

**Scandals, Lawsuits, and Politics:**

**Child Welfare Policy in the States**

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**Abstract:** In order to understand what factors drive child welfare policy making, this research analyzes data on spending and legislation from the fifty states over a three year period. The key independent variables are scandal, litigation, federal oversight, and local discretion. While states that experience a scandal or a lawsuit do not increase their spending levels over previous years, they do enact more child welfare legislation. This raises the possibility that states engage in symbolic rather than substantive responses to child welfare crises. The administrative structure of the child welfare system also affects state policy making.

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## **Introduction**

In 2002, Florida's Department of Children and Families made national news when it was reported that a child in its custody, 5 year-old Rilya Wilson, had been missing from her foster home for at least 15 months without anyone associated with DCF noticing. In 1998, the death of 7 year-old Ryan K. at the hands of his aunt became an issue in the Connecticut race for governor, when it was revealed that the state agency that had placed Ryan in his aunt's custody had also received five separate abuse reports against the aunt in the months prior to his death. In 2003, the New Jersey Division of Youth and Family Services, already operating under a consent decree, came under renewed scrutiny when a couple was arrested for starving four of their adopted children, even while the agency had placed another foster child with the family and was moving forward with adoption plans. As these examples illustrate, the state agencies charged with administering child welfare services—child protection, foster care, and adoption—have arguably one of the most difficult jobs in state government. With low pay and often large caseloads, social workers who do their job well receive little public recognition or reward. When they make a mistake—remove a child from his or her parents only to see the child abused in foster care or return a child to his or her biological parents only to see the child harmed again—they, and the department they work for, become the object of not only state but sometimes national scrutiny.

Although failures to protect children make headline news, child-welfare policymaking has received relatively scant attention from political scientists. Yet, there are reasons to expect the politics of foster care, adoption, and child protection to differ from the politics of some of the more commonly studied policy areas. First, while child-welfare policy in some respects resembles traditional welfare policy—it lacks powerful interest group support, for example—it

differs significantly in that the target population of the policy, abused children, is one that evokes considerable public sympathy.<sup>1</sup> At the same time, unlike other policy domains that target sympathetic populations—social security, for example—child welfare programs tend to be starved for resources in state budgets. Second, state spending on traditional welfare programs is thought by some to be constrained by fears of a migration effect—any state that is too generous toward the poor may attract more low-income residents (Peterson & Rom 1990). Politicians are not expected to have the same fears about generous child welfare programs (unless they believe that parents anticipate having their children removed from their custody and so move to a state where the children are most likely to be treated well in foster care). Third, the role of compelling stories that seize media attention are perhaps another way that legislating for child welfare differs from that for other poverty programs. Because they command media and public attention, these events can be a way for generally less powerful groups to be able to seize the political agenda.<sup>2</sup> In the context of TANF, for example, attention-grabbing stories are both much less likely and, to the extent that they occur, are less likely to be the kinds of stories that generate sympathy for the target of the policy (well-publicized scandals in the TANF context are more likely to focus on an example of welfare fraud rather than on an example of a poor woman's struggle to feed her children).

### **Question and Hypotheses**

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<sup>1</sup> See Schneider & Ingram (1997, Ch. 5) for discussion of how the social construction of target populations affects policy making.

<sup>2</sup> Birkland (1997) makes this point in reference to the way in which natural disasters like hurricanes and earthquakes serve as focusing events for policy entrepreneurs.

Given this supposition that the politics of child welfare policy may differ from the politics of other social welfare policies, this research asks what drives state policy making in the area of child welfare policy. I consider a number of hypotheses to explain policy action.

***Scandal:*** First, as the opening paragraph of this paper suggests, policy making in this area may be driven by crisis. Discussion of child welfare policy commonly makes the argument that policy making is largely reactive—“child welfare policy is set by a pendulum that swings from crisis to crisis” (Orr, 1999). What often defines a crisis for child welfare systems is a well-publicized story in which the state failed to protect a child from abuse. These incidents typically involve a child whose family is already known to the child welfare system—after an abuse investigation, the decision may have been made to let the child stay with the family or perhaps the child was removed for a period of time but then returned home. When the child subsequently dies at the hands of the family, the child welfare system comes under fire for allowing the child to remain in the home.

Certainly, national coverage of stories like the disappearance of 5-year old Rilya Wilson in Florida generate large public outcry and focus state actors on the child welfare system. However, the fact that a well-publicized scandal has the potential to shape the state’s policy agenda does not necessarily mean that policy actually does change. In Kingdon’s (2002) terms, the well-publicized failure of the child welfare agency to protect a child may open a policy window, but this policy window can close again without other factors in place to push policy through the open window. State officials may feel the need to respond, but this response could be largely symbolic.

