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**HOOSIER CHILDREN IN FOSTER CARE SYSTEM FILE CIVIL RIGHTS ACTION FOR VIOLATION OF THEIR CONSTITUTIONAL AND FEDERAL STATUTORY RIGHTS**

(*Evansville, Indiana, June 25*) – In Indiana, two young girls removed from their mother’s home due to her substance abuse cycle through 16 and 17 different foster homes over 2.5 years; a 12-year old boy in foster care for 10 years self-harms and is put into a facility’s locked unit; a 10-year old girl who calls 911 to report her father sexually abusing her is moved through 17 different foster care placements and ends up spending three years in a state psychiatric hospital. These Hoosier children are the responsibility of Indiana’s Department of Child Services (DCS) and today they and five other foster children filed a civil rights class action alleging that DCS is failing in its duty to protect the 22,000 children with open child welfare cases, including the 14,300 of these children who are in out-of-home care.

The compelling stories of these nine plaintiff children, ages three to 16 years, illustrate exactly where and how DCS is failing them. The lawsuit, *Ashley W. v. Holcomb*, seeks to stop the ongoing violations of children’s constitutional rights and rights under federal law, transform the state’s child welfare system, and ensure DCS fulfills its legal responsibility for vulnerable foster children in Indiana’s child welfare system.

The lawsuit names Eric Holcomb, the Governor, Terry Stigdon, the Director of the Department of Child Services, and the Indiana Department of Child Services as defendants and charges that State officials have long been on notice of these issues with numerous audits and reports documenting the system’s disarray over the last five years. In December 2017, then Director of DCS, Mary Beth Bonaventura, submitted her letter of resignation to Governor Holcomb, warning that Indiana officials were systematically placing Hoosier children at risk “in ways that all but ensure children will die.”

Although Gov. Holcomb has recently announced some legislative changes to address recommendations of an expert group’s report last year, those changes are minimal and do not address the fundamental problems in Indiana’s child welfare system, lawyers for the plaintiffs said.

The class action lawsuit addresses systemic problems such as:

- **Indiana is failing to provide children in its care with stable, nurturing, family-like homes**—a lack of foster homes mean children are placed based on what home is available rather than what home is suitable.
- **Frequent moves among homes and institutions increase trauma** for children already removed from their family homes and often separated from their siblings, their school, and their community.
- **DCS is unable to meet the needs of the thousands of foster children with disabilities** whose involvement in the child welfare system places them at a greater risk of institutionalization.
- **The child welfare system relies heavily on institutionalization, even for children with relatively minor behavioral problems.**

- **The system is not set up to provide children the necessary services and treatment they need**—foster children’s medical, mental health, and physical needs remain unmet due to irregular, infrequent assessments and a lack of sufficient and available resources.
- **Overworked caseworkers struggle to make important but difficult decisions** about the right services to provide—they face having too many children to serve, too few resources, and too little training.

*Ashley W. v. Holcomb* has been filed on behalf of nine named plaintiffs who have suffered serious physical and psychological harm while in the care of DCS. The lawsuit was filed by three organizations: A Better Childhood, a national advocacy group for children; Indiana Disability Rights, an organization that protects and promotes the rights of individuals with disabilities through empowerment and advocacy; and Kirkland & Ellis, a global law firm.

“We have been deeply troubled the more we have studied the Indiana child welfare system,” said **Marcia Robinson Lowry**, executive director of A Better Childhood. “There have been years of expert reports, years of promised reforms, and minimal and intermittent movement forward, but the fundamental problems in this system do not change. Children are being very badly harmed by the lack of appropriate placements, by the erratic practices, and by the lack of a fundamental focus on the well-being of children. The way that Indiana is treating these vulnerable children is both unconstitutional and inhumane.”

