated, and in peril of life,

40. *Id.* at 64.

41. *Id.* at 64-65.

42. *See* Clement, *supra* note 9, at 10.

43. *See, e.g.,* Armstrong v. Bd. of Control of State Pub. Sch., 88 Minn. 382, 384, 93 N.W. 3, 4 (1903); VANDAM, *supra* note 27, at 15.

44. 1885 Minn. Laws 172, 175 (“There shall be received as pupils in said school those children who are declared dependent on the public for support . . . who are over three (3) and under fourteen (14) years of age, and who are in suitable condition of body and mind to receive instruction.”).

45. *See generally* Armstrong, 88 Minn. at 384, 93 N.W. at 4 (holding that once the board of control “is made the legal guardian of [a minor, the] guardianship continues during [the minor’s] minority, unless sooner dissolved by action of the board, and is superior to the rights of parents [or] other guardians, either previously or subsequently appointed”).

health, or morality, by continued cruel personal injury or by the habitual intemperance or grave misconduct of the parents or of the guardians.⁴⁶

[O]nce committed to the care and guardianship of the school, the [child] should continue an inmate thereof during minority, unless the board in charge of the school should sooner voluntarily relinquish and surrender its control to a suitable person willing to adopt, rear, and educate the child. Whether [a child] committed to the care and custody of the school should be released prior to arriving at majority is a matter resting in the sound discretion of the school board,—a department of the executive branch of the government,—with the exercise of which the courts have no jurisdiction to interfere or intermeddle in any way.⁴⁷

With the advent of the juvenile court in Minnesota, decision-making power shifted from the Board of Control to the juvenile court. For example, the juvenile court asserted jurisdiction to change or terminate guardianship, noting that the law gives the juvenile court exclusive jurisdiction over dependent children, while “[t]he state board of control had only supervisory duties over the institutions which the court might appoint to guardianship of such children.”⁴⁸ This meant that the board of any institution-appointed guardian might recommend, for example, discharge of a minor, but the juvenile court ultimately had the power to act thereon.⁴⁹ The Minnesota Supreme Court held that “the authority and power of such courts over their wards is always supreme to that of the guardian to whose custody they have been committed by those courts.”⁵⁰

A. Private, Non-Sectarian Orphanages: Washburn Memorial Orphan Asylum

Washburn Memorial Orphan Asylum was established with a bequeath from Cadwallader Colden Washburn, former governor of Wisconsin, Civil War major general, and founder of the Washburn-Crosby Milling Company in Minneapolis, now known as General

46. *State ex rel. Rea v. Kinmore*, 54 Minn. 135, 139, 55 N.W. 830, 830 (1893).

47. *Armstrong*, 88 Minn. at 384, 93 N.W. at 4.

48. *State v. Probate Court of Mahnomen County*, 150 Minn. 16, 17-18, 184 N.W. 27, 28 (1921).

49. *Id.* at 22, 184 N.W. at 30.

50. *Id.* at 19-20, 184 N.W. at 29.

Mills.⁵¹ It has been said that “[t]hrough the eyes of his mill employees and through personal knowledge, he knew that all too often, families were broken apart by death, accident, and disease.”⁵² Thus, Washburn provided in his will for the creation of an “environment of security to care for orphaned children,” and at his death in 1882 he left “\$375,000 for the founding and preservation of the Washburn Memorial Orphan Asylum, in memory of his mother, Martha Benjamin Washburn.”⁵³

Located between 49th and 50th Streets along the western side of Nicollet Avenue in Minneapolis, Washburn Memorial Orphan Asylum opened its doors in 1886 to the first eight of the 924 children who would live there.⁵⁴ As with most nineteenth century orphanages, Washburn Orphan Asylum admitted children who were not necessarily orphaned. In those early years, the Minnesota State Board of Charities and Corrections provided Washburn Orphan Asylum with full guardianship over the children placed there.⁵⁵

The experience of one child, Harry Oliver, was not atypical. Harry and his younger sister, Susan, lived in rural Marshall, Minnesota, when their mother, pregnant with her third child, was abandoned by their father and found herself unable to care for her children.⁵⁶ Susan was placed with a family in Richfield, while Harry was sent to Washburn Orphan Asylum, where he lived from 1892 until 1897.⁵⁷ At fifteen, Harry was discharged from Washburn Orphan Asylum, as required by institutional policy, and went to work on a farm in Iowa.⁵⁸

Children living at the Washburn Orphan Asylum attended school and performed chores such as gathering fruit and vegetables and tending livestock to help with the needs of the institution.⁵⁹ Washburn originally had a liberal visitation policy for relatives and friends of the children, and by 1887 such visitation was undoubtedly facilitated by the development of the Twin City

51. Washburn Child Guidance Center, History of the Washburn Child Guidance Center, <http://www.washburn.org/updatedpage/services/history.html> (last visited Feb. 18, 2006).

52. VANDAM, *supra* note 27, at 13.

53. *Id.*

54. *Id.* at 13-15.

55. *Id.* at 15.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

Rapid Transit streetcar system which extended to 50th Street and Nicollet Avenue, ending at Washburn Orphan Asylum.⁶⁰ By 1897, however, Washburn had restricted its visitation policy whereby friends and relatives of the children were only allowed to visit once every three months.⁶¹ Children were frequently seen near the front gate of the Washburn Orphan Asylum, waiting for their guests to arrive.⁶²



Figure 1 – Young Residents of the Washburn Memorial Orphan Asylum, ELIZABETH VANDAM, THE DOORS OF TANGLETOWN (2002).

As child welfare practices shifted in the early twentieth century, the number of children living at Washburn Orphan Asylum began to decrease.⁶³ In 1929, after forty-three years of operation, the Washburn Orphan Asylum was demolished.⁶⁴ However, the mission of caring for children continued, as Washburn became a foster home care placement agency.⁶⁵ In 1951, the board of trustees determined that Washburn should become a

60. *Id.* at 14, 25.

61. *Id.* at 14.

62. *Id.*

63. *Id.* at 15.

64. *Id.* Ramsey Fine Arts School and Washburn Senior High School now occupy some of the twenty acre site originally occupied by Washburn Orphan Asylum. Washburn Child Guidance Center, *supra* note 51.

65. *Id.*

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children's mental health agency; thus, Washburn became what is now known as the Washburn Child Guidance Center, a community-based mental health agency in Minneapolis providing services for community children and their families, including many foster children.⁶⁶

B. Private, Non-Sectarian, Culturally Specific Orphanages: Crispus Attucks Colored Orphanage and Old Folks Home

Crispus Attucks Colored Orphanage and Old Folks Home, also known as the Crispus Attucks Home for the Friendless, was established in 1906.⁶⁷ The Home was named for black hero Crispus Attucks, who was the first Colonial-American patriot to lose his life in the Boston Massacre in 1770.⁶⁸ Originally, the Home was located at Randolph and Brimhall Streets in St. Paul.⁶⁹ The Crispus Attucks Home was later relocated to a charity residence on a hill near the corner of DeSota and Collins (now Tedesco) Streets, just west of Payne Avenue in the St. Paul neighborhood later known as "Swede Hollow" or "Railroad Island."⁷⁰ The Crispus Attucks home was a unique institution in Minnesota inasmuch as the private facility was operated by and for African Americans and up until the 1920s housed both young orphans and dependent children, as well as poor, elderly people.⁷¹

66. *Id.*; VANDAM, *supra* note 27, at 15.

67. Paul D. Nelson, *Orphans and Old Folks Revisited, with a Story by Lloyd L. Brown*, MINN. HIST., Fall 2001, at 368-70.

68. See F. Michael Higginbotham, *Soldiers for Justice: The Role of the Tuskegee Airmen in the Desegregation of the American Armed Forces*, 8 WM. & MARY BILL RTS. J. 273, 277 n.15 (2000).