In *After Disaster*, Birkland (1997) expands on Kingdon’s work on agenda-setting to consider the way in which natural disasters like hurricanes and earthquakes work as focusing

events. His findings are helpful for thinking about the ways in which child welfare scandals may or may not shape policy making. Birkland's definition of focusing events seems to apply to stories about child abuse: They are rare and highly visible, and while they don't affect as many people as an earthquake or hurricane, they do horrify many people. While both kinds of disasters, hurricanes and earthquakes, have agenda-setting potential, Birkland finds that earthquakes seem to result in more significant policy action than hurricanes. He argues that this is because for earthquakes there is a more cohesive and organized scientific community ready to take advantage of an open policy window than for hurricanes. This suggests that state response to child welfare crises will depend in part on whether organized policy entrepreneurs stand ready to push policy through the open window.

Butler and Drakefield (2003) look at the relationship between scandal and social welfare policy in the British context and find that policy change in response to scandal is quite rare. They suggest that while "scandal can accelerate a rising policy tide, it cannot, of itself, originate a change in policy direction, or alter the course of a policy which is already well-established" (p.224). Their explanation for the weak policy effects of scandal is that they tend to be accompanied by an official "discourse in which scandals are treated as flaws in an essentially sound system, crises which will pass....Individual wrongdoing and minor policy adjustments attract the attention which might otherwise have been directed towards structural causes and thus minimize the need for extensive social change" (p.224). This finding is interestingly at odds with anecdotal reports of the link between child welfare scandals and policy change in the United States.<sup>3</sup> For example, legal scholars, who have written extensively on the shift in federal policy

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<sup>3</sup> While disagreeing about whether a link exists, both Butler and Drakefield and the observers of child welfare policy in the U.S. are dissatisfied with the results of scandal. Butler and Drakefield

away from an emphasis on family preservation toward an emphasis on faster adoptions, credit much of this shift to the power of crisis to set the policy agenda (Wilkinson-Hagen 2004). Congressional debate over the Adoption and Safe Families Act of 1997 (ASFA) was dominated by horrible stories of children abused by members of their own family, after a social services agency had made the decision to return or not remove the child (Bailie 1998; Roberts 1999). Susan Brooks (2001) argues that plentiful, well-respected scholarship has long established the benefits for children of alternatives to adoption. However, "...ASFA takes significant steps in the opposite direction by staunchly reinforcing the primacy of traditional adoption and failing to promote any other permanency option...." Again, her explanation for the fact that ASFA ignores "this great wealth of knowledge" about what is best for children is the powerful role played by high-profile stories of children abused or killed by their biological parents.

At the state level, some observers have hypothesized that state government action is also driven largely by crisis. Describing high levels of volatility in state expenditures on child welfare programs, an Urban Institute report suggests that this is due in part to the fact that spending levels change in reaction to "media or political pressure following a child's death from abuse or neglect" (Bess et al. 2001, p.5). In another Urban Institute study, looking at the relationship between welfare reform and child welfare services, caseworkers, the street-level bureaucrats of the child welfare system, reported that "highly publicized child death cases"

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are concerned that by focusing on individual acts of wrongdoing in the aftermath of scandal, the larger institutional failures that contributed to the problem are ignored. In contrast, critics of the process in the United States complain of too much willingness on the part of national and state policy makers to introduce sweeping institutional reforms on the basis of one compelling, but not necessarily representative, story.

affected their day-to-day decision making (Green & Tumlin 1999, p.9). This suggests that even if formal policy does not change in the face of scandal, the implementation of that policy can change in ways that alter the meaning of the policy in practical terms—for example, making it more likely that children will be removed from their home after an abuse report and less likely that they will be returned.

***Litigation:*** A second, related, hypothesis is that litigation drives state policy making. Lawsuits have become an increasingly popular strategy for pushing states to reform their child welfare systems. On the one hand, it makes sense to expect that court rulings against departments of social services force states to change policy or increase spending in order to address the court's concerns. The Urban Institute argues that "lawsuits have played an important role in shaping child welfare policy." In response to litigation, "states have signed settlement agreements or consent decrees that require them to increase child welfare funding for agencies, provide more staff, reduce caseloads, change individual policies or practices, provide additional services, and increase oversight and quality assurance" (Green & Tumlin 1999, p.11). Looking at child welfare litigation in Illinois, Mezey (2000) makes the case that court action does affect policy outcomes. Although not everything agreed to in the legal settlements is achieved, she finds evidence of significant policy change as a result of the litigation. In particular, she finds that in the years after legal action, the child welfare services budget in the state increased whereas in previous years the budget was always in trouble (p.159). One possible effect of litigation then may be that the budget for child welfare programs increases even when other areas of the state budget are being cut—the agreements mandate a certain amount of spending to reach specific goals.

