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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

WASHINGTON STATE COALITION FOR	)	
THE HOMELESS, et al.,	)	No. 91-2-15899
	)	
Plaintiffs,	)	BRIEF OF <i>AMICI CURIAE</i>
	)	
v.	)	
	)	
DEPARTMENT OF SOCIAL AND HEALTH	)	
SERVICES, et.al.,	)	
	)	
Defendants.	)	

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INTRODUCTION

Homelessness is among the greatest tragedies that could befall a child. Homeless children bear permanent psychological and physical scars and fare significantly worse than children in poor, but housed families. Similarly devastating to a child is the separation from family.<sup>1</sup>

Homeless children and their families need shelter and housing assistance that DSHS has failed to provide. This is one of DSHS's

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<sup>1</sup> *Amici* direct the court to its brief filed in opposition to defendants' motion for judgment on the pleadings, and that section thereof addressing the effects of homelessness and family separation on children. Sad brief was filed with this Court on November 5, 1991.

1 most important and pressing responsibilities. This failure has  
2 left nearly 70,000 Washington children homeless and has left the  
3 State's dependency system without the shelter and housing resources  
4 necessary to prevent or shorten foster care placements.<sup>2</sup>

5 *Amici*<sup>3</sup> ask this Court to find that the State has a duty to  
6 provide emergency housing to homeless children and their families.  
7 *Amici* argue that, in addition to the grounds set forth by  
8 plaintiffs, this duty stems from the State's common law *parens*  
9 *patriae* duty to protect the children of the State of Washington.

10 In addition, *amici* urge this Court to use its inherent power  
11 to determine DSHS's statutory duties and to use this determination  
12 to fashion an appropriate remedy.

#### 13 ARGUMENT

14 Homeless children are perhaps those most in need of State-  
15 sponsored child welfare services. The State refuses, however, to  
16 provide homeless children with the one service they need the most:  
17 shelter and housing with their families. A former Governor's Task  
18 Force on Homelessness found that "[t]he underlying social, health  
19 and economic problems resulting in homelessness cannot be

20  
21 <sup>2</sup> See Parties' Stipulation of Facts, Paragraphs 1-1.5.

22 <sup>3</sup> The following eight organizations are participating in this  
23 lawsuit as *amici curiae*: Alliance for Children, Youth, and  
24 Families; American Academy of Pediatrics; Church Council of Greater  
25 Seattle; Women's Law Center; Washington Academy of Family  
26 Physicians; Washington Association of Churches; Washington  
Psychological Association; and Youthcare. Declarations stating  
these participants' interest in this lawsuit were filed in and are  
incorporated herein by reference.

1 successfully treated on the street -- a home is needed."<sup>4</sup> Without  
2 the availability of family housing assistance, children of homeless  
3 families must bear the devastating effects of homelessness and  
4 foster care. These effects will remain with them throughout their  
5 lives. The State must no longer be permitted to avoid its duties  
6 to the nearly 70,000 homeless children in the State of Washington.

7  
8 **A. THE STATE HAS A PARENS PATRIAE DUTY TO PROTECT HOMELESS  
CHILDREN AND PROVIDE HOMELESS CHILDREN AND THEIR FAMILIES WITH  
EMERGENCY SHELTER.**

9  
10 1. *The State's Parens Patriae Responsibility.*

11 In addition to the statutory and constitutional duties  
12 described in the plaintiffs' Motion for Partial Summary Judgment,  
13 DSHS has a common law *parens patriae*<sup>5</sup> duty to protect homeless  
14 children. The *parens patriae* doctrine originates from the English  
15 common law principle that "the sovereign is duty bound to assure  
16 protection of all children within the state." Braveman, Children,  
17 Poverty and State Constitutions, 38 Emory L.J. 577, 607 (1989); see  
18 generally, Custer, The Origins of the Doctrine of Parens Patriae,  
19 27 Emory L.J. (1978). The doctrine has been adopted in the United  
20 States as the duty of each state to provide special protection for  
21 its children. Braveman, at 606-07.

22  
23 <sup>4</sup> The Governor's Task Force on Homelessness, A Comprehensive  
Political and Social Strategy to End Homelessness in Washington  
State, at 10 (Dec. 1990).

24  
25 <sup>5</sup> The term *parens patriae* has been translated as "parent of the  
26 country." See BLACK'S LAW DICTIONARY 1003 (5th Ed. 1979).

