

**Presentation to the Families, Children and Seniors Committee Re: HB 4589 on June 12, 2013  
by Dave and Kathy Ulmer**

**I. Opening statement by Kathy Ulmer:**

I would like to begin by thanking you for allowing Dave and I to meet with you today to discuss an issue that has touched our hearts deeply and changed our lives forever. Our hope and prayer is that no other child or family ever goes through what our family went through, while trying to advocate for and adopt state ward children, such as Khristopher and Ariel Guthrie.

**II. DHS Mission Statement:**

First though, we think it is important that we begin with a basic foundational mission statement that is embedded throughout Child Welfare, which is taken from the Settlement Agreement of the federal class action settlement that was signed in the early summer of 2008, which ironically, was one year earlier than when our adoption efforts began for Khristopher and Ariel. It clearly states that the **"INTERPRETATION OF THE PROVISION OF THE AGREEMENT WILL BE GUIDED BY THE FOLLOWING PRINCIPLES:**

- A. Safety: the *first priority* of the Department of Human Services ("DHS") child welfare system is to keep children safe. 20 (emphasis added)"**

**III. History of Ulmer family's situation:**

Before we met Khristopher Guthrie and his foster parents who were only licensed for "respite" or short-term care (Ivan and Alicia Provalov), we had never known anyone who was involved with the foster care system and we very naïve to how it worked. The Provalov's were very experienced with the foster care system, as Alicia had grown up in a family who provided foster care for many years and they had many friends who fostered and adopted children via foster care. The Provalov's solicited us to initially provide Substitute Care for Khristopher and then later encouraged us to become licensed so we could adopt him. They repeatedly told us they did not want to adopt a boy, as they were only interested in adopting one child, who was an infant girl. Ironically, their initial home assessment also stated that they did not want to adopt a black child, as they "feel that they may have trouble acclimating a child of a different race into their family if he child is to be placed with them for an extended amount of time, as adoption is a future goal." We fell in love with that sweet, little boy very quickly (who was also African American) and did not want him to be tossed back into the "system" and be placed with the horrible types of foster families the Provalov's told us he would go if we did not agree to foster and adopt him. Unfortunately, the Provalov's deceptively gave us a lot of inaccurate information, along with Judson Center staff, which caused us to make ill-informed decisions, which ended up costing us dearly... the adoption of Khristopher and his infant sister, Ariel, into our loving family.

When we began to realize the truth and depth of the Provalov's deceptive actions, we were legally advised to review the various booklets that were given to us by Judson Center at the foster care and adoption licensing classes we had attended, as we were very concerned about the welfare of the children at the Provalov's foster home. We were told that we needed to report accurate information regarding our concerns to Judson Center, in order for them to understand and take appropriate action to best protect the children. We notified Judson Center of our concerns regarding the type of care given to the children by the Provalov's, via email, on June 5, 2009. Our stated concerns were substantiated after a six-month Special Investigation by Judson Center's Licensing department, which included a sixty-eight page Special Evaluation Report, dated 12.2.09 and Addendum, dated 12.09.09 (see attachment #1). Judson Center's Licensing Department recommended revocation of the Provalov's foster home license "Due to willful and substantial noncompliance." The serious, high-risk level of charges included "failure to provide proper

care and safety of the (Guthrie) children”, failure “to have a temperament, habits, and reputation that will not impair the care of a foster child,” as well as other violations. (For a complete list, see attachment)

According to the Special Evaluation Report on page 64, when informed of the recommendation by Judson Center’s Licensing Department to revoke their foster license on 12/1/2009, Alicia Provalov asked the Judson worker, Derekia Williams, “If the license was going to be revoked, then why weren’t the children removed? This worker informed her that on 7/31/2009, Bill Johnson stated the children were not in danger and did not need to be removed from the home at that time.” (See attachment #2)

No one can figure out why Bill Johnson’s statement was still valid five months later, especially since the Special Evaluation Report clearly showed that it was an unsuitable/unsafe home AND it was a direct violation of DHS Policy to leave the foster children in an unsuitable foster home, such as the Provalovs. The immediate removal of the children after such an evaluation was evident in the following DHS documentation via CPA Letter #2001-02, dated April 2, 2001 from then BCAL/CWL Director, Carole Engle, as stated in point 4.c. (R400.12314(5)) **“The CPA is no longer required to meet with the licensee after the special evaluation report is forwarded to them. BCAL (formerly CWL) will schedule a compliance conference.”** Clearly, the Agency workers no longer need to meet with the foster family since the foster children are obviously removed from the unsuitable home (see attachment #3)