On the other hand, some scholars have argued that courts are generally a poor mechanism for achieving social policy reform and that those interested in social reforms would do better to focus their energy on legislatures (Rosenberg, 1991). In response, Mezey argues that critics of the role of courts in achieving social policy change focus only on the Supreme Court and do not consider the way in which legal action is an iterative process: "...by encouraging legal advocates and mobilizing public support, institutional reform litigation can ultimately spur policy change" (p.169). In some instances, she finds that even the threat of litigation may be enough to spur changes in the practices of social service agencies (p.161). Researchers with the Urban Institute have similarly suggested that fear of litigation, along with increasing national publicity for problems in child welfare systems, has states running scared (Green & Tumlin 1999).

***Intergovernmental Relations:*** A third hypothesis is that state child welfare policy making is largely shaped by changes in federal policy. While child welfare policy is mainly the province of states, the federal government has passed a number of important pieces of legislation that provide incentives for states to adopt particular approaches to child protection, foster care, and adoption. The most significant are the 1980 Adoption Assistance and Child Welfare Act (CWA) and the 1997 Adoption and Safe Families Act (ASFA). The CWA was focused on encouraging states to move children more quickly out of foster care, with an emphasis on family reunification as the preferred alternative. Receiving federal funds for child welfare was contingent on demonstrating that the state agency was making "reasonable efforts" to reunite children in foster care with their biological families (Wilkinson-Hagen 2004, p.143). The policy pendulum swung in the opposite direction with the passage of ASFA. Although the stated purpose of the legislation was similar in terms of emphasizing the importance of ending "foster care drift," the focus was now on finding permanent adoptive homes for foster children rather



than on family reunification. The timeline for parents to establish their fitness to have their children returned was shortened, and social service agencies were instructed to engage in concurrent planning—developing plans to prepare the child for adoption while the parent’s attempt at reunification is still ongoing. Receipt of federal funds is now tied to the state’s success at increasing the number of adoptions of foster care children—no financial reward is attached to the return of a child to his or her biological family. By requiring states to meet changing federal standards in order to continue receiving federal funds, these pieces of legislation are expected to significantly shape state policy making.

Another important federal action which may affect state child welfare policy is the adoption in 2000 of new regulations by the Department of Health and Human Services. The federal government now collects annual performance data on the child welfare systems in each state and assesses the state’s performance on seven dimensions, including child safety. In response to these Child and Family Services Reviews, states are required to adopt Program Improvement Plans (PIPs) and demonstrate progress on improving the operation of their child welfare systems. States face financial penalties if they fail to comply. During the first round of these reviews, no state managed to receive a passing grade on more than two dimensions, and fifteen states did not receive a passing grade on any dimension.

In addition to the effect of national policy on state behavior, another dimension to consider in a federal system is the relationship between state action and local government. One of the ways in which child welfare systems differ across states is in the degree to which local government, generally counties, play a key role in the administration and funding of programs. Some states are strongly centralized with little role for local government while other states require significant financial contributions from counties and/or allow significant administrative

discretion at the local level. It seems reasonable to expect that policy making at the state level might differ depending on which kind of system is in effect—perhaps state legislators in states with decentralized systems are less engaged with this policy area than are state legislators in states that have state-administered systems.

*Other State Characteristics:* Other hypotheses about what determines state policy making related to child welfare are drawn from the more general literature about what determines state policy outcomes. For example, the partisan make up of state government is expected to affect policy outcomes. Perhaps Democratic or Republican control of state government is more likely to lead to reforms in child welfare policy, generally, or perhaps particular types of reforms are associated with each political party. For example, Republican leadership may increase the likelihood of the privatization of child welfare services while perhaps Democratic leadership may increase the willingness to spend more money on child welfare programs. Research on state level policy making has also generally emphasized the role of political culture (Elazar 1984) or ideology (Erikson et al. 1993; Berry et al. 1998). In the culture model, states with moralistic cultures, for example, are expected to enact more generous social programs than states with traditionalistic cultures. Others argue that the key determinant of state policy making is the ideology of state voters. States with more liberal populations are more likely to enact generous social programs than those with more conservative populations. Ideology is subject to more change over time than the cultural attributes of states, which are established based on early settlement and migration patterns (Berry et al. 1998).