1 The State's *parens patriae* duty to protect children is  
2 "inherent in the supreme power of every state." Weber v. Doust, 84  
3 Wash. 330, 333-334, 146 Pac. 623 (1915). Courts have recognized  
4 the broad scope of the State's *parens patriae* power by invoking the  
5 doctrine to require state action when a child's or incompetent's  
6 welfare is at stake. See, e.g., In re William L., 477 Pa. 322, 383  
7 A.2d 1228, cert denied sub nom Beatty v. Lycoming County Children's  
8 Services, 439 U.S. 880, 99 S.Ct. 216 (1978) (court established  
9 that, while the state cannot generally enter into the private realm  
10 of family life, the state, as *parens patriae*, has an affirmative  
11 duty to protect minor children); In re Phillip B. 92 Cal.App.3d  
12 796, 801-802, 156 Cal.Rptr. 48 (1979), cert denied sub nom Bothman  
13 V. Warren B., 445 U.S. 949, 100 S.Ct. 1597 (1980) ("The state is the  
14 guardian of society's basic values. Under the doctrine of *parens*  
15 *patriae*, the state has a right, indeed, a duty, to protect  
16 children") (emphasis added).<sup>6</sup> The state's *parens patriae*  
17 responsibility for children is "broad, comprehensive, and plenary."  
18 Chandler v. Chandler, 56 Wn.2d 399, 404, 353 P.2d 417 (1960).

19  
20 <sup>6</sup> See also In re Petra B., 216 Cal.App.3d 1163, 265 Cal. Rptr. 342  
21 (1989) (Department of Social Services was justified in asserting  
22 jurisdiction over minor who had serious burn injuries); Williams v.  
23 Williams, 425 N.W.2d 390 (S.D. 1988) (trial court, while acting in  
24 its role as *parens patriae*, had a duty to ensure that the best  
25 interests of the minor children is being served). See generally  
26 Braveman at 607 and cases cited therein (*parens patriae* doctrine  
"has served as the foundation for a vast array of state action on  
behalf of children. It has been used to justify termination of  
parental rights; medical treatment of children; involuntary  
commitment of children; adjustment programs for mother and child;  
and suppression of child pornography").

1 The Washington Supreme Court has already determined that  
2 DSHS's *parens patriae* obligations include the duty to provide  
3 children with a suitable home. In In re Sumey, 94 Wn.2d 757, 621  
4 P.2d 108 (1980), the Court held that "the State has a "*parens*  
5 *patriae* right and responsibility" to make a residential placement  
6 for a child when his or her parents are unable to provide a healthy  
7 home environment. Id. at 762 (emphasis added).<sup>7</sup> The Court stated  
8 that the basis for DSHS's duty is the State's "constitutionally  
9 protected *parens patriae* interest in protecting the best interests  
10 of the child." Id. at 763. The protective principles set forth in  
11 Sumey in the context of one child's welfare apply equally to the  
12 class members in this action.

13 2. *The state's parens patriae duty includes the*  
14 *duty to house homeless children with their families.*

15 This Court should hold that the State has a *parens patriae*  
16 duty to protect homeless children by providing them and their  
17 families with emergency housing. As discussed above, Washington  
18 courts have already recognized the State's duty to protect children  
19 when their parents are unable to provide them with a healthy home  
20 environment. Requiring the State to protect children against  
21 homelessness by providing them and their families with housing is a  
22 logical component of this duty. Cf. In re Sumey, 94 Wn.2d at 764;  
23 see also Note, Homelessness in a Modern Urban Setting, 10 Fordham

24 \_\_\_\_\_  
25 <sup>7</sup> Washington courts have also recognized that one of the most  
26 important parental responsibilities is the "duty to provide a  
home." In re Tarango, 23 Wn. App. 126, 133, 595 P.2d 552 (1979).

1 Urb. L. J. 749, 778 (states have "both a right and a duty to do  
2 whatever is most conducive to the interests of one suffering from a  
3 disability"). Providing homeless children and their families with  
4 emergency housing may, in fact, prove more cost effective than the  
5 current child welfare programs such as foster care. See In re  
6 Nicole G., 577 A.2d 248 (R.I. 1990) (housing assistance would be  
7 more costs effective than funding programs that are destructive of  
8 the family unit).<sup>8</sup>

9 The state does not fulfill its *parens patriae* duties to  
10 homeless children by providing for foster care or otherwise  
11 removing the child from the family unit. The damage to children  
12 that is caused by separation from parents and family is well-  
13 documented. See Brief of *Amicus Curiae* in Opposition to Motion for  
14 Judgment on the Pleadings, notes 1-48; see also Angelou, Keeping  
15 Families Together: The Case for Family Preservation (1985)  
16 (removing a child from his or her family greatly increases the  
17 chances that the child will never make his way successfully in  
18 society). By refusing to provide housing assistance to homeless  
19 children with their families, and by placing children in  
20 alternative homes without their parents, DSHS is abrogating its  
21 responsibility to protect the best interests of children in this  
22 State.