#### **IV: Options for permanency for Ariel and Khristopher:**

The MCI Superintendent, Bill Johnson, Judson Center, and DHS were left with two options for Khristopher and Ariel:

1. Place them with their current foster family that DHS deemed unsuitable due to numerous safety compliance issues and boldly violate DHS Policy in the process, OR
2. Place them with another Judson, licensed foster family that had a relationship with the children as their substitute care providers, who were also deemed “suitable and appropriate” for adoption of Ariel and Khristopher, as stated by Bill Johnson in his Denial of Consent letter on 11.29.2010 (see attachment #4, page 3).

Unfortunately, they choose to place the toddler children with a family who was “unfit to foster children, yet fit for adoption!” The Provalov’s “foster home” status was changed to a “pre-adoptive home”, where a foster license is not required and they continued to receive payments from the State of Michigan for the unsuitable care they were providing the children. How is that decision in the best interests of the children?

#### **V. Further violation of Federal and State statutes by MCI Superintendent, DHS, and Agency:**

DHS-Pub-538 also states that **in order to be eligible for Adoption Support Subsidy, “A reasonable effort has been made to place the child without adoption assistance”**, as per Part III. The Title IV-E Adoption Assistance Program, page 74 (see attachment #5).

In May 2009, we applied to adopt Ariel and Khristopher Guthrie, where we stated verbally and in writing that we were willing to adopt the children without subsidy. According to page five of the children’s *Adoptive Children’s Assessment DHS-1927, dated 7/30/2009, “Neither Ariel nor Khristopher qualify for a Determination of Care (DOC) rate at this time as their needs are not considered “above and beyond” age-appropriate.*” (see attachment #6) Judson staff reported at our Sect 45 Hearing that the Provalov’s did not sign the adoption papers until fifteen months later, when Adoption Subsidy was secured at a DOC Level of 2 for both Khristopher and Ariel!

The aforementioned information begs the answer to the following questions:

- a. Why was it acceptable for the State and Federal mandates regarding Adoption Subsidy to be violated in the case of Ariel and Khristopher Guthrie by DHS, Judson Center and the Provalov's?
- b. \$279,000... It is a lot of money... it also happens to be the amount of money the Provalov's will receive from the State and Federal government (tax free) as Adoption Subsidy for Ariel and Khristopher until they turn 18. Was money their motive for not signing the adoption papers immediately after termination, since the children did not qualify for adoption subsidy at that time?
- c. What happened in the fifteen-month time period to Ariel and Khristopher's health, while solely in the care of the Provalov's and care was no longer given by our family (we provided formula, food, clothing, took Khristopher to all of his doctor appointments, etc.) that the children's Document of Care (DOC) level rose from a non-DOC to a Level 2?
- d. Why did the dramatic decline in both children's health NOT raise a "red flag" to any workers within DHS and/or Judson Center? Especially when one considers the basic fact that the Provalov's foster license was revoked due to "failure to assure proper care and safety of the children"!
- e. Why was it acceptable to the Courts and DHS for Judson staff to not update the MCI with the latest Child Health Assessment, which was given to the Courts in October 2010, until one week AFTER the MCI's decision regarding Consent for Adoption, which was dated 11/29/2010? It was a violation of DHS Policy, as it was the responsibility of the Agency to provide the MCI with an assessment that was less than one year old, prior to his decision. Bill Johnson based his decision off the assessment that was dated 7/30/09, which was a violation of his duties and responsibilities as the MCI Superintendent (see attachment #6).

## VI. Why???

Honestly, if we could truly understand why this all happened, we would have a lot stress in our lives.