As an alternative to culture and ideology models, Hero (1998) has suggested that the key determinant of state policy may be the degree of racial and ethnic diversity of the population. In keeping with prior research on the relationship between race and welfare policy, Hero finds that

states with more diverse populations have lower welfare effort (per capita spending relative to per capita income)—although this finding is no longer statistically significant once other control variables are included in the model—and that more minorities as welfare recipients is also associated with lower welfare effort (p.96). Much research on AFDC and TANF has made the argument that this policy area is shaped by the politics of race with the perception that welfare is primarily for African-Americans reducing support for the program (Gilens 1999, Roberts 199b) It's not clear how this might apply to child welfare policy. On the one hand, the politics of child welfare policy might be quite similar to the politics of welfare more generally.<sup>4</sup> However, on the other hand, as discussed above, there are reasons to expect different outcomes for child welfare policy. The objects of the policy are vulnerable children, hence sympathetic; attention-grabbing stories of abused children may create more agenda-setting opportunities than generally exist for programs that primarily target politically weak populations, and the fear of migration effects, which political economy models of state policy suggest should limit state generosity on social welfare programs, would seem to be less of a factor in child welfare policy. A final explanatory factor that needs to be considered is capacity. Some states have more resources than others to devote to state programs.

### **Data Analysis**

*Dependent Variables:* In addition to considering what factors drive child welfare policy generally, this research also considers the possibility that particular factors are more likely to

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<sup>4</sup> Some critics of the child welfare system argue that a racial bias exists in the greater willingness of state agencies to remove children from poor, African-American families. See, for example, Roberts (2002).

result in one kind of policy action than another. For example, perhaps crisis is more likely to lead to enactment of new policies but lawsuits are more likely to lead to increased spending. Consequently, I consider two different measures of state policy activity. The first is spending on child welfare programs. This information is not straightforward to collect as states utilize different definitions of child welfare programs. For example, some states include spending on juvenile justice as part of their child welfare budgets. To address this problem, the Urban Institute began to collect state child welfare spending data that would be comparable across all fifty states and across time. They developed a list of programs and services that would constitute a uniform definition of child welfare policy and asked states to report on the amount of federal, state, and local dollars devoted to these programs. This data is available every two years, between 1996 and 2004.<sup>5</sup>

The second measure of state policy activity that I consider is the passage of legislation. Again, this is complicated somewhat by the broad array of policy initiatives that have some ties to child welfare services. Beginning in 2002, the National Conference of State Legislatures began reporting annually on the passage of “significant” state legislation related to child welfare systems.<sup>6</sup> Examples of the kinds of bills that they document are new policies for training child welfare workers, new incentives for kinship care, and new programs for older children in foster care. For the current analysis, I consider data on spending and legislating for 2002 through 2004.

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<sup>5</sup> The Urban Institute provides this data in the form of published reports (Green et al. 1999, Bess et al. 2002, Bess et al. 2004, Scarcella et al. 2006). This data can also be downloaded in electronic form from the Child Welfare League of America’s National Data Analysis System (NDAS). Available at: <http://ndas.cwla.org>.

<sup>6</sup> Available at: [www.ncsl.org/programs/cyf/childlegislation.pdf](http://www.ncsl.org/programs/cyf/childlegislation.pdf) (accessed on August 8, 2005).

This is the period for which the available spending data overlaps with the available data on legislation, allowing me to compare the results for the two dependent variables.

***Independent Variables:*** Both models include four key variables to test the hypotheses developed earlier in the paper. First, I include a measure of child welfare scandals in the state. In order to create this variable, I searched the highest circulation newspaper in each state for stories about death or injuries to children who were either in state custody or were “known” to the child welfare system (previous child abuse complaints against the family, for example).<sup>7</sup> I counted the incident as a rising to the level of scandal if the newspaper carried three or more stories about the way in which the actions or non-actions of the child welfare agency contributed to the death or injury of the child.<sup>8</sup> The variable included in the models is a count of the number of scandals in the two years preceding the spending and legislation data (i.e. any scandals between 2000 and 2002 for the 2002 spending and legislation data). Two years allows enough time for a response to the scandal to show up in either legislation enacted or money spent but

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<sup>7</sup> In order to cast a wide net for these stories, I searched each newspaper using the terms: “child,” “abuse,” and the name of the state’s child welfare agency. For some states, I accessed the highest circulation newspaper through LexisNexis Academic. For other states, I used the NewsLibrary Archives. In a few instances, the archives for the state’s highest circulation newspaper were available directly through the newspaper’s own website.