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24  
25 <sup>8</sup> See also Parties' Stipulation of Facts, ¶ 5 (noting amount of  
26 state payments to foster care parents or to the custodial foster  
care agency for out-of-home placements in the State of Washington).

1           3.    *Washington's child welfare statutes inform and are*  
2                *consistent with the State's parens patriae duties.*

3           Although DSHS's *parens patriae* duty toward homeless children  
4 exists irrespective of statute, Washington statutes inform the  
5 manner in which the State's *parens patriae* responsibility should be  
6 exercised.    *See Sumey, 94 Wn.2d at 764-65.* As discussed in  
7 plaintiffs' Motion for Partial Summary Judgment, the Washington  
8 Legislature has made it clear that protecting children from the  
9 effects of homelessness and the preservation of the family unit are  
10 top priorities in this State. These legislative pronouncements  
11 regarding DSHS's statutory duties towards homeless children are  
12 consistent with the conclusion that DSHS's *parens patriae*  
13 responsibilities include the duty to provide emergency housing to  
14 homeless children and their families.

15    **B.    THE COURT MUST DETERMINE WHETHER DSHS HAS COMPLIED WITH ITS**  
16    **STATUTORY RESPONSIBILITIES TO HOMELESS CHILDREN AND PROVIDE**  
17    **PLAINTIFFS WITH AN APPROPRIATE REMEDY.**

18           1.    *This Court must determine DSHS's duties under state and*  
19                *federal law.*

20           Plaintiffs have identified a number of State statutes setting  
21 forth DSHS's duties. Under RCW 74.13.031(1), DSHS is required to  
22 devise and implement an effective, comprehensive plan to serve  
23 homeless children. Under RCW 74.13.020 and ch. 74.14A RCW, DSHS is  
24 required to provide appropriate, effective, and adequate child  
25 welfare services to the State's homeless children. Finally, under  
26 ch. 13.34 RCW and ch. 74.14A RCW, DSHS is required to make

1 reasonable efforts to prevent or lessen the need for foster care  
2 placements.

3 This Court has broad equitable powers to determine the scope  
4 of DSHS's duties under these state welfare laws. As our Supreme  
5 Court has stated:

6 The courts of this state have long recognized the  
7 inherent power of the superior court to hear and  
8 determine all matters legal and equitable in all  
9 proceedings known to the common law. . . . In the absence  
10 of any limiting legislative enactment, the superior court  
11 has full power to take action to provide for the needs of  
12 a mentally incompetent person, just as it has authority  
13 to do so to protect the interests of a child.

14 In re Hayes, 93 Wn.2d 228, 232-33, 608 P.2d 635 (1980) (emphasis in  
15 original).

16 Washington courts have not hesitated to assume this  
17 responsibility. In Tommy P. v. Bd. of County Commissioners of  
18 Spokane County, 97 Wn.2d 385, 645 P.2d 697 (1982), for example, the  
19 court ordered Spokane County to provide and fund education for  
20 children in the County's Juvenile Detention Center. Class  
21 plaintiffs, comprised of juveniles who were or would be placed in  
22 the Spokane Juvenile Detention Center, brought a declaratory  
23 judgment action seeking education while in detention. The County  
24 argued that it did not have the duty to provide such additional  
25 educational services. Id. at 389-90.

26 The Court found that the provision of educational services  
would "further the policies and purposes" of the Juvenile Justice  
Act and was consistent with the statutory scheme. Id. at 396. The  
Court also held that the provision of educational services for



1 children in detention would be a "particularly effective response  
2 to a critical need. . . ." Id. at 397. The Court noted that  
3 parents and guardians are required to provide children with an  
4 education under the State's compulsory school attendance laws and  
5 that juveniles in detention facilities are not specifically  
6 excepted from this requirement. The Court also took judicial  
7 notice of evidence presented by educators indicating that  
8 incarcerated youths "are in special need of education in  
9 detention." Id. at 392-94, 397.