We were scouted out by the Provalovs to get licensed and take Khristopher, as they didn't want him. We fell in love with Khristopher. We decided that we couldn't imagine our lives without him. He called us "mommy" and "daddy" at the direction of the foster family that repeatedly told us they "had prayed about it and did not want to adopt him." We believed their lies and manipulations because we were blinded by our love for a little boy who opened our hearts towards adoption, as we had not considered it before. He chose us as his family. He felt secure, treasured and loved in our home and his thriving health proved it. We were wrongly told that we could not foster and/or adopt later born his infant sister, as the Provalov's would only be able to foster and adopt her. We believed their lies. When both children's rights were terminated, much to (only) our surprise, we notified Judson Center in writing of our intent to adopt both children within ten days. It was reported in Court that the Provalovs waited almost two months, even though they were "matched" as the adoptive family immediately following termination and the children were living in their foster home.

Whose actions all along have clearly showed that they wanted to adopt both children, without subsidy? Ours. What family fought for three years in Court to adopt those children, at their own expense, because they felt lead to adopt them and were concerned about the unsafe home where they were placed for adoption? We did, out of love and commitment to what was best for the Khristoher and Ariel.

**Our family was denied the right to adopt Khristopher and Ariel, despite the fact that it was in direct violation of DHS, State and Federal Policy and certainly not in the best interests of the**

**children. We were punished by Judson Center for reporting that one of their licensed foster families was seriously out of compliance with DHS Policy – to the point that revocation of their foster license was recommended... which means that as a Child-Placement Agency, Judson Center was also out of compliance with DHS for not watching over their foster family properly. How DARE we blow the whistle on the their foster family and then expect “favor” from Judson, regarding adoption of two toddler state ward children they were hired by the DHS to place into a suitable and safe adoptive home!**

**We didn’t realize it at the time, but the Agency is paid \$10,000/child if the children are adopted within three months of termination of parental rights. The amount goes down every three months, which means that we cost Judson Center \$20,000 in adoption fees from the State and Federal government. Ironically, we paid a lot more than that amount in legal fees trying to advocate for and adopt Ariel and Khristopher and do what is in their best interests and we still lost the fight. Unfortunately, Ariel and Khristopher are the biggest losers, as they were placed and adopted by a family that DHS deemed as “unsuitable to provide proper care and safety of children.”**

**It is for the aforementioned reasons that we are here today, to encourage you – the lawmakers of the State of Michigan – to stand up and fight for children, such as Ariel and Khristopher, and for families such as ours.**

## **VII. HB No. 4589**

**In our specific situation, which unfortunately is not unique, the Child-Placing Agency (CPA) and DHS colluded together to violate DHS Policies, which are based on State and Federal Child Welfare Laws, to do what is in their best interests – NOT THE BEST INTERESTS OF THE CHILDREN!**

1. HB No. 4589 is the reason we are here today, as it relates to preventing any more MCI or State Ward Children in the State of Michigan from being adopted by persons who are deemed unsuitable (see attachment # 18).
2. Sec. 41 (1) clarifies that orders of the court regarding adoption shall be withheld until a specific time period has elapsed, allowing the birth parents the time to appeal the termination, if so desired.
3. Sec. 41 (2) states that during the aforementioned time period, the child may be placed in a pre-adoptive home and no adoption order may be filed until the birth parent’s rights for a rehearing in the Court of Appeals has expired, as well as the Leave for Appeal to the State Supreme Court. At this point, we would like to humbly suggest that the following words be added to line 12 under subsection (2):  
A child or the court approves placement of a child TO A HOME THAT  
IS IN THE BEST INTERESTS OF THE CHILD AND ADHERES TO ALL DHS POLICIES  
REGARDING ADOPTION...
4. Sec. 41 (3) is awesome! As it clearly mandates that any licensed foster home or foster parent is unable to adopt a child if their home is deemed “unsuitable”.

Since 95% of the children who are adopted from foster care in Michigan are adopted by either relatives or their foster parent, we would humbly like to request that you consider adding “or a relative placement” along with the other persons listed, but only if you think it will not slow up this bill! If so, an amendment in the future should be considered by the Legislature, as why

shouldn't all children who are in unsuitable homes receive the same protection when it comes to adoption?

An example of this would read: Sec.41, (3) line 2:

Child who resides in a licensed foster home OR A RELATIVE PLACEMENT (licensed or unlicensed)...

Line 3 would read:

Adopted by the foster parent or parents OR RELATIVES, except if the licensed...