<sup>8</sup> If I found coverage of a death or injury that didn’t fit my definition of scandal, I then searched the newspaper using just the name of the child as the search term in order to make sure that I was not missing additional stories about the incident.

also recognizes that the link between scandal and policy is expected to come from the desire of state actors to respond quickly in the face of public outrage.

Second, both models include a litigation measure—a measure of whether the state’s child welfare system recently entered into a consent agreement in response to a lawsuit. Since the 1970s, thirty-three states have been sued over the operation of some or all of their child welfare system. Some of these states have faced multiple lawsuits and some of the consent agreements have been in effect for many years—for example, Connecticut and Illinois are still under consent decrees entered into in 1991. This information on consent decrees is drawn from an October 2005 study produced by the Child Welfare League of America in collaboration with the American Bar Association, which summarizes every child welfare consent agreement in every state from 1995 to 2000.<sup>9</sup> Utilizing the same logic as for the scandal variable, the litigation variable measures whether a state entered into a consent decree in the previous two years. I include all kinds of consent decrees entered into during the time period—both those that focus on the overall operation of the child welfare system and those that focus on a specific aspect of the system, reunification services provided to parents for example.

Third, both models contain measures of intergovernmental relationships. One variable measures whether the state has had its initial assessment as part of the federal government’s Child Welfare and Family Services Reviews. Because no state received a passing grade on more than two of the seven dimensions of the review, I use a measure of whether the review has

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<sup>9</sup> “Child Welfare Consent Decrees: Analysis of Thirty-Five Court Actions from 1995 to 2005.”

Available at: <http://www.cwla.org/advocacy/consentdecrees.pdf>.

recently occurred, rather than a measure of how well the state did on the review.<sup>10</sup> Every state has had to develop an improvement plan in response to the review and every state will need to demonstrate improvement in order to continue receiving federal money. Consequently, I expect that states where the review has recently occurred may have enacted legislation or increased spending in response to criticism from the federal government.<sup>11</sup> The other intergovernmental measure is a dummy variable capturing whether the state has a strong role for county governments in the administration and/or financing of the child welfare system<sup>12</sup>

In addition to controlling for these key variables, I include the following additional independent variables:

- Governor is a Democrat<sup>13</sup>
- One or both houses of the legislature are controlled by Democrats<sup>14</sup>
- Percentage of the state population that identifies as liberal<sup>15</sup>

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<sup>10</sup> Results of the analysis did not change when I used a measure of how well the state did on the review (comparing those states that received a failing grade on every dimension with those that received one or more passing grades).

<sup>11</sup> Information available from the Department of Health and Human Services. Administration for Children and Families. See: <http://www.acf.hhs.gov/programs/cb/cwmonitoring>.

<sup>12</sup> U.S. Department of Health and Human Services. (2003) "National Study of Child Protective Services Systems and Reform Efforts: Review of State CPS Policy." April. Available at: <http://aspe.hhs.gov/hsp/cps-status03/state-policy03>

<sup>13</sup> *The Book of the States* vol. 34-36. (2002-2004). Lexington, KY: The Council of State Governments.

<sup>14</sup> Ibid

- Median income (as a measure of state capacity)
- Percentage of the population that is African-American
- Percentage of children living in poor families
- Percentage of the child population in foster care<sup>16</sup>

**Spending Model:** Model 1 has total (federal, state, and local) spending per child as the dependent variable. I use total spending rather than just state and local spending because the federal portion of spending on child welfare services is also expected to reflect state level factors, not simply federal priorities. For example, the amount of federal spending may reflect how aggressively a state pursues federal dollars, in which case the amount of federal spending may in part reflect the state's desire to maximize the funds available to its child welfare programs. Also, federal dollars may substitute for state dollars, in which case smaller amounts of state spending may reflect a constant commitment to child welfare services, when the size of the federal spending is considered. I average the spending across the state's child population in order to take into account the extent to which larger states are expected to spend more on child welfare services than smaller states. Using child population rather than overall population seems to make sense given that the programs under consideration specifically target children's well-being. I look at spending per child rather than per child in foster care because child welfare programs encompass much more than simply foster-related spending—for example, abuse investigation and prevention services. At the same time, recognizing that a larger foster care population may

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<sup>15</sup> Erikson, Wright, & McIver measure of liberalism. Available at:

<http://php.indiana.edu/~wright1/>

<sup>16</sup> Data available from the Child Welfare League of America's National Data Analysis System. (<http://ndas.cwla.org>).



increase the demand for spending, I include the relative size of the foster care population as a control variable. Because I am interested in explaining *change* in the level of spending, rather than the absolute level of spending, I also control for the previous level of spending on child welfare services.<sup>17</sup>

### **Table 1 about here**

**Results:** Table 1 reports the coefficients and standard errors for the regression model predicting changes in state and local spending per child on child welfare programs in 2002-2004.<sup>18</sup> Neither scandals, consent agreements, nor being reviewed by the federal government are significantly related to changes in spending.<sup>19</sup> The only key variable of interest that is

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<sup>17</sup> I use spending lagged by two years rather than one year because the Urban Institute spending data is biennial.