10 Other courts have similarly used their judicial powers to  
11 order state agencies to take particular action under broadly worded  
12 child welfare statutes. In Hansen v. Dep't of Social Services, 193  
13 Cal.App.3d 286, 238 Cal.Rptr. 232 (1987), a California court  
14 addressed whether the California Department of Social Services  
15 ("DSS") was required, under California child welfare laws, to  
16 provide emergency housing emergency shelter and other child welfare  
17 services to homeless families. A full discussion of the court's  
18 decision in Hansen is warranted due to its similarity to the  
19 present matter.

20 Under the California Child Welfare Act, DSS must provide  
21 social services directed toward (1) protecting and promoting the  
22 welfare of all children, (2) preventing or remedying, or assisting  
23 in the solution of problems that may result in the neglect, abuse,  
24 exploitation, or delinquency of children, and (3) preventing the  
25 unnecessary separation of children from their families. 193 Cal.  
26

1 App. 3d at 289. Emergency shelter care is a component of all three  
2 of these statutory programs. Id. at 290.

3 The plaintiffs in Hansen argued that DSS must provide  
4 emergency shelter for homeless families under Cal. Welfare &  
5 Institutions Code § 16504.1. That section directs DSS to provide  
6 emergency shelter care to children. DSS took the position that it  
7 was required to provide emergency shelter care only to those  
8 children that had been, or were in the process of being, removed  
9 from their homes.

10 The court found that DSS was required to provide emergency  
11 shelter care to homeless families under § 16504.1. The court  
12 emphasized that one of the purposes of California's welfare  
13 statutes is to ensure that "as few children as possible be ensnared  
14 in the foster care network." The court also noted "[t]he  
15 preservation of the family unit is . . . an objective which  
16 courses throughout the body of California's laws governing the AFDC  
17 program." Id. at 292-93. The court found that DSS's policy of  
18 providing emergency shelter only to homeless children subverted  
19 these state goals.

20 The court also reasoned that the provision of emergency  
21 shelter to families is consistent with California laws and policies  
22 designed to provide adequate, safe housing to low income families.  
23 Id. at 295-97. The court found that providing emergency shelter to  
24 homeless families pursuant to the state's child welfare statutes  
25 was consistent with a state policy of remedying the problem of  
26

1 homelessness through the maximum utilization of appropriate  
2 federal, state, and local programs. Id. at 297-98.

3 The California court clearly described its judicial role in  
4 the context of the child welfare statutes and *amici* urge this Court  
5 to accept the same role. The court emphasized that "[i]t is our  
6 obligation as a court to ensure that these measures be actively and  
7 humanely enforced . . . DSS must act with the reasonable  
8 understanding of the practical demands of the circumstances with  
9 which individual homeless families are faced." Id. at 298  
10 (emphasis added). The court concluded that DSS's interpretation  
11 was inconsistent with the statute's clear language and ran counter  
12 the objectives of federal and state child welfare laws. Id. at  
13 299. It is equally the obligation of this Court, in this case, to  
14 determine whether DSHS's interpretation of its duties is consistent  
15 or inconsistent with the statutes enacted by the Washington  
16 legislature.

17 California courts are hardly unique in undertaking to ensure  
18 the adequacy of legislatively mandated social services. For  
19 example, in In re Nicole G., 577 A.2d 248 (R.I. 1990), the Rhode  
20 Island Supreme Court addressed the adequacy of the Department for  
21 Children and Their Families' ("DCF") reunification program under  
22 state law. The court ordered DCF to provide housing assistance to  
23 homeless children and their families, reasoning that the provision  
24 of such services was part of DCF's statutory duty to make  
25 "reasonable efforts to encourage and strengthen the parental  
26

1 relationship." Id. at 249. The court rejected DCF's argument that  
2 it lacked the statutory directive and the funds to provide housing  
3 assistance to homeless families. The court found that housing  
4 assistance would be more cost effective than funding programs, such  
5 as foster placement, that are destructive to the family unit. Id.  
6 at 250.

7 The judiciary's important role in ensuring the adequate  
8 implementation of state welfare legislation is also apparent  
9 outside of the child welfare context. In Arnold v. Arizona Dep't  
10 of Health Services, 160 Ariz. 593, 775 P.2d 521 (1989), the Arizona  
11 Supreme Court upheld the trial court's decision to order the  
12 Arizona Department of Health Services, the Arizona State Hospital,  
13 and Maricopa County to develop a comprehensive system of community  
14 mental health services for all eligible individuals. The trial  
15 court's decision set forth specific and general responsibilities of  
16 the three defendants. Id. at 528-29.