Line 5 should also read:

Unsuitable to continue as a foster home or foster parent or parents OR RELATIVE PLACEMENT...

Note: RELATIVE PLACEMENT OR RELATIVES would also need to be added to Sec 42 (1), lines 12,23 and (2), lines 25, 27, and 4, following the descriptions of the adoptive parents.

5. Sec. 42 discusses the course of action that must take place regarding the adoption process, special Investigations, and if a family is found unsuitable, then the agency shall not recommend them for adoption.

If this section had been in effect when we were advocating for Ariel and Khristopher, the unsuitable foster/pre-adoptive family would still have been allowed to adopt the children! The Agency, DHS, and the GAL never informed the lower level court of the Notice of Intent to Revoke the Provalov's license and Judge Leslie Kim Smith ruled we were not allowed argue it at the Section 45 Hearing, as the MCI Superintendent, Bill Johnson, "had considered it in his decision to deny us consent to adopt," which is a violation of In re Rood, as he did not adhere to ADM 520, which mandated that the Provalov's were not allowed to be recommended for adoption.

Note: ADM 520, which clearly states the following regarding Prior Complaint or Investigation:  
... A LICENSE CORRECTIVE ACTION PLAN MUST BE SATISFACTORILY COMPLETED BEFORE RECOMMENDING THE APPLICANTS FOR ADOPTION.

To make matters worse, various levels of DHS employees continued to collude, violate and circumvent various DHS policies, which included ADM 520, in order to time the delay of the revocation of the Provalov's foster home license with the approval by the courts for their petition to adopt!

To our shock and dismay, via FOIA request, we discovered that Bill Johnson colluded with the presently retired, Wayne County DHS superior, Miriam Wilson (aka Mindy) to completely violate DHS Policy. Mindy wrote to Bill in an email, dated 12.30.2009, "*So... you're right, this is our call, but we'll be willing to time a license closure to coincide with any decision you make reasonably soon - i.e. in the next 4-5 months- on the Guthrie kids.*" (see attachment #9).

It was NOT "their call", as DHS Policy was clear via ADM 520 that the Provalovs could not be recommended for adoption of the Guthrie children, yet they chose to ignore the DHS Policy, which is based upon State law!

We also discovered that Ms. Sandra Ohl, Judson Center Adoption Supervisor and the Contract Licensing Worker for the Provalov's Initial Home Study, colluded with Jason Scheeneman, BCAL worker who was in charge of the Compliance Conference re: Revocation of the Provalov's foster care license, to also delay the process for their benefit of adoption. See #( ? ) emails dated from July 21, 2010 to September 28, 2010 (see attachment # 10).

6. In order to prevent further collusion amongst various parties or entities, and most importantly, keeping the best interests of the children as the goal, we would like to humbly suggest that the following be added to Sec .42 (1), line 23:

Proceed. IF IT HAS BEEN DETERMINED BY DHS OR THE AGENCY OR ANY OTHER GOVERNMENTAL AGENCY THAT THE PRE-ADOPTIVE FAMILY IS UNSUITABLE AND/OR THEIR FOSTER LICENSE HAS BEEN RECOMMENDED FOR REVOCATION OR HAS BEEN REVOKED, IT IS THEIR MANDATED RESPONSIBILITY TO INFORM THE COURT OF THE UNSUITABILITY OF THE PERSON(S); FURTHERMORE, THE COURT MAY NOT DETERMINE THAT IT IS IN THE CHILD'S BEST INTERESTS TO BE ADOPTED BY SAID FAMILY.

This would also prevent a person or family, who was found to be unsuitable by another State or Country, from adopting one of our precious children from within the Michigan Child Welfare System.

We would also like to point out that at times, there is collusion between DHS, the Agency and the Courts. An example of this was our experience with Judge Leslie Kim Smith. We submitted to the Appellate Court that Judge L.K. Smith should have recused herself as the trial judge for our Sect 45 Hearing, as she signed the Provalov's Placement to Adopt Order in December 2010. During the Placement to Adopt hearing, she was informed of the Provalov's licensing issues and was also Informed by DHS and the Agency/Judson Center as to why they felt it was in the children's best interests to ignore the NOI to Revoke their foster license due to safety violations.