69. Nelson, *supra* note 67, at 370; *see infra* fig. 2.

70. Nelson, *supra* note 67, at 370.

71. *Id.* at 368.



Figure 2 – Crispus Attucks Orphanage and Old Folks Home, Randolph and Brimhall Streets, St. Paul, courtesy of Minnesota Historical Society.

During the early years, Crispus Attucks was dependent on charitable contributions, primarily from St. Paul's black community.⁷² The conditions at Crispus Attucks, therefore, fluctuated with the ebb and flow of community donations: "[s]o when there was money, or plentiful gifts of food, or the Attucks gardens produced well, the residents ate well. But when resources got thin and handouts did not come, nutrition declined to a level of misery."⁷³

In 2000, Lloyd Brown⁷⁴ (formerly known as Lloyd Dight), age eighty-eight, was considered one of the oldest surviving ex-residents of Crispus Attucks and shared his recollections with interviewers. Lloyd was born to a German-American farm girl from Stearns County, Minnesota and an African-American waiter from Alabama.⁷⁵ Lloyd's mother died when he was four years old and Lloyd's father sent his four young children to Crispus Attucks

72. *Id.* at 370.

73. *Id.* at 370-71.

74. Lloyd Brown has been called "one of the most interesting twentieth-century sons of St. Paul," as he grew up to become a famed labor organizer, editor, and novelist. *Id.* at 372-74.

75. *Id.* at 372.

because he was not able, or not willing, to care for them.⁷⁶ Lloyd and his siblings lived at Crispus Attucks from 1918 until 1920.⁷⁷ Lloyd described the conditions at Crispus Attucks as “bleak.”⁷⁸ During hard times, sometimes the only bread available had been “discarded from bakeries and scavenged by the old folks.”⁷⁹ In addition, elderly residents of Crispus Attucks regularly traveled to the South St. Paul stockyards for “a sack of bones and chicken feet to be cooked for broth and whatever rubbery flesh the orphans and old folks could detach from the bones.”⁸⁰ According to Lloyd, this type of fare might be their only food for days at a time.⁸¹

In addition to food shortages, the young residents of Crispus Attucks often lacked suitable clothing.⁸² Not all the children had shoes, and for many those shoes were “ill-fitting castoffs often lined with cardboard or paper to cover holes in their soles,” the likes of which gave young Lloyd such frostbite or “chilblains,” as he termed it, that he tied strings around his toes because the “counter pain was better than the itch” of frostbite.⁸³ The hand-me-down clothing marked the children as “charity cases” to their peers at school, and their sleep was disturbed by bedbug infestations in their tick mattresses.⁸⁴ Lloyd, albeit fair-skinned enough to “pass” for white, recalls the racial names and taunts he received from classmates, who “knew where he lived and drew the inescapable conclusion.”⁸⁵

Lloyd Brown also had positive memories of his years at Crispus Attucks, particularly the relations between the children and the elderly residents, “most of whom had lived in slavery and told stories of those distant times,” whose spirits were “so utterly compassionate and humane,” and who took an interest in his accomplishments at school, showering him with praise.⁸⁶ In 1920, Lloyd, who was Catholic, was moved to the Catholic Boys’ Orphan Asylum in Minneapolis.⁸⁷ He later attended school in St. Paul (Cathedral Hill and Cretin High School), living on his own with his

76. *Id.*

77. *Id.* at 370.

78. *Id.*

79. *Id.* at 371.

80. *Id.*

81. *Id.*

82. *Id.* at 370.

83. *Id.*

84. *Id.*

85. *Id.* at 372.

86. *Id.*

87. *Id.*

older brother with some financial support from their father.⁸⁸ In the 1920s, Crispus Attucks Home stopped accepting children, but continued to serve elderly African-Americans until the facility closed in 1966.⁸⁹

C. Public Orphanages: Minnesota State Public School for Dependent and Neglected Children

The State School for Dependent and Neglected Children was created by the Minnesota Legislature in 1885 and was influenced by innovative theories in social work.⁹⁰ Hastings H. Hart, then Secretary of Minnesota's State Board of Charities, conducted a study in 1884 of 340 children who had been placed with Minnesota families by Charles Loring Brace's Children's Aid Society via the "orphan trains."⁹¹ Minnesota's State School for Dependent Children was influenced by Brace's emphasis on family home placements and modeled after the so-called Michigan Plan, whereby the State assumed responsibility for providing centralized, institutional care for dependent and neglected children, pending placement with a family.⁹²

The Michigan Plan was based on the philosophical premise that dependent children were not delinquent and could therefore be "saved."⁹³ The theory was that through preventative and remedial measures, such as providing children with a pastoral environment and discipline, these children could be rendered acceptable to a new family.⁹⁴ Hart was confident that the Michigan Plan would work in Minnesota, since the state public school in Coldwater, Michigan, had been operating since 1874 and was considered successful.⁹⁵

Adapting the Michigan Plan for Minnesota children, children placed at the Minnesota State Public School for Dependent and Neglected Children were to experience "family-like" life by residing in "cottages" with approximately twenty-five children and a matron

88. *Id.*

89. *Id.* at 368, 370.

90. Clement, *supra* note 9, at 4.

91. *Id.*

92. Minnesota State Public School for Dependent and Neglected Children, History, <http://www.orphanagemuseum.com/history.php> (last visited Feb. 18, 2006) [hereinafter Minnesota State Public School History].

93. *Id.*

94. *Id.*

95. Clement, *supra* note 9, at 4.

serving as a surrogate mother.⁹⁶ The cottage model was a dramatic departure from the typical orphanage experience where children lived in large, congregate dorms.⁹⁷ It was hoped that the children would reside in the cottages for less than a year, while working, playing, eating, worshiping, and learning in a communal setting.⁹⁸ After the children had “basic training,” they were to be “placed out,” via adoptive, foster, or indentured placement with a suitable home, chosen by state agents and subject to regular inspections.⁹⁹

The State Public School for Dependent and Neglected Children was built in Owatonna, Minnesota. Owatonna was considered a prime location for the new State School as it was situated in a densely populated region in southern Minnesota at the junction of two key railroad lines; as a result, children could be easily transported from all parts of the state to the State Public School.¹⁰⁰

The School opened in 1886 when a “sufficient number of applications for admission to the State School [had] already been received to fill the cottages.”¹⁰¹ When placed at the State School, children became wards of the State and were called “State Schoolers.”¹⁰² The young residents attended school and assisted with the operation of what became a virtually self-sustaining institution.¹⁰³ At its peak, the State School was home to 500 children living in sixteen cottages.¹⁰⁴ The State School grew to include a nursery, hospital, school, gym, laundry, power plant, superintendent and staff residences, greenhouse, icehouse, a complete farm operation on 287 acres of land, and a cemetery.¹⁰⁵

96. *Id.*; Minnesota State Public School History, *supra* note 92.

97. Clement, *supra* note 9, at 4.

98. *Id.*; Minnesota State Public School History, *supra* note 92.

99. Clement, *supra* note 9, at 4.

100. *Id.*; Minnesota State Public School History, *supra* note 92.

101. NEWSLETTER (State School Orphanage Museum, Owatonna, Minn.), Spring 2005, at 2, *available at* <http://www.orphanagemuseum.com/newsletters/13.pdf>.

102. Clement, *supra* note 9, at 9.

103. Minnesota State Public School History, *supra* note 92.

104. *Id.*

105. *Id.*



Figure 3 – Dining Room, Owatonna State School, Owatonna, courtesy of George A. Kamrath, Minnesota Historical Society.

