

Minnesota Legislature Should Negotiate Tougher with Department of Human Services

The Minnesota [Legislative Child Protection Task Force](#) was convened to make sure recommendations from the Governor's 2015 Task Force got implemented. However the Department of Human Services (DHS) has frequently ignored their requests for follow-through. Examples include assigning fewer cases to Family Assessment, and ensuring that counties are serving children over 12 and cross-reporting with local law enforcement.

After several sessions featuring frustration about the Department's lack of responsiveness, the Task Force stopped meeting.

Legislators have budget leverage. To get DHS cooperation they can for example threaten to cut some high level staff positions, or the Commissioner's favorite pilot project.*

It seems peculiar to suggest that Minnesota's legislature get tougher with DHS when many state legislatures are abusing their power. But checks and balances are essential to good governance. The legislature should establish a more appropriate power relationship with the Department.

** Other options include the famous Washington Monument ploy. The podcast or its transcript has more about that.*

An important thing to know about the relationship between the Minnesota legislature and the State Department services is that, in my experience, it is not typical.

I have not worked in every state but have been in half a dozen as a manager or consultant, and also worked with a city council and county board of commissioners. I have not seen an administrative department like Minnesota's DHS simply ignore requests from the elected body they relate to. It's pretty audacious. I give them credit for having a lot of moxie.

I worked in Maryland for example and the legislature there had staff known as the legislative auditor which is a very different model from the one Minnesota. Here the Office of the Legislative Auditor is also staff to the legislature but they are mostly engaged in studies and writing reports. In Maryland the legislative auditor staff are hands-on following up on commitments that the state department head, known there as the Secretary, agreed to usually during some high pressure hearing. To give you a flavor, I used to joke that if you didn't have a report or project done on time a staff person from the legislative auditor would follow you home in your car and pull up behind you in your driveway. So you couldn't leave your house until you produced the required product. By the way this was actually a technique used by the FBI to harass Gus Hall, which if you are old enough you may remember was the Secretary General of the Communist Party of the United States for many years from 1959 into at least the 1980s.

Here in Minnesota the Legislative Task Force on Child Protection was set up because the legislature was determined that the recommendations from the Governor's Child Protection Task Force in 2015 didn't just sit on the shelf.

But as I sat through hearings of this Task Force I was astounded to see top level managers from DHS for example do a presentation requested during the past hearings that simply didn't

respond to the request. It was off-point, it answered different questions, and not very relevant ones to the task at hand. Classic passive resistance. Legislators were so frustrated that they were literally muttering to themselves but they didn't find a way to use their legislative power to compel the department to follow through.

There are two categories where the Department didn't respond. One is recommendations that they or Minnesota's counties and tribes may have followed through on partially or fully, but never shared information with legislature on the status of these items. Part of this is understandable. There are 84 local child welfare programs in Minnesota including some counties that have combined and two tribes. So getting information on something that seems simple, like caseload sizes, requires a separate project for each issue.

But it seemed like the Department could have at least picked a few of the high-priority ones and gotten information to the legislature. I know when I was in those types of jobs I would've stayed up late or worked weekends to do just that, partly out of simple professional pride but also because most elected bodies are not very tolerant of staff who don't produce. For example there were two hearings just on the issue of whether the Department, working with the counties, had established 24/7 coverage for child protection reports statewide. Obviously this is important because if you have a child protection report on a Friday afternoon and no one is in the office until Monday morning, bad things can happen during that time. It seems like progress was being made towards 24/7 coverage but it was never possible to get a complete picture or a full answer from the Department.

The same is true of other priority recommendations from the Governor's Task Force. A particular concern was that counties establish Multi-Disciplinary teams to determine whether a case should be screened in, and then whether it should be assigned to the traditional response or to Family Assessment. Another issue was to change the Department's Social Services Information System, or SSIS, so that workers receiving maltreatment reports could check on whether that alleged abuser had been previously reported in another county. In addition the department was supposed to establish connections with other state systems including in judiciary. To this day we don't know whether those projects happened.

Another important recommendation was to start serving children 12 years or older. This stems from great frustration among agencies serving youth in the state that counties had developed a de facto cut off 12 years old for a case to be responded to by child protection. I was in a hearing once that was held by the Legislative Auditor in about 2013 when they were doing a report, which was initiated by Safe Passage by the way, on child protection screening practices throughout the state. There were, and I counted them, 50 really frustrated sometimes angry caseworkers and managers from youth serving agencies state that complained bitterly about a lack of child protection response for youth. What they reported as being told to them by County agencies is that 12-year-old was able to leave their household and go to a shelter. I don't know about you but when I was 12 I was not ready to do something like that. Interestingly, that hearing never was referenced in the Legislative Auditor's final report. But that's a topic for another day.

Another really important recommendation was that counties and local law enforcement agencies should consistently cross report child protection issues to each other. It's possible there was an improvement in that area as a result of the Governor's Task Force, but it doesn't appear to be consistent across the state. We know from recent child fatalities, particularly Autumn Hallow,

that child protection and local law enforcement were not in regular communication, or that the protocols about what “counts” as child abuse were murky. You can read more about Autumn in our recent log post

Another key recommendation was that if parents were not working their case plan, the County Attorney had to be consulted before a county social services department could close a Family Assessment case. We have heard independently from the County Attorneys Association that is happening in some counties, but we don't know how consistently and don't have that corroborated by any report or survey by DHS.

The second category of non-responsiveness has to do with recommendations that the Department and counties simply refused to implement. We have talked about this often in other blogs and podcasts. But briefly to summarize there were 17 requested reports that still have not been done. These were reports that the department did not object to, they simply haven't produced. One of the most important ones was a report showing how many children were reported one, two, three,... N times. This was of course in response to the Eric Dean case that prompted these attempted reforms, and which is talked about by us elsewhere, where he had been reported 15 times to Pope County child protection without any meaningful response before he was murdered by his stepmother. The Department has never made an effort as far as we know produce that report. I personally have seen a report from Scott County which started with children who were reported 25 