Judge Smith also allowed Alicia Provalov to submit a motion to the Court just prior to our Sect 45 Hearing, where our family was slandered to the Court with a bunch of lies! Alicia also requested a Personal Protection Order against our family "to protect the children". According to writing on the document, the motion was "verbally denied by Judge L.K. Smith on 5/2/11 with instructions for the family to seek assistance from the AG's office." (see attachment # 11).

We were not notified of the ex-parte communication between Judge L.K. Smith and Alicia Provalov prior to our Sect 45 hearing, as required by law; nor were we notified that she was the judge who signed to Petition to Adopt Order for the Provalov's, as we would have requested that she remove herself from our case. The information was discovered when we requested the Motion for Appeal of Judge Smith's Sect 45 ruling against our family and in favor of the MCI Superintendent, Bill Johnson's, decision to place the children with the DHS deemed, unsuitable Provalov family.

Unfortunately for us, the Appellate Court did not have even a basic grasp of our very complicated and convoluted adoption case, as they incorrectly thought that Ariel and Khristopher had already been adopted. Even if that was the case, why are so many people unwilling to disrupt a placement that DHS deemed as unsuitable for state ward children?

7. Sec. 42 (2) concludes that if the Department, Agency, or the Court determines the unsuitability of any pre-adoptive persons, they may not be considered eligible to adopt, even if the Department, Agency or Court has not recommended removal of the children from the unsuitable home, which is a violation of DHS Policy.

We would humbly like to suggest the following addition to Sec. 42 (2), line 3:

IF ANY CHILD, WHO IS UNDER THE CARE OF THE DEPARTMENT, AGENCY OR THE COURT AND IS FOUND TO BE IN AN UNSUITABLE HOME BY ANY OF THE AFOREMENTIONED, THE CHILD IS TO

BE IMMEDIATELY REMOVED FROM THE UNSUITABLE HOME, EVEN IF ONE OR MORE ENTITIES DO NOT SUPPORT THE REMOVAL.

An example of this situation was noted above in point VII. (5).

Overall, we are thrilled to see a bill be drafted for serious consideration as law that will better help the State of Michigan's most vulnerable children and families. There are some loopholes that need to be closed, in order to make this law in the best interests of the children. As such, we have some further points that we would appreciate if you would also consider within this subcommittee.

## VIII. Additional Comments by Dave Ulmer

### IV. Points for the legislature to ponder re: further ways to improve the child welfare system and prevent other families from going through the nightmare we experienced –

**Note: we have received input for some of the following suggestions from Child Welfare Attorneys, Karen Gullberg Cook and Sherrie Ross. Karen Cook also serves on the Legislative Committee for the Children's Law Section Council of the State Bar and has also written an article, which we have attached for your review, entitled "The Weakest Link: how CPA's and BCAL Fail to Ensure the Physical Safety of Foster Children" (see attachment #12). Their contact information is attached for your convenience (see attachment # 13).**

- a. We would like the legislature to consider the case of *In re Rood*, which clearly states that "Statutory requirements, Court rules and Agency policies" must be followed. Furthermore, the majority held that a respondent may "claim procedural error in an action brought by the state to terminate this right if the state fails to comply with the required procedures and its failure may be said to have affected the outcome of the case." The respondent in this case was advocating for his parental rights to not be terminated and DHS violated policy by terminating his rights without following proper DHS policy. The court ruled in his favor. DHS Director Maura Corrigan would certainly agree to the *In re Rood* ruling, as she was on the State Supreme Court bench when it was written.

In our case, the state failed to comply with DHS policies regarding our efforts to advocate for and adopt Ariel and Khristopher Guthrie. Their rights for a "safe" placement were violated as well.

We would like to see a system put into place where the workers are held accountable when they violate DHS Policies and Procedures. If the Department, Agency or Court does not follow DHS Policy, then the adoption should not be approved. If anyone overrides DHS policy, then he/she should be sanctioned and any decision he/she made that did not follow policy is automatically considered arbitrary and capricious.

- b. Attorney Cook suggests "parallel legislation be introduced to move BCAL to another agency (away from the umbrella of DHS), such as the Department of Licensing and Regulatory Affairs (LARA)," in order to have a better separation of departments and less chance for collusion amongst departments within DHS. The merger of the departments occurred under Governor Granholm and has since created a host of issues.