17 The defendants appealed, arguing that the legislation at issue  
18 did not mandate the creation of the comprehensive mental health  
19 care system ordered by the trial court. Id. at 529-31. The  
20 Arizona Supreme Court affirmed, however, finding that general state  
21 statutes regarding the state's and county's responsibility to  
22 provide indigent health care and more specific statutes regarding  
23 the development of comprehensive mental health care mandated the  
24 trial court's decision. Id. at 532.

1 The state defendants in Arnold also argued, unsuccessfully,  
2 that the trial court's order "intruded into areas reserved for  
3 legislative and executive branches of state government." The  
4 Arizona Supreme Court rejected this argument, stating that "the  
5 trial court merely set forth in its order duties already mandated  
6 by legislation . . . [it] did not create duties for the defendant,  
7 it held that the legislature had created the duties. It is an  
8 appropriate judicial function to determine whether the legislature  
9 has created a duty and whether the duty has been breached." Id. at  
10 529 (citations omitted, emphasis added).

11 This Court, too, should respond to the critical needs of  
12 Washington's homeless children presented by the plaintiffs'  
13 complaint. In doing so, this Court should not hesitate to  
14 determine the scope of DSHS's duties under the laws enacted by the  
15 legislature, as well as under the State's common law *parens patriae*  
16 duties discussed above.

17 2. *This Court should require DSHS to implement an effective*  
18 *plan for homeless children.*

19 Plaintiffs have asked the Court to determine whether DSHS has  
20 adequately complied with its duty under state law to devise and  
21 implement a plan to serve the State's homeless children. See RCW  
22 74.13.031(1) (DSHS shall "[d]evelop, administer, supervise, and  
23 monitor a coordinated and comprehensive plan that establishes,  
24 aids, and strengthens services for the protection and care of  
25 homeless . . . children"). DSHS has prepared a document entitled  
26 "Comprehensive Plan to Coordinate Services for Homeless Children

1 and Families" (the "Plan"). DSHS asserts that this Plan is  
2 sufficient to comply with RCW 74.13.031(1). If, however, the Court  
3 finds that the Plan will not effectively serve the State's homeless  
4 children, amici urge the Court to (1) reject the Plan as inadequate  
5 under applicable law and (2) clarify DSHS's duties to homeless  
6 children and their families in an appropriate court order.

7 It is the task of courts to assess the substance, not just the  
8 form, of state agency action, so as to require action consistent  
9 with the relevant statutory directives. In Mitchell v. Johnston,  
10 701 F.2d 337 (5th Cir. 1983), for example, the Fifth Circuit  
11 assessed the adequacy of a state's dental program required under  
12 the federal-state Medicaid program. The relevant statute, 42  
13 U.S.C. § 1396d(a)(4)(B), required states to provide "such early and  
14 periodic screening and diagnosis of individuals who are eligible  
15 under the plan and are under the age of 21 to ascertain their  
16 physical or mental defects, and such health care, treatment, and  
17 other measures to correct or ameliorate defects and chronic  
18 conditions discovered thereby, as may be provided in the  
19 regulations of the Secretary."<sup>9</sup>

20 The trial court had found that cutbacks in the state's dental  
21 program rendered the program inadequate because it failed to  
22 provide eligible children with quality preventive dental care. The  
23

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24 <sup>9</sup> The relevant regulations required participating states to  
25 provide eligible children with "the dental care needed for relief  
26 of pain and infections, restoration of teeth and maintenance of  
dental health." 701 F.2d at 347, quoting 42 C.F.R. § 441.56(b)(2).

1 trial court did not hesitate to determine whether specific details  
2 of the state's program complied with the general mandate of the  
3 statute. Specifically, the trial court found that (1) Texas's  
4 triennial periodicity schedule was inadequate to meet the  
5 "reasonable dental needs" of eligible children; and (2) Texas was  
6 required to reinstate several basic dental services that the court  
7 considered necessary to a minimally acceptable program. These  
8 services included topical fluoride treatments, posterior root  
9 canals, fixed space maintainers, partial dental appliances on  
10 posterior teeth, porcelain crowns, antibiotic injections, and  
11 nonsymptomatic extraction of impacted teeth. Id. at 342-343. The  
12 trial court's decision was based on the testimony of expert  
13 witnesses who addressed the efficacy of the dental care and  
14 procedures at issue.