Although the home-like cottage model was a new concept in child-care institutions, education of the children placed there was not.¹⁰⁶ The earliest orphanages in Minnesota and elsewhere included schoolrooms, based on the generally accepted premise that education could be the key to “saving children” from a life of poverty.¹⁰⁷ Indeed, since many of those early orphanages “antedated the creation of public schools [they] offered the children of the poor their only chance to learn to read and write.”¹⁰⁸

Minnesota’s compulsory education law was enacted in 1885 and mandated that children between the ages of eight and sixteen attend school twelve weeks a year; however, at the time, the new law was largely viewed as an expression of sentiment and not necessarily practice in a large, agrarian state where child labor was essential to farm life and schools were often situated a considerable distance from rural homes.¹⁰⁹ As a result, from 1887 to 1909, the few children who remained at the State School for several years likely received more formal education than the majority of children who were indentured or otherwise placed with a family within a

106. Clement, *supra* note 9, at 5.

107. *Id.*

108. *Id.*

109. *Id.*

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year or so after their arrival at the School; this despite the State School's requirement that such families ensure that the children attend local schools for at least five months of the year until reaching the age of eighteen.¹¹⁰

The 1900 Bi-annual Report of the State School recorded the following:

Children received	2148
In MN homes	1499
In homes—other states	238
Died	66
Returned to county	87
Present at school	258 ¹¹¹

Legal adoption of State Schoolers by foster parents was the ultimate goal of the school's officials.¹¹² However, adoption rates for these state wards were much lower than anticipated.¹¹³ From 1887 to 1897, only 6% of the state wards had been adopted, and in the following decade, the adoption rate had increased to just 20%.¹¹⁴ Typically, most of the children who were adopted were female and very young, with an average age of three years.¹¹⁵ However, most of the state wards living at the State School were over six years of age and male, and such boys were often desired primarily for their labor.¹¹⁶

As an alternative to legal adoption, many state wards were placed in homes on "indenture contracts."¹¹⁷ With the school's aggressive "placing-out" program, the mean length of stay in Owatonna decreased to eight months from 1915 to 1916.¹¹⁸ Because children could be placed in families hundreds of miles from the State School, and most homes could only be reached by a

110. *Id.*

111. NEWSLETTER (State School Orphanage Museum, Owatonna, Minn.), Spring 2003, at 4, available at <http://www.orphanagemuseum.com/newsletters/9.pdf> [hereinafter NEWSLETTER Spring 2003].

112. Clement, *supra* note 9, at 8.

113. *Id.*; NEWSLETTER Spring 2003, *supra* note 111, at 4.

114. Clement, *supra* note 9, at 8.

115. *Id.*

116. *Id.* at 8-9.

117. NEWSLETTER Spring 2003, *supra* note 111, at 4.

118. Clement, *supra* note 9, at 7.

combination of train and wagon travel, the school's agents could not visit the children often.¹¹⁹ Because of this, an emphasis was placed on trying to ensure a successful placement by a "careful matching of child and home."¹²⁰

The State School agents generally lived at the school and thereby became acquainted with the children's needs.¹²¹ Once a child was "placed out" with a family, the state agent tried to visit the child several times a year, typically unannounced, and interviewed the parents and child separately.¹²² The agents checked local school records to determine whether children received the education promised to them in the indenture contracts.¹²³ They also visited when the children's terms of service were finished to ensure that they received the financial settlements promised upon completion and to ascertain if they had secured suitable employment thereafter.¹²⁴

While some children found good homes through this process, many were taken out strictly for work and were ill-treated.¹²⁵ If a child was being mistreated or the arrangement was not considered a satisfactory match, the state agent could remove the child from such a home.¹²⁶ Indeed, between 1887 and 1897, 67% of the children did not fare well in their first placement and had to be removed from that home.¹²⁷ Most of those children returned to the State School and were then placed out again.¹²⁸

The school had a more difficult time finding a good fit for older children. According to the State School records, less than 20% of children between the ages eleven to sixteen who were placed out from the state school between 1897 and 1907 were happy, satisfied, and well accepted in their first foster homes.¹²⁹ Older children placed out from Owatonna were most likely to be denied access to schooling.¹³⁰ Records also document the rate of pregnancy and childbirth among teenage girls, several of whom

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.* at 8.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* at 11.

130. *Id.*

had children by their foster fathers or foster brothers.¹³¹ Some agents tended to blame the child rather than the foster family for whatever problems developed, agreeing with pronouncements by the foster parents that the child was, for example, “mischievous” or “disagreeable.”¹³² However, it was clear that some of the placements did not succeed because of the expectations or actions of the foster parents. In 1898, a state agent offered this theory for why some placements were not successful:

[O]ne of the principal causes of failure of our children is the lack of foresight and the penuriousness of the foster parents, some of whom take children, not from a desire to do them good, but as a business venture, expecting to do little for them and get much from them . . . [despite this, it] is a very rare thing to find a child who will complain of his surroundings if they are at all endurable.¹³³

In some cases, the state wards were physically abused by foster parents. The local newspaper, *The Owatonna Journal*, included a weekly column entitled “State School News,” which published this disturbing piece in 1896:

[State School] Superintendent Merrill has received word from the county attorney of Waseca County that the case of Fred Harrington, charged with having maltreated Lulu Connor, one of the states [sic] wards entrusted to his care, will be tried sometime this week. It is charged that the little girl was unnecessarily and brutally whipped by the defendant, the marks of the punishment showing plainly on her body when she was taken away.¹³⁴

The *Owatonna Journal* later reported the following:

The Waseca Judge before whom the case of Mrs. Fred Harrington, charged with maltreating a state school girl, was tried, dismissed the case, evidently thinking abuse of a dependent and unprotected child a less offense than the ill-use of a horse or dog.¹³⁵

In contrast to Lulu Connor’s fate, other State Schoolers had

131. *Id.*

132. *Id.* at 8.

133. *Id.*

134. NEWSLETTER (State School Orphanage Museum, Owatonna, Minn.), Winter 2004, available at <http://www.orphanagemuseum.com/newsletters/12.pdf>. (discussing historical events relating to the state school and displaying excerpts from the *Owatonna Journal*).

135. *Id.*

more positive experiences. Former State Schooler Florence (Logan) Wuollet of Glenwood, Minnesota, reported that the State School placed her in a “good home” at the age of fifteen and she later became a registered nurse.¹³⁶ Excerpts from her reminisces of life at the State School follow:

I remember . . .

. . . One girl per size taken to the Shakopee
Women’s Prison in the summer so the women
prisoners could get accurate sizes of the dresses
they would sew for us. We were given lunch at
the prison . . . what a big day for us girls!

. . . Our chair was our whole life! A special
memory is sitting in our chairs a half hour
before bedtime and saying our prayers together
out loud

. . . SINGING! We sang all the time! I still love
those old songs. . . .

. . . As a Girl Scout going house to house in
Owatonna selling candy bars (Baby Ruth,
O’Henry, etc.) Girl Scout training
was excellent. . . .

. . . Having to eat EVERYTHING on our plate!
(Including spinach and parsnips) . . .

. . . Wearing black bloomers that came to the knees.¹³⁷

136. NEWSLETTER (State School Orphanage Museum, Owatonna, Minn.), Winter 2003, at 3, *available at* <http://www.orphanagemuseum.com/newsletters/10.pdf>.