“Children come in to the care of DCS having already experienced trauma. The failure of DCS to protect these kids from further harm is unconscionable, especially when much of that harm is due to DCS’s own failings.” said **Melissa Keyes**, Legal Director of Indiana Disability Rights. “That children with disabilities are being kept in overly restrictive institutional settings, that they are not being provided with adequate community-based services has certainly contributed to the developmental trauma these kids are experiencing.”

“The Indiana DCS’ failure to protect these vulnerable children is completely unacceptable,” said **Aaron Marks**, partner at Kirkland & Ellis. “This violation of constitutional rights is causing lasting harm to both the children and their communities. We are hopeful that our efforts will transform this broken system, and ensure the protection and welfare of Hoosier children.”

Responding to requests from local advocates to investigate Indiana’s child welfare system, the organizations, over the past year, conducted extensive research and interviews with numerous people involved in every aspect of the state’s foster care system. They consistently identified failings pointing to the need for a lawsuit to force reform of DCS and protect children in its care.

The nine children who appear as named representative plaintiffs in the lawsuit include, as examples:

#### General Class

**Ashley W. and Betty W.** are four- and three-year-old sisters who have cycled through 16-17 foster care homes over a 2½ year period, including two episodes in emergency shelter care. After two years in care, DCS finally changed the girls’ permanency goal to adoption but then failed to meet statutory deadlines for terminating parental rights so a judge dismissed the DCS petition and the girls are now split up and residing in separate non-kinship foster homes.

**Milo S. and Thomas M.** are three- and five-year-old brothers who have lived in foster care most of their lives. At age one Thomas was removed from his mother’s care due to domestic violence and her use of methamphetamine. DCS later placed him back home for a trial visit but failed to monitor the family and his mother started using meth again, DCS removed Thomas and discovered then three-month-old Milo with severe scabies all over his body. Six Family Care Managers (FCMs) and four DCS attorneys have been assigned to the boys’ case, with two FCMs terminated due to inappropriate

behavior. Parental rights were terminated, but the Court of Appeals reversed the order due to DCS's severe mishandling of the case.

ADA Subclass

**Logan S.** is a 12-year-old boy who entered Indiana's foster care system over a decade ago when he was two years old, and has cycled through at least 15 placements, including failed pre-adoptive placements, emergency shelters, and residential facilities. It took DCS five years to free Logan for adoption, and he now lives in a locked facility in northern Indiana. He longs for a family who will love him.

**Sara O.** is 14 years old and first entered foster care in Indiana when she was seven years old, due to her father's sexual abuse. After several years in foster care, DCS returned Sara to her father, who again sexually abused her. After calling 911, Sara reentered foster care. DCS has placed Sara in at least 17 different placements, including a state psychiatric hospital, where she lived for three years. Sara currently lives in a private secure facility in northern Indiana.

*Ashley W. v. Holcomb* requests that the court permanently prohibit DCS from subjecting the children in the general class and the ADA subclass to further harm and from threatening their safety and well-being through practices that violate their rights. On behalf of these children, the court is being asked to order appropriate remedial relief to ensure that defendants comply with the law and provide children with legally mandated services.

*A Better Childhood is a national nonprofit advocacy organization that uses the courts to reform dysfunctional child welfare systems around the country.*

*Indiana Disability Rights is the designated Protection and Advocacy System and Client Assistance Program for the State of Indiana. The mission of Indiana Disability Rights is to protect and promote the rights of individuals with disabilities through empowerment and advocacy. For more information, visit [www.IndianaDisabilityRights.org](http://www.IndianaDisabilityRights.org).*

*Kirkland & Ellis is an international law firm with 2,500 attorneys representing clients in litigation and dispute resolution/arbitration, private equity, M&A and other complex corporate transactions, restructuring, and intellectual property matters. The Firm has no headquarters location, and operates from 15 offices around the world: Beijing, Boston, Chicago, Dallas, Hong Kong, Houston, London, Los Angeles, Munich, New York, Palo Alto, Paris, San Francisco, Shanghai and Washington, D.C.*

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The full complaint filed in *Ashley W. v. Holcomb* is available upon request from media contacts above.