15 The Fifth Circuit affirmed the trial court's holding that the  
16 state's dental program did not "reasonably accomplish the purposes"  
17 of the Social Security Act. Id. at 346, 352. It emphasized that  
18 Congress clearly intended to provide children with preventive  
19 dental services through the dental program. The Fifth Circuit then  
20 upheld the trial court's decision that all of the dental services  
21 at issue were necessary components of adequate preventive dental  
22 care.

23 The Fifth Circuit's decision in Mitchell v. Johnson  
24 illustrates the important role that courts must play in evaluating  
25 an agency's implementation of social welfare statutes. The trial  
26

1 court in Mitchell required Texas to include specific dental  
2 services in its Medicaid program for children, although none were  
3 specifically required by statute or regulation. As it affirmed  
4 this decision, the Fifth Circuit emphasized that:

5 . . . cooperative social fiscal programs lead to disputes as  
6 to the requirements of the undertaking and the rights of  
7 individuals sought to be benefited. As a consequence,  
8 tribunals such as this are required to resolve disputes in  
9 areas in which, quite frankly, little judicial expertise  
exists. We are, nonetheless, required by our oaths as is the  
district judge who tried this case, to interpret and uphold  
the laws of the land; in this case, laws admittedly dealing  
with issues of grave political and social consequence.

10  
11 Id. at 352.

12 The court's decision in McCain v. Koch, 70 N.Y.2d 109, 511  
13 N.E.2d 62, 66 (1987), also demonstrates the active role that courts  
14 must take in ensuring that agencies effectively implement their  
15 public welfare responsibilities. In McCain, the New York Court of  
16 Appeals found that the Department of Social Services, if it chose  
17 to provide emergency shelter to the homeless, was required to  
18 provide shelter that met certain minimum standards.<sup>10</sup> The trial  
19 court found that such minimum standards were necessary because  
20 "[i]n a civilized society, a 'shelter' which does not meet minimal  
21 standards of cleanliness, warmth, space and rudimentary  
22 conveniences is no shelter at all." Id.

23  
24 <sup>10</sup> The court did not address DSS's argument that it did not have a  
25 legal obligation to provide the plaintiffs with any emergency  
26 housing. Id. at 65. The court focused instead on the legal  
requirements that must be met when the DSS did provide housing to  
the plaintiffs.



1 The Court of Appeals affirmed. The court rejected the  
2 defendants' argument, similar to that made by DSHS here, that the  
3 plaintiffs' claims were not justiciable because the adequacy of  
4 agency benefits was committed to the agency's discretion.<sup>11</sup> Id.  
5 The court reasoned that the trial court was justified in  
6 establishing minimum habitability standards in the absence of any  
7 departmental regulation on such standards. Id.

8 The court in In re Nicole G., 577 A.2d 248 (R.I. 1990),  
9 provides a final example of the courts' role in evaluating agency  
10 action. In addressing the adequacy of an agency's efforts to  
11 reunify families pursuant to state and federal law, the court  
12 emphasized that:

13 [a]lthough [the agency] has, in the first instance,  
14 responsibility for developing and implementing case plans, it  
15 is the [court] that must decide whether [the agency's] efforts  
16 toward reunification have been sufficient. If a trial justice  
17 determines that DCF's efforts have not been sufficient, he or  
she does not make the department guess what more it should do  
but rather makes an order directing it to provide whatever  
service was lacking.

18 Id. at 251 (emphasis added).<sup>12</sup>

19 <sup>11</sup> The Department eventually adopted more stringent standards than  
those established by the trial court.

20 <sup>12</sup> For other cases on a court's power to review the substance of  
21 agency action, see Board of Education of Hendrick Hudson Central  
22 School District v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982)  
23 (courts must, in addition to finding that a state has adopted the  
state plan required under the Education of the Handicapped Act,  
24 determine that the state has created an individualized education  
plan for an eligible child that conforms with the requirements of  
the Act); Alessi v. Commonwealth of Pennsylvania, 710 F. Supp. 127  
25 (E.D. Pa. 1989) (state's Department of Public Welfare used an  
irrational system to obtain and distribute funds for the mentally  
26 retarded); Matter of Burns, 519 A.2d 638 (Del. 1986) (state agency  
was not entitled to remove child from parent without making efforts



1 DATED this 15th day of September, 1993.

2  
3 Respectfully submitted,

4 PRESTON THORGRIMSON SHIDLER

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9  
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