137. *Id.*

While the State School endeavored to place its children in foster or adoptive homes, officials were extremely reluctant to reunify children with their birth families.¹³⁸ From 1897 to 1907, just 5% of State Schoolers were full orphans, and over 55% still had two living parents.¹³⁹ When a child was committed to the State School, all legal ties with his or her parents were terminated, and most children never saw their parents again.¹⁴⁰ Sadly, some “indigent parents did not always realize when they signed Owatonna commitment papers that they were relinquishing” all legal rights to their children.¹⁴¹ One mother wrote to the superintendent of Owatonna: “Let me know whether she is dedd or alive yet how she is and if she is well . . . it brakes my hart when I think I may nevere see theme again on earth.”¹⁴² Others begged school officials to return their children.¹⁴³ If a child had not been placed out with a suitable family or repeatedly ran away, officials might return the child to his or her parents.¹⁴⁴ However, from 1897 to 1907, just 11% of all children admitted to the school were reunited with their birth families, and only 27% of the children eventually returned to their birth families after some time spent with a foster family.¹⁴⁵

In addition to severing ties between children and their parents, State Schoolers were often separated from their siblings.¹⁴⁶ Although most children entered the State School with one or more siblings, they were often assigned to different cottages based on age and later indentured or adopted by different families.¹⁴⁷ It was not uncommon for children to try to reconnect with their siblings after being separated.¹⁴⁸ For example, in 1891, Frank H., then eighteen, had not received any correspondence from his brother in three years.¹⁴⁹ He wrote to the school superintendent and expressed his unhappiness about not being able to contact his brother except through the school and threatened to pursue him to where he was

138. Clement, *supra* note 9, at 9-10.

139. *Id.* at 9.

140. *Id.*

141. *Id.* at 10.

142. *Id.* (misspellings in original).

143. *Id.*

144. *Id.* at 9-10.

145. *Id.* at 9.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.* at 10.

last known to be staying.¹⁵⁰

In 1917, the Board of Control for the Owatonna school was abolished, and replaced by the State Board of Control.¹⁵¹ By this time, the power of commitment (and the power to reunify children with parents) had been turned over to the county juvenile court.¹⁵² Over time, the juvenile courts began to send “feeble minded” children to the State School, while entrusting healthier, younger children to local, private foster care agencies.¹⁵³

The State School closed its doors in 1945, by which time social workers had come to view institutionalization as an option of last resort for all but the most “unplaceable” child.¹⁵⁴ From its inception in 1886 until the State School closed in 1945 due to shifts in child welfare practices, 10,635 Minnesota children lived at the State School.¹⁵⁵ From 1945 until 1970, the school provided academic and vocational programs for mentally disabled individuals.¹⁵⁶ The City of Owatonna now houses its administrative offices and other city departments on the property.¹⁵⁷

In 1992, with significant help from former State Schoolers such as Harvey Ronglien, along with his wife Maxine, the Minnesota State Public School Orphanage Museum opened on the property.¹⁵⁸ Through photos, artifacts, documents, film from the 1930s, and the 2002 award-winning documentary, *The Children Remember*, the museum provides a unique view of orphanage life from the 1880s until the 1940s.¹⁵⁹ Since the establishment of the museum, former State Schoolers and community members raised

150. *Id.*

151. *Id.* at 13.

152. *Id.*

153. *Id.*

154. *Id.*; see also Minnesota State Public School History, *supra* note 92 (discussing use of the school from 1945 to 1970).

155. Minnesota State Public School for Dependent and Neglected Children, Home, <http://www.orphanagemuseum.com/home.php> (last visited Feb. 18, 2006).

156. Minnesota State Public School History, *supra* note 92.

157. *Id.*

158. *Id.*

159. Minnesota State Public School for Dependent and Neglected Children, Museum, <http://www.orphanagemuseum.com/museum.php> (last visited Feb. 18, 2006). The museum is located in the Main building, 540 West Circle Hills, Owatonna, Minnesota, and is open from 8 a.m. until 5 p.m. Monday through Friday (except for major holidays) and 1:00 p.m. until 5:00 p.m. Saturday and Sunday. Phone: (507) 451-2149; website: www.orphanagemuseum.com. The film, *The Children Remember*, is available for purchase through the website or at the museum.

funds to provide grave markers with names in the children's graveyard where dozens of children who died during their placement at the State School were originally buried with headstones bearing their institutional numbers, but not their names.¹⁶⁰

D. Private Religious Orphanages: St. Joseph's Home for Children

In the face of cholera epidemics, the Civil War, and other hardships of pioneer life, many children living in Minnesota in the 1800s were left in need of parental care.¹⁶¹ In response to that need, the Sisters of St. Joseph opened the first Catholic orphanage in St. Paul in 1856.¹⁶² Like other religious groups that established orphanages in Minnesota, the establishment of orphanages by Roman Catholics was shaped by specific religious beliefs that called for the care of orphans.¹⁶³ At the time, there were a number of Protestant and non-Sectarian orphanages in Minnesota, and the Catholic community was interested in preserving and nurturing the Catholic faith of Catholic children who needed to be cared for in an orphanage.¹⁶⁴

The institution now known as St. Joseph's Home for Children in Minneapolis resulted from a merger of two orphanages that started in the late 1800s.¹⁶⁵ The first was St. Joseph's German Catholic Orphan Asylum (later St. Joseph's German Catholic Orphanage and then St. Joseph's Home for Children), located in St. Paul.¹⁶⁶ The second was Minneapolis German Catholic Boys' Home (later Minneapolis Catholic Boys' Home).¹⁶⁷

St. Joseph's German Catholic Orphan Asylum was operated by the Sisters of St. Benedict and financed by the St. Joseph's German

160. See Minnesota State Public School History, *supra* note 92.

161. Catholic Charities Volunteer Corps, *History of Catholic Charities St. Paul/Minneapolis*, <http://www.ccvolunteercorps.org/history.aspx> (last visited Feb. 18, 2006).

162. Irish Genealogical Society International, *supra* note 36.

163. See, e.g., *Isaiah* 1:17 (admonishing people to seek justice and defend the orphans).

164. See, e.g., Marian Veronica DeVoy, *The Catholic Boys' Home: History of the Minneapolis Catholic Orphan Asylum 9-10* (Mar. 1944) (unpublished paper in partial fulfillment of the requirements of the Degree of Master of Arts in Social Work at the University of Minnesota) (on file with author).

165. Fact Sheet, *St. Joseph's Home for Children* (on file with author and St. Joseph's Home for Children).

166. *Id.*

167. *Id.*

Catholic Orphan Society, a group established by parishioners from Assumption Parish in St. Paul.¹⁶⁸ The first six children, of German and Slavonic nationality, entered St. Joseph's German Catholic Orphan Asylum when it opened its doors on the Feast of St. Joseph, March 19, 1877.¹⁶⁹ The asylum was originally located in a rented two-story frame house on the corner of 9th and Robert Streets in St. Paul.¹⁷⁰ In 1900, St. Joseph's German Catholic Orphan Asylum moved to its own five-story building at 1458 Randolph Street in St. Paul.¹⁷¹ While the institution was originally established by German Catholics for German-speaking Catholic orphans, children of other nationalities including Polish, Bohemian, French, Hungarian, Slovenian, and Irish children also came to live there.¹⁷² Furthermore, while in the early years, many children had lost both parents, by 1931 there were only five full orphans out of the 188 children living at St. Joseph's.¹⁷³ Eventually, St. Joseph's German Orphan Asylum changed its name to St. Joseph's Home for Children.

After placement at St. Joseph's, some children were eventually placed in foster homes, adopted, or returned to family.¹⁷⁴ However, some children became so accustomed to living at St. Joseph's that they resisted leaving. For example, one nun recalled how a girl hid at the top of a set of lockers after she was told that foster parents were coming to take her.¹⁷⁵ Apparently, other girls knew where she was, but did not want her to leave them.¹⁷⁶ Other children faced the trauma of waiting to be adopted by a family. One former orphan from St. Joseph's stated: "I have the saddest, vivid memories of the many times I stood in the hallway at the Home with my brown suitcase containing everything I owned, waiting for someone to come get me. I hope my children will never have that experience of uncertainty and dreadful fear that I felt at those

168. Claire Lynch, *St. Joseph's Home for Children 1877-1960: A Symbol of the Charity of Christ 1, 3* (unpublished manuscript) (on file with Minnesota Historical Society and St. Joseph's Home for Children).