An example of this was the handling of the Provalov's NOI to Revoke Foster license.

The Bureau of Children and Adult Licensing (BCAL), issued a Notice of Intent to Revoke the Provalov's license on February 22, 2010. BCAL, DHS, Judson Center and the Provalov's delayed the mandated policy found within the Technical Assistance Manual (page 130, see attachment), in order to time the revocation of their license after the Provalov's received a Petition to Adopt Order by the Court. BCAL's failure to adhere to DHS Policy also allowed the Provalov's to reach a "settlement" with BCAL, which included an "exception" to their license closure. (see attachment #15 and #16) Also see point VII. (5) for further example.

It certainly shocks one's conscience to see the favoritism an "unsuitable" family was given throughout this whole process, while we were slandered and mocked by the child welfare system for advocating for two innocent, vulnerable children.

- c. We would also like to suggest that legislation be put forth to remove the Child-Placing Agency as the "Special Investigators" when a report is filed regarding potential violations within their agency.

There is no incentive for the Agency to find the foster and/or pre-adoptive family out of compliance, as the Agency itself can be found out of compliance with their contract with DHS as a result of the findings. Therefore, the Agencies tend to cover up the violation, especially if it is within a pre-adoptive home where they are slated to receive a substantial kickback from the government due to the larger fee associated with a more timely adoption.

An example of collusion in our case between the Special Investigator and the foster family: CPA/Judson Special Investigator, Derekia Williams sends an email to Alicia Provalov, dated 11/30/2009, where she colludes with the foster family to cover up their non-compliance related to DHS's Gun Safety Policy, SIX MONTHS AFTER the gun safety violation was initially reported to Judson Center! Derekia writes, "It is imperative that I see the ammunition in a locked area so that you will be in compliance with the licensing rule. *Kara informed me that the gun was in a locked box, however, the ammunition was not and if I go on what Kara said, then you would have a non-compliance, which is why I need to come to the home and view the ammunition.*" (see attachment #17)

However, on page 2 of the Special Evaluation Report Addendum, Derekia Williams writes, "*Mr. and Mrs. Provalov were found in compliance (with the Gun safety rule). On 6/9/2009, the gun was locked and bullets were in a separate locked location, as viewed by previous licensing worker, Kara Fridrich.*" (see attachment #1).

Fox watching the henhouse... who suffers? The vulnerable children!

- d. We would also like to request that a formal investigation be made due to the numerous, deliberate, and egregious violations of DHS Policies, which include State and Federal laws, and quite possibly fraud regarding Adoption Subsidy. At the time of these violations by the Department, Agency and Courts, the State of Michigan was obviously under a federally sanctioned Settlement Agreement due to violations committed to other at-risk children and families. What is it going to take for the various entities to take their roles seriously and do what is in the best interests of the vulnerable children?
- e. On a final note, we would like to humbly request that HB 4589, when enacted into law, be made retro-active. It would certainly be in the best interests of the State's most vulnerable and at-risk children, who may have been placed into adoptive homes where DHS, the Agency,

and/or the Courts made decisions that were NOT based on DHS Policy, which is in direct violation of In re Rood.

If HB 4589 was made retro-active, we would be able to request that the adoption of Ariel and Khristopher be disrupted, as In re Rood and DHS policy demanded at their time of their adoption that DHS Adoption and Foster Care Policies and procedures be followed, which did not happen in their case.

The Guthrie children were removed from their birth mother because of neglect and abuse. Why is it acceptable that we allow them to be placed with a foster/adoptive family who DHS also deemed was unsuitable? Why should they have to suffer and become unhealthy in their foster/adoptive home because various DHS and/or Agency workers , whose main job was to protect their best interests, instead chose to violate the DHS policies that were set up to protect them?

Who wins when the children lose? Is this the best we can do for our most vulnerable children and families who are in our child welfare system? They are our future... we think they deserve better! Please help us ensure a better future for our precious children by protecting them with better laws and by punishing those who do not abide by the laws and polices written to protect them.

Thank for your time today. We appreciate you allowing us the time in your busy schedules to hear our plea for better protection for children and families within the child welfare system in Michigan.