<sup>18</sup> The model is an ordinary least squares model. To reflect the fact that I pooled data from 2002 and 2004, I specify clustering of the observations by state, and the standard errors are adjusted to reflect this clustering. I include dummy variables for year in order to control for any year-specific effects on spending and legislation. I also include dummy variables for region—including dummy variables for each state is not possible given the degrees of freedom in the model. Hawaii and Alaska are excluded from the model because some of the independent variables were only available for the 48 contiguous states.

<sup>19</sup> While a recent consent agreement does not seem to be associated with an increase in spending, I also considered the possibility that an older consent agreement, still in effect, might be associated with higher spending levels. Even if the most significant monetary response to a court order were to occur in the first years of the consent decree, this earlier infusion of dollars might continue to affect spending relative to other states, given that the state's compliance with the

significantly related to changes in spending is the county-administered system measure. States with a strong role for counties in their child welfare system were more likely than states with centralized systems to increase their child welfare spending ( $p=.06$ ). In interpreting this result, it is important to keep in mind that this does not mean that county-administered systems spend more in general than state-administered systems. Rather, it means that county-administered systems, all else held constant, increased their spending over prior years more than did state-administered systems. It's not immediately clear why this might be the case. One possibility is that this finding is specific to the time period. Many states were experiencing fiscal problems during these years and perhaps systems in which counties contribute a significant share of the revenue were less likely to see reductions in child welfare budgets than systems which rely exclusively on state funding.

Five other variables in the model are significantly related to spending. Previous spending is positively associated with current spending ( $p=.007$ )—those states that spent more in the past, continue to spend more. The size of the foster care population is also positively associated with federal, state, and local spending ( $p=.004$ ). Those states with a larger percentage of children in out-of-home care spend more on their child welfare systems. None of the measures of partisanship, ideology, or income are significant, but this may be because the model controls for previous spending levels. Democratic states or liberal states may spend more on child welfare

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consent decree is still being monitored. In addition, consent decrees often require regular reports on the child welfare system. Release of these reports means that the child welfare system and its problems may be in the news on a regular basis, even years after the agreement is reached. However, a model that included a variable for “a consent decree currently in effect” produced results that were very similar to those presented above.

systems than Republican or conservative states but these differences will be captured in the lagged spending measure. Given the inclusion of this lagged spending measure, the significant and negative relationship between the size of the African-American population and spending is particularly striking ( $p=.02$ ). Even controlling for previous spending levels, states with large African-American populations spent less on child welfare programs, all else held constant. Finally, states in the Northeast ( $p<.001$ ) and Midwest ( $p=.06$ ) seemed to spend more than other states, all else held constant.

**Table 2 about here**

*Legislation Model:* Model 2 has the number of pieces of child welfare-related legislation enacted annually between 2002 and 2004 as the dependent variable. This captures the degree of attention being devoted to the child welfare system at the state level. A large number of bills dealing with the child welfare system in one year does not necessarily mean that the entire child welfare system is undergoing fundamental reform. However, if the child welfare system *is* undergoing fundamental reform, this will generally be reflected in the passage of a number of pieces of legislation. This variable ranges from zero to six with a mean of 1.7 and a median of 1. The independent variables are the same as the variables in model 1 with one addition—a measure of professionalization.<sup>20</sup> States that are more professionalized are expected to be more likely to enact legislation on any topic than states which meet only part-time.

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<sup>20</sup> Professionalization reflects length of session, legislator pay, and size of legislative staff. Data from the National Conference of State Legislatures.