169. *Id.* at 5.

170. *Id.* at 4.

171. *Id.* at 9.

172. *Id.* at 8.

173. *Id.* at 40.

174. *Id.* at 36.

175. *Id.* at 22 n.33.

176. *Id.*

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times.”¹⁷⁷

At its peak, 283 children resided at St. Joseph’s in 1923.¹⁷⁸ However, the population of children living at St. Joseph’s eventually decreased to fifty-four in 1960, which was the year the facility closed after it was unable to afford to make major repairs to the building as required by the state licensing agency.¹⁷⁹

The Minneapolis German Catholic Boy’s Home traces its roots back to 1885, when land was bought at the intersection of 46th Street and Chicago Avenue, then a pastoral location a half-day’s ride from the city of Minneapolis.¹⁸⁰ Bishop John Ireland met with a small group of business men, professional men, and artisans at the school house of the Immaculate Conception Parish in Minneapolis to discuss establishment of a Catholic orphanage in Minneapolis.¹⁸¹ According to the minutes from the first meeting, Bishop Ireland spoke of “the justice and necessity of this community bearing a portion of the burden of orphaned children.”¹⁸² In response, the Orphan Asylum Association was established and began raising money to open the Minneapolis German Catholic Boys’ Home.¹⁸³

177. *Id.*

178. *Id.* at 39.

179. *See generally id.* at 37-42.

180. *See* Catholic Charities of St. Paul & Minneapolis, History of St. Joseph’s Home for Children, <http://www.ccsmp.org/stJoes/stJoesHistory.html> (last visited Feb. 28, 2006) [hereinafter History of St. Joseph’s Home for Children].

181. DeVoy, *supra* note 164, at 37.

182. *Id.*

183. *See id.*



Figure 4 – Catholic Boys' Orphan Asylum, Chicago Southeast Corner of Forty-Sixth Street East, Minneapolis, courtesy of Camera Art Company, Minnesota Historical Society.

With the establishment of the Minneapolis German Catholic Boys' Home, children were educated and cared for by the Sisters of St. Joseph in a setting that was considered to be far from the ills of city life. A new building, likened to a "baronial castle," was finished in 1887, complete with its own well and windmill to supply water to the building.¹⁸⁴ A reporter from the *Minneapolis Times* visited the Catholic Boys' Home in 1897 and provided this account: "The home is located out among the hills and woods on Forty-sixth Street . . . A group of children were frogging down on the lowlands and looking forward to a feast of frogs' legs for supper. Others were wading in Minnehaha Creek and there was a merry time generally."¹⁸⁵ Later, the Catholic Boys' Home became less remote and more accessible when the Twin City Rapid Transit streetcar system was developed and extended to a stop nearby.¹⁸⁶

By the 1960s, foster care began replacing orphanages as the favored placement for dependent or neglected children. With declining numbers of children living in orphanages, the

184. *Id.* at 61.

185. *Id.* at 68.

186. See VANDAM, *supra* note 27, at 25.

Minneapolis Catholic Boys' Home and St. Joseph's Home for Children were consolidated on the Boys' Home property under the name of St. Joseph's Home for Children.¹⁸⁷ St. Joseph's Home for Children is currently operated by Catholic Charities and provides community and residential programs for children in crisis, children with mental health problems, and homeless teens.¹⁸⁸ In contrast to the dozens of orphanages in Minnesota that have long since closed or otherwise stopped providing residential care for children, St. Joseph's Home for Children continues to provide residential care for children and is often the first temporary placement for Hennepin County children who are the subject of a child protection petition.¹⁸⁹ As Executive Director Father Larry Synder put it, "Kids today are orphaned through lack of a stable family environment, parents with drug addictions, parents who are in jail."¹⁹⁰

IV. INDIAN BOARDING SCHOOLS

Most nineteenth and twentieth century orphanages were populated by poor and often immigrant children deemed to be dependent, neglected, or abused. Before and after the heyday of such orphanages, a massive number of Native American¹⁹¹ children were removed from their families and placed in government boarding schools. During the boarding school era, government officials essentially viewed all Native American children as "dependent." Historically, Indian education and boarding schools have been intertwined with federal policies designed to "save Indian children" and force assimilation.¹⁹²

In 1819, Congress enacted the Indian Civilization Act which provided a federal funding mechanism for Christian missionary

187. History of St. Joseph's Home for Children, *supra* note 180.

188. *Id.*

189. Today, St. Joseph's provides central intake services for all Hennepin County children removed from their home due to abuse or instability. St. Joseph's Home for Children, Program Overview, <http://www.ccspm.org/stJoes/stJoes.html> (last visited Feb. 18, 2006).

190. History of St. Joseph's Home for Children, *supra* note 180.

191. Recognizing that there are political, social, and historic dimensions to the terms "Native American," "American Indian," and "Indian," all three terms are used interchangeably in this Article to refer to the indigenous people of North America.

192. Grover, *supra* note 22, at 225.

groups to set up Indian schools.¹⁹³ By 1870, mission schools began contracting for government money to operate as “federal contract” schools.¹⁹⁴ The first federal Indian boarding school was established in Carlisle, Pennsylvania, in 1879.¹⁹⁵ The founder of the Carlisle school implemented a military regime of education and argued that the best way to deal with the so-called “Indian problem” was by “immersing the Indians in our civilization and when we get them under holding them there until they are thoroughly soaked.”¹⁹⁶ In 1891, Congress enacted a compulsory education law for American Indian children.¹⁹⁷ By the 1890s, boarding and reservation day schools in Minnesota were serving 1700 children—from on-reservation boarding schools in Redlake and Ponemah (both on Red Lake) and Vermillion Lake (Nett Lake Reservation), to mission schools like Saint Mary’s Mission (Red Lake), and off-reservation boarding schools, like the one located in Pipestone, Minnesota.¹⁹⁸

During the early years of forced assimilation, Indian families were often coerced into sending their children to government boarding schools. For example, rations, annuities, and other goods were withheld from parents and guardians who did not agree to send their children away to school.¹⁹⁹ Ojibwe children from northern Minnesota were often “rounded up by the reservation police before being sent to boarding school.”²⁰⁰ Many American Indian parents resisted residential boarding school education and refused to relinquish their children to government officials.²⁰¹ Some boarding schools, such as the Vermillion Lake Indian School, which employed Indian staff and an Indian recruiter, were more successful in persuading parents to send their children to the boarding school during those early years.²⁰²

Boarding school education policies confronted Native American families in Minnesota during a turbulent time in their

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. BRENDA J. CHILD, BOARDING SCHOOL SEASONS: AMERICAN INDIAN FAMILIES 1900-1940 13 (1998).

198. *Id.* at app. 1; Grover, *supra* note 22, at 225.

199. CHILD, *supra* note 197, at 13.

200. *Id.*

201. *Id.*

202. Grover, *supra* note 22, at 227.

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history.²⁰³ The 1887 General Allotment (Dawes) Act and subsequent legislation “worked to erode the traditional, communal method of tribal landholding in favor of individual ownership on reservations.”²⁰⁴ With the noteworthy exception of Red Lake (which was not subject to allotment and remains to this day a “closed reservation”²⁰⁵ with land owned by the tribe instead of individuals), the government broke reservation land throughout the rest of Minnesota into allotments of forty, eighty, or 160 acres distributed to individuals.²⁰⁶ This development supported another goal of Indian boarding school education—to teach Indian children how to become farmers and successfully assimilate into the cultural and economic fabric of white, rural America.²⁰⁷ However, for many tribes in Minnesota, the allotment policies led to a widespread dispossession of the land.²⁰⁸ As one historian summarized:

Land fraud was rampant, and the interests of ecocidal timber companies dominated the political landscape of the woodlands. By 1920, the once-luxuriant pine trees in the north had been cleared from many reservations. The land base of Ojibwes [in northern Minnesota] had declined precipitously, and new Euro-American landowners, beneficiaries of tribal losses, populated the region . . . [much of the] remaining reservation lands were frequently far too poor to farm²⁰⁹

On the Leech Lake Reservation, 437 allotments were “abruptly transferred from individual trust ‘for the benefit of the people’” in 1908 when Congress established the Minnesota National Forest (later renamed, ironically, the Chippewa National Forest).²¹⁰ The traditional seasonal cycles of harvesting fruits and wild rice, hunting, and making maple sugar were threatened by the land loss and Indians became increasingly dependent on wage labor; many left the reservations.²¹¹

203. CHILD, *supra* note 197, at 9.

204. *Id.*

205. Grover, *supra* note 22, at 230; Minnesota Indian Affairs Council, Red Lake, http://www.cri-bsu.org/IA_web/htdocs/tribes/redlake.html (last visited Feb. 18, 2006).

206. CHILD, *supra* note 197, at 9.

207. Grover, *supra* note 22, at 230.

208. CHILD, *supra* note 197, at 9.

209. *Id.*

210. *Id.* at 10.

211. *Id.* at 10-11.

“Poverty, diaspora, and disease were the combined legacies of dispossession at White Earth and other reservations” in Minnesota.²¹² In the boarding school era, tuberculosis afflicted a significant number of Indians in Minnesota, as evinced by the prevalence of the disease at the Fond du Lac, Grand Portage, and Nett Lake reservations (at the Nett Lake reservation, for example, an estimated 30% of the population contracted the disease).²¹³ Other communicable diseases, including syphilis, gonorrhea, influenza, and trachoma also wreaked havoc on Minnesota Indian communities in the early twentieth century.²¹⁴ The government often blamed Native Americans for their high rates of disease, child mortality, and early death, ascribing the problems to the ignorance and immorality of “superstitious people who preferred medicine men to government physicians and rejected vaccinations and the concept of cleanliness.”²¹⁵

For generations, Native American families relied on the generosity and support of family and community when faced with hardship and calamity.²¹⁶ Native American families welcomed parentless children into their families through “customary adoption” and an informal system of kinship care.²¹⁷ However, the increased poverty and homelessness emerging at White Earth and other Minnesota reservations in the early twentieth century seemed to overwhelm the traditional ways of caring for the vulnerable and adopting parentless children.²¹⁸ Indian families suffered greatly during the early reservation, post-allotment, and Great Depression years.

The ranks of the poor, sick, widowed, and orphaned grew. All too often, husbands, wives, and even older siblings were left with large families to maintain after the death of a spouse or parent. Overcrowding became a common feature of Ojibwe households, and many remaining allotments, some of them held by minor children or vulnerable to tax forfeiture, were secure only temporarily.²¹⁹

212. *Id.* at 12.

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *See, e.g., id.* at 17.

218. *Id.* at 12.

219. *Id.*

Families were unable to continue customary adoptions and systems of kinship care, and yet another generation of Indian children were sent away to government boarding schools.²²⁰ At this point, orphaned Indian children themselves “often applied to government boarding schools as family networks failed.”²²¹ For example, Alphonse Caswell of Red Lake asked to enter the Flandreau boarding school in order to learn a trade after his parents died.²²² He intended to return to Red Lake to care for his younger siblings, Louis and Priscilla, who lived with relatives until that time.²²³

By the 1920s and 1930s, it was increasingly common for impoverished Indian families, especially single mothers who had relocated to Minneapolis and other urban areas, to voluntarily enroll their children in boarding schools.²²⁴ Without the support of extended family or a husband, many urban Native American women found themselves working menial jobs and unable to care for their children.²²⁵ For example, in 1925, one mother asked an Indian boarding school to accept her son, explaining,

I have my boy Herbert . . . from White Earth, with me and I have come to the conclusion that this city life is not conducive to his moral welfare. His grandmother . . . is not able to give him the proper care on account of [forgetfulness] or else I would send him back to the reservation. My sincere wish is that he enter your institution so that he may obtain the proper training to success.²²⁶

The widespread practice of placing Indian children in boarding schools lasted until the middle of the twentieth century.²²⁷ Government officials, as well as many Indian parents and children, hoped that the boarding school experience would equip children with the tools necessary to earn a living and succeed in society. Significant energy was expended on cultural assimilation as well. Traditional Indian clothing, hairstyles, recreation, language, and

220. *Id.* at 17.

221. *Id.*

222. *Id.* at 19.

223. *Id.*

224. *Id.* at 20.

225. *Id.*

226. *Id.* at 21 (quoting Letter from parent to Flandreau school (Aug. 16, 1925) (National Archives, Record Group 75, Records of the Bureau of Indian Affairs)).

227. *See id.*

sometimes even the children's own names were replaced by the clothing, hairstyles, recreation, religion, language, and names from the majority culture.²²⁸



Figure 5 – Indian Children Doing Calisthenics at a Boarding School, location unknown, courtesy of Minnesota Historical Society.

In addition to formal education at the boarding school, most Indian students farmed and provided other labor, making the boarding schools in many ways self-sufficient, while other students took part in “outing” programs, performing housework for white families.²²⁹ Proponents of Indian boarding schools argued that vocational training, when combined with several years of isolation from family, would lessen the pull of “tribalism” on the next generation of Indian children.²³⁰ As a result, visits with family were limited.²³¹ Many Indian children living and working at the government boarding schools became lonely, demoralized, and homesick, and “running away became a common occurrence, indeed even a universal thread that united boarding school

228. Grover, *supra* note 22, at 228-29.

229. See CHILD, *supra* note 197, at 1; Grover, *supra* note 22, at 230.

230. CHILD, *supra* note 197, at 43.

231. *Id.*

students through the decades.”²³²

Some argue that in the end, the Indian boarding school system failed twice: “Indian people, determined to maintain family ties and cultural identity, did not assimilate, and the system created generations of poorly educated students The time and effort spent forcing Indians to learn the ways of the majority culture cut into time allotted to academics and vocational training.”²³³

By the middle of the twentieth century, the population of children in Indian boarding schools waned, but Indian children continued to be removed from their families at unprecedented rates.²³⁴ In 1958, the Bureau of Indian Affairs, with support from the Child Welfare League of America, launched the Indian Adoption Project, a campaign to relocate Indian children from reservations to orphanages and white adoptive homes.²³⁵ By the 1970s, as many as 25 to 35% of all Native American children in some states were removed from their families and placed in non-Indian homes by state courts, welfare agencies, and private adoption agencies.²³⁶ For example, in Minnesota one in four Indian children under the age of one had been removed from their home and adopted by a non-Indian couple.²³⁷ In all too many cases, these children were removed by non-Indian social workers and judges based on cultural prejudices and the belief that poverty was tantamount to neglect.²³⁸

In the wake of these practices, Congress passed the Indian Child Welfare Act of 1978 (ICWA), which provides substantive and procedural protections for Indian children who are the subject of child protection proceedings in state courts.²³⁹ ICWA was established for a number of reasons: (1) to prevent the unwarranted removal of Indian children; (2) to ensure that when they must be removed from their family, they are placed in homes that reflect their unique traditional values; and (3) to preserve

232. *Id.* at 6.

233. Grover, *supra* note 22, at 234.

234. Kristen Kreisher, *Coming Home: The Lingering Effects of the Indian Adoption Project*, CHILDREN’S VOICE, Mar. 2002, <http://www.cwla.org/articles/cv0203indianadopt.htm>.