**Results:** Table 2 reports the coefficients and standard errors for a count model of child welfare legislation.<sup>21</sup> Several of the key variables of interest have a statistically significant relationship to passage of legislation. Experiencing a child welfare scandal is positively and significantly related to legislation ( $p=.04$ ). States that have experienced a scandal enact more legislation, all else held constant, than those that have not. The consent agreement variable is significantly and positively related to legislation in a model that only includes the key variables of interest ( $p=.02$ ) but falls short of statistical significance in the full model ( $p=.15$ ). While having the federal government review the child welfare system is not significantly related to legislation, the administrative structure of the state is statistically significant ( $p=.02$ ). States with a strong role for county governments in the administration of their child welfare system also enacted fewer pieces of legislation than those with more centralized state systems. This fits with the hypothesis that states which give county governments more responsibility for child welfare systems are less likely to enact state-level legislation governing those systems.

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<sup>21</sup> Because the dependent variable is a count of pieces of legislation enacted in each state, I use a negative binomial regression model. Because the data pools together 3 years of state data, I specify clustering of the observations by state, and the standard errors are adjusted to reflect this clustering. I include dummy variables for year in order to control for any year-specific effects on legislation. I also include dummy variables for region—including dummy variables for each state is not possible given the degrees of freedom in the model. Hawaii and Alaska are excluded from the model because some of the independent variables were only available for the 48 contiguous states.

In contrast to the spending model, the percent of the population that is African-American does not seem to affect passage of legislation. However, some of the other characteristics of state populations do seem to matter for legislation. States with higher median incomes were more likely to enact child welfare legislation, holding other variables constant ( $p=.02$ ). More surprisingly, states with more liberal populations were less likely to enact legislation ( $p=.05$ ). Two of the dummy variables for region are also significant in this model. Northeastern ( $p<.001$ ) and Midwestern ( $p=.06$ ) states were less likely to enact legislation than Western and Southern states, all else held constant. These states seem to spend more but legislate less.

### **Conclusions**

This analysis of child welfare spending and legislating suggests several interesting features of child welfare policy making. First, scandals do seem to affect policy making. While a child welfare scandal does not affect spending levels, it does spur the passage of legislation. In the face of scandal, state politicians seem to respond by passing laws, rather than by spending money. While coverage of child welfare scandals frequently mentions the need for more money to be spent (linking the low-pay and high turnover of social workers to failures to protect a child, for example), state leaders with tight budgets may prefer to respond with legislation that changes the rules under which the system operates rather than with legislation that increases the fiscal resources available to the system. In terms of the politics of child welfare policy, legislation represents a more publicly visible response to criticism of the system than does spending.

To the extent that consent decrees had any discernible effect on state behavior, the effect also seems to be on the amount of child welfare legislation produced by the state rather than on relative spending levels. However, these findings may still understate the significance of lawsuits. For example, some researchers have suggested that state child welfare policy making is

increasingly driven by the fear of litigation (Green & Timlin 1999, Mezey 2000). If this is the case, then looking only at those states which have actually entered into consent agreements will miss some of the ways in which lawsuits affect policy outcomes.

Another interesting aspect of the findings is the role of federalism on the operation of the child welfare system. The federal government has been playing a larger role in child welfare policy since the passage of the Adoption Assistance and Child Welfare Act of 1980. As with other policy areas, the federal government has expanded its policy reach by linking financial assistance to the states with compliance with federal guidelines. The role of the federal government in this policy area expanded further with the introduction of Child and Family Services reviews in 2000, which hold states accountable for specific child welfare outcomes. As of 2004, states that had been recently reviewed (and in all cases found in need of improvement) were not significantly different than other states in terms of their spending levels or likelihood of enacting legislation, all else held constant. It remains to be seen if these reviews results in significant change in state policy over time—particularly if the threat of losing federal money is taken seriously.

The other aspect of federalism addressed here is the distinction between states with centralized child welfare systems and states in which county governments have significant amounts of administrative responsibility for child welfare. States with strong county systems did seem to produce fewer pieces of child welfare-related legislation than centralized states, perhaps suggesting less engagement with the policy issue in those states and/or a more hands-off approach to a policy area that is seen as mainly a county responsibility. The relationship between administrative structure and spending was unexpectedly positive and significant. One might expect local governments to have less fiscal capacity than state governments when it

comes to social policy and therefore expect strong-county systems to spend less than state-administered systems. However, during this time period, county-administered systems were more likely to increase spending over prior levels than were state-administered systems.