235. *Id.*

236. B.J. Jones, American Bar Association, *The Indian Child Welfare Act: The Need for a Separate Law*, <http://www.abanet.org/genpractice/compleat/f95child.html> (last visited Feb. 18, 2006).

237. *Id.*

238. *Id.*

239. 25 U.S.C. §§ 1901-1963 (2004).

tribes.²⁴⁰ Although compliance with ICWA in Minnesota and elsewhere varies, many believe that it nonetheless has reduced the unwarranted removal of Native American children from their families and “solidified the power Indian families and tribes have over the placement of their children” when an out-of-home placement is deemed necessary.²⁴¹

Today, the Indian boarding schools in Minnesota are no longer in operation, but the legacy of government boarding schools is still being sorted out as many former students have complex and mixed sentiments about their experiences.²⁴² “[Native American] families that disintegrated during the boarding school years were a vulnerable population.”²⁴³ Today’s Native American foster children, some of whom are descendents of boarding school students, remain overrepresented in the child welfare system when compared to their numbers in the general child population.²⁴⁴ For example, in 2003, Native American children in Minnesota comprised 11.8% of the children in out-of-home placements, compared with their 1.6% occurrence in the general child population in the state.²⁴⁵

V. ORPHAN TRAINS

Charles Loring Brace, a minister and one of the preeminent child welfare reformers from the nineteenth century, criticized the practice of institutionalizing needy children. In 1853, he founded the Children’s Aid Society to care for street children in New York City.²⁴⁶ Institutions, according to Brace, were costly, physically and psychologically barren, and antithetical to good child development.²⁴⁷ Brace noted that “the longer [the child] is in the asylum [i.e., orphanage], the less likely he is to do well in outside life.”²⁴⁸ Charles Brace believed that the personal attributes that

240. Kreisher, *supra* note 234.

241. *Id.*

242. CHILD, *supra* note 197, at 100.

243. *Id.*

244. Minn. Dep’t of Human Servs., *Minnesota’s Child Welfare Report for 2003*, BULLETIN, Apr. 4, 2005, at 42, available at <http://www.leg.state.mn.us/docs/2005/mandated/050419.pdf>.

245. *Id.*

246. BONNIE BEATSON PALMQUIST, VOICES OF MINNESOTA HISTORY 1836-1946 83 (2000).

247. Gittens, *supra* note 12, at 69.

248. CHARLES LORING BRACE, THE DANGEROUS CLASSES OF NEW YORK, AND

were rewarded in an institutional environment, such as “mindless obedience” and “dependence,” did not help a child develop into a “healthy, independent” citizen.²⁴⁹ Additionally, as investigations and scandals unfolded, it seemed as though institutions by their very nature fostered and covered up abuse and mistreatment of children.²⁵⁰

In the hopes of improving the treatment and outcomes for vulnerable youth, Brace launched the “Baby Trains,” or “Orphan Trains,” whereby thousands of children left East Coast slums and were placed on trains headed toward Midwestern and Western states, including Minnesota.²⁵¹ As with orphanages, not all children on the Orphan Trains were orphans—some had been taken from abusive parents and many others had been given up by poor, often immigrant families, unable to care for the child.²⁵² Brace believed that resettling the children in homes was the “simplest and most direct way [to improve these children’s lives], relying as much as possible on the basic goodness that he believed informed the souls of most Americans, especially those who still lived away from the corrupting city in the virtue-producing agricultural heartland of the nation.”²⁵³

Thus, from 1854 to the 1920s, Brace and his associates would arrive in a town with a trainload of children and with the assistance of local churches and committees ask citizens to open their homes to these vulnerable children.²⁵⁴ Word of the children’s arrival was spread by word of mouth, flyers, and advertisements. For example, one such advertisement, circulated prior to the arrival of the orphan train in Winnebago, Minnesota, on January 11, 1907, contained a photo of children with the caption, “Homes Wanted for Children.”²⁵⁵

TWENTY YEARS’ WORK AMONG THEM 76-77 (Wynkoop et. al. eds., 1872).

249. Gittens, *supra* note 12, at 69.

250. *Id.*

251. PALMQUIST, *supra* note 246, at 83; Clement, *supra* note 9, at 3-4; Gittens, *supra* note 12, at 69; C.A.S. Orphan Locations By States, <http://www.orphantrainriders.com/locations11.html> (last visited Feb. 18, 2006); *see also* The Orphan Train Collection, <http://www.orphantrainriders.com> (last visited Feb. 18, 2006) (listing a number of articles which detail the history of the orphan trains).

252. PALMQUIST, *supra* note 246, at 83.

253. Gittens, *supra* note 12, at 69.

254. *Id.*

255. *See infra* fig. 6.

Homes Wanted For Children



A Company of Orphan Children

of different ages in charge of an agent will arrive at your town on date herein mentioned. The object of the coming of these children is to find homes in your midst, especially among farmers, where they may enjoy a happy and wholesome family life, where kind care, good example and moral training will fit them for a life of self-support and usefulness. They come under the auspices of the New York Children's Aid Society. They have been tested and found to be well-meaning boys and girls anxious for homes.

The conditions are that these children shall be properly clothed, treated as members of the family, given proper school advantages and remain in the family until they are eighteen years of age. At the expiration of the time specified it is hoped that arrangements can be made whereby they may be able to remain in the family indefinitely. The Society retains the right to remove a child at any time for just cause, and agrees to remove any found unsatisfactory after being notified. Remember the time and place. All are invited. Come out and hear the address. Applications may be made to any one of the following well known citizens, who have agreed to act as local committee to aid the agent in securing homes.

A. J. Hammond, H. W. Parker, Geo. Baxter, J. F. Damon, J. P. Humes,
H. N. Welch, J. A. Armstrong, F. L. Dargin.

This distribution of Children is by Consent of the State Board of
Control, and will take place at the

G. A. R. Hall, Winnebago, Minn.
Friday, Jan. 11th, '07, at 10.30 a. m. @ 2 p. m.
H. D. Clarke, State Agent,
Dodge Center, Minn.

Office: 105 East 22nd St.,
New York City.

Figure 6 – Orphan Train Advertisement from Winnebago, Minnesota, courtesy of Ron Peluso, Artistic Director, Great American History Theatre.

The advertisement noted:

The object of the coming of these children is to find a home in your midst, especially among farmers, where they may enjoy a happy and wholesome family life, where kind care, good example and moral training will fit them for a life of self-support and usefulness. They come under the auspices of the New York Children's Aid Society. They have been tested and found to be well-meaning boys and girls anxious for homes.

The conditions are that these children shall be properly clothed, treated as members of the family, given proper school advantages and remain in the family until they are eighteen years of age. At the expiration of the time specified it is hoped that arrangements can be made

whereby they may be able to remain in the family indefinitely. The Society retains the right to remove a child at any time for just cause, and agrees to remove any found unsatisfactory after being notified²⁵⁶

At each stop, the Orphan Trains were met by townsfolk and farmers.²⁵⁷ While the chaperone gave their names and ages, the children lined up in front of the train and waited until (and if) someone chose them.²⁵⁸ According to the Winnebago advertisement, “[t]his distribution of Children is by the Consent of the State Board of Control,” and took place at the G.A.R. Hall in Winnebago on January 11, 1907, at 10:30 a.m. and 2:00 p.m.²⁵⁹ Unfortunately, this method of “distribution” often meant that siblings were frequently separated if a family only wanted a girl or a boy of a certain age. According the Children’s Aid Society report, by 1910 3258 children from the orphan trains had been placed in homes in Minnesota.²⁶⁰

The poem below reflects the experience of one orphan train rider:

Orphan Train

April 1893

Look at me, please!
You know why I am here
or you wouldn’t have come.

They found us alone,
after mama died. I tried,
really I tried, to keep
them fed and clean,
but then there wasn’t any food
and they took us away.

256. *See supra* fig. 6.

257. PALMQUIST, *supra* note 246, at 83.

258. *Id.*

259. *See supra* fig. 6.

260. C.A.S. Orphan Locations By States, <http://www.orphantrainriders/locations11.html> (last visited Feb. 18, 2006).

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Finally, a hundred of us
boarded the train
and began our journey west.

It's been long.
I tried to take care
of Willie and Mary
(she's three and is forgetting
Mama already).
I combed her hair
into ringlets so someone would
think she's pretty
and take her.
I didn't know that her cry
would cut through my heart
when, in Weston,
someone did.

I held Willie's hand as
we got on the train,
his tears streaming
down his cheeks.

"Don't cry," I said.
We knew we probably
wouldn't be together.
But I had so hoped we would.
Then another stop,
this time in Milltown,
and we got off,
lined up in a row,
and a woman rushed
toward Willie
crying, "That's my Henry!"

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“But that’s not his name,”

I cried softly.

With a backward look

with those sad eyes,

he followed them.

That left me.

The matron pulled my hair back,

she said that it had a

“no nonsense” look

and someone would think

I was a good worker.

But we are nearing the end

of our journey,

so please look at me.

I need a home, I’ll work,

but don’t let me be

the last one.²⁶¹

Some argue that Brace’s plan of “free foster homes” was just a newer, transnational version of apprenticeship or indentured servitude, in which children worked for families in exchange for care and training.²⁶² However, free foster homes such as those arranged by Brace through the Orphan Trains were different from apprenticeships in that there were no legal bonds tying the child to his or her foster family.²⁶³ Brace ardently believed that a child who brought “a willing pair of hands” to a family could reasonably expect to be treated well by his or her foster family.²⁶⁴ This did not always prove to be the case, however. Despite rosy outcomes from various orphan train “alumni” surveys conducted by the Children’s Aid Society, critics questioned the quality of these studies and concerns mounted, both with respect to mistreatment of children in their free foster homes, the overall lack of oversight, and the

261. PALMQUIST, *supra* note 246, at 85-88.

262. Gittens, *supra* note 12, at 69.

263. *Id.*

264. *Id.*

perception that the orphan trains were just “dumping” a troublesome population from one state to another.²⁶⁵

VI. PAID FOSTER HOMES

The concept of placing dependent or neglected children with families and the conviction that families provided a healthier, more natural environment than an institution began to take root in child welfare thinking by the end of the nineteenth century.²⁶⁶ Brace’s ideal of “free foster homes,” with families being entrusted to care for vulnerable children without compensation or supervision, was eventually replaced in philanthropic thinking by the belief that supervision by an external agency was vital in order to monitor the home on behalf of the child.²⁶⁷ In 1925, the slogan from the Minnesota State Conference on Social Work was, “a child for every childless home and a home for every homeless child.”²⁶⁸ Alongside this development was the shift away from “free foster homes” to boarding foster homes, where a family received payment for taking care of a child or children and was supervised by a licensing agency.²⁶⁹

VII. FAMILY PRESERVATION

An additional shift in twentieth century child welfare theory was the “growing conviction that the best thing that could be done for children was to keep them with their families whenever possible.”²⁷⁰ In contrast to the Elizabethan Poor Laws and Colonial American belief that poverty was a sin or moral failure, child welfare theorists increasingly came to view poverty as “a result of faulty economic and social structure rather than of personal failings of feckless or lazy individuals, and they disapproved of the kind of casual invasion of poor families’ lives that could demand the sacrifice of parental rights in return for assistance.”²⁷¹

Significant social welfare developments in the first half of the twentieth century buttressed family preservation efforts: “Mother’s allowances” were established in Minnesota in 1913, and by 1918

265. *See id.*

266. *Id.* at 70.

267. *Id.*

268. Wattenberg, *supra* note 1, at 6.

269. Gittens, *supra* note 12, at 69.

270. *Id.*

271. *Id.*

mothers were receiving an average of \$67 per year; Article V of the Social Security Act was signed into law in 1935 and established the program Aid to Dependent Children (ADC); the Social Security Act was later amended to provide “caretaker” grants to mothers of dependent children; and the program Aid to Families with Dependent Children (AFDC) replaced ADC in 1950.²⁷² AFDC was supplanted by the Minnesota Family Investment Program (MFIP) in the 1990s in response to federal welfare reform legislation. Also of significance, the twentieth century witnessed the elimination of the legal distinctions between “legitimate” and “illegitimate” children. Additionally, single mothers began to receive help from government child support agencies and the courts with the establishment and enforcement of child support obligations for absent fathers.

The establishment of government economic support programs as well as the development of the system for child support enforcement may have spared some children and families from being separated based on poverty alone. However, the vast majority of Minnesota children now in out-of-home placements who have been adjudicated by the juvenile court as a “Child in Need of Protection or Services” (CHIPS), still come from low-income families which, in turn, qualifies counties to receive federal funds to pay for such placements.²⁷³ The stated policy goals of current juvenile protection law are premised on family preservation and reunification, consistent with the child’s best interests, welfare, and safety.

The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child The purpose of the laws relating to juvenile courts is to secure for each child alleged or adjudicated in need of protection or services and under the jurisdiction of the court, the care and guidance, preferably in the child’s own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child; to provide judicial procedures which protect the welfare of the child; to preserve and strengthen the child’s family ties whenever possible and in the child’s best interests, removing the child from the

272. Wattenberg, *supra* note 1, app. B. at 2-3.

273. See Social Security Act, 42 U.S.C. § 670 (2000).

custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal; and, when removal from the child's own family is necessary and in the child's best interests, to secure for the child custody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.²⁷⁴

VIII. CONCLUSION

In 2004, 14,359 children in Minnesota were in out-of-home placements due to a juvenile court CHIPS adjudication coupled with the determination that such a placement was in the child's best interest.²⁷⁵ Approximately 73% of these children were reunited with their parent(s) or found a permanent home with relatives.²⁷⁶ However, as of September 15, 2005, 1473 children were state wards, which means that the juvenile court has terminated parental rights and transferred guardianship and custody of the child to the Commissioner of the Department of Human Services.²⁷⁷ These children are "legal orphans," and legally free for adoption.

Since its establishment 100 years ago, the juvenile court still has original and exclusive jurisdiction over cases where a child has been abused, neglected, or is otherwise in need of protection or services. As such, the juvenile court, and not the local or state agency, has the ultimate authority to make placement decisions in CHIPS cases. The majority of children currently in out-of-home placements due to a CHIPS determination reside in paid foster families (relative and non-relative) who are licensed through the county or a private child placement agency. Other children live in group homes or residential treatment centers for youth with emotional and/or behavioral challenges.

As policymakers, judges, social workers, families, children, community members, tribes, and religious and civic organizations all contemplate ways to protect children, reduce the need for out-

274. MINN. STAT. § 260C.001, subd. 2 (2004).

275. MINN. DEP'T OF HUMAN SERVS., MINNESOTA'S CHILD WELFARE REPORT FOR 2004, REPORT TO 2005 LEGISLATURE, LEG. 2005-BULLETIN #05-68-10 2 (2005).

276. Minnesota Department of Human Services, Foster Care and Other Out-of-home Placement, http://www.dhs.state.mn.us/main/groups/children/documents/pub/DHS_id_000164.hcsp (last visited Feb 18, 2006).

277. *Id.*

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of-home placements, and provide out-of-home placement options best suited for the needs of children, the early history of out-of-home placement options and the experiences of children warrants remembrance, reflection, and evaluation.