The paper began with the supposition that the politics of child welfare policy might differ from the politics of other social welfare programs, most notably TANF. However, the effect of race seems to contradict this expectation. The racial make-up of a state was significantly and negatively related to spending levels. Those states with larger African-American populations spent less on child welfare policy than those with fewer African-Americans—a finding consistent with some research on state TANF spending. This similarity is surprising to the extent that political discourse about the two policy areas tends to be different: the need to require adults to support themselves and their families rather than relying on government assistance versus the need to protect vulnerable children from abuse and help them find loving homes. This finding also raises the possibility that the effect of scandal on policy outcomes may depend in part on the race/ethnicity of the abused children and their families.<sup>22</sup>

The results reported here support the feeling of many observers of child welfare policy that policy making is frequently reactive—“set by a pendulum that swings from crisis to crisis” (Orr, 1999). A number of important questions about the way in which scandals shape child welfare policy remain, however. First, while experiencing a scandal may increase the likelihood that the state enacts legislation, the content of this legislation can vary considerably from bills that fundamentally alter how the system operates—privatization in Kansas, for example—or make relatively minor changes—requiring FBI background checks for relative caregivers in Indiana, for example. Are there particular characteristics of a scandal that make it more or less

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<sup>22</sup> This also suggests another dimension to the “color of child welfare” (Roberts 2002).

likely to spark major, as opposed to minor, reform? Perhaps the answer depends in part on the presence of policy entrepreneurs who use the policy window opened by the scandal to push through large-scale changes.<sup>23</sup> Second, while spending and legislation are clearly important policy outcomes, scandals could change the operation of the child welfare system in other important ways, not captured by these two variables. Heads of agencies may announce new rules and procedures in response to a scandal—changing the operation of the system without involving the legislature. Similarly, the head of the agency may resign (or be fired by the governor) and a new head may introduce reforms. Finally, caseworkers—the street-level bureaucrats of the system—may alter the way they work in ways that fundamentally changes how the system operates. When the scandal involves a child harmed in foster care, the caseworkers may become more reluctant to remove children from potentially abusive parents. When the scandal involves a child harmed at home, the caseworkers may increase the rate at which they remove children from their families in the face of possible abuse, with accompanying growth in the foster care population.<sup>24</sup> In order to explore these hypotheses, future work needs to explore how scandal affects child welfare policy making in a few specific states.

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<sup>23</sup> A related possibility is that policy entrepreneurs don't simply take advantage of scandals, but actually help turn the death of a child into a scandal in the first place by calling attention to problems in the child welfare system. In several states, individual's planning to run for governor (the attorney general in Virginia, for example) were extremely vocal in their criticism of the child welfare system in light of a child's death and called for investigations and reforms.

<sup>24</sup> In some states, these "street-level" responses are intensified after a scandal by the introduction of legislation to make caseworkers personally liable for mistakes that contribute to the death or injury of a child.



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**Table 1: Total Spending per Child on Child Welfare 2002-2004**

<b>Independent Variable</b>	<b>Coefficient (robust standard errors)</b>
Scandal	-.74 (5.68)
Consent Decree	-14.11 (16.18)
<i>Strong County</i>	33.95 <sup>^</sup> (17.99)
Federal Review	-5.69 (23.16)
Democratic Governor	10.67 (26.86)
Democratic Legislature	-10.28 (15.74)
Liberal	1.97 (1.58)
<i>African-American</i>	-238.73* (96.15)
Median Income	.002 (.002)
Child Poverty	463.66 (369.92)
<i>Foster Care Population</i>	11038.79** (3628.90)
South	35.40 (22.07)
<i>Northeast</i>	63.34*** (23.71)
<i>Midwest</i>	53.92 <sup>^</sup> (27.94)
2002	2.94 (16.37)
<i>Total Spending T-2</i>	.55** (.19)
Constant	-178.19

Note: n=96, r-squared=.71, \*\*\*=p<.001, \*\*=p<.01, \*=p<.05, ^=p<.10

**Table 2: Passage of Child Welfare Legislation 2002-2004**

<b>Independent Variable</b>	<b>Coefficient (robust standard errors)</b>
<i>Scandal</i>	.09* (.05)
Consent Decree	.22 (.16)
<i>Strong County</i>	-.43* (.19)
Federal Review	-.05 (.18)
Democratic Governor	.16 (.15)
Democratic Legislature	.02 (.09)
<i>Liberal</i>	-.03* (.01)
African-American	-.96 (1.10)
<i>Median Income</i>	.00005** (.00002)
Child Poverty	.54 (2.66)
Foster Care Population	4.33 (24.26)
South	-.05 (.24)
<i>Northeast</i>	-.97*** (.23)
<i>Midwest</i>	-.47^ (.25)
Professionalism	.13 (.09)
2002	-.16 (.25)
2003	-.10 (.18)
Constant	-1.18

Note: N=144, Wald chi2(16)=32.59\*\*, \*\*\*=p<.001, \*\*=p<.01, \*=p<.05, ^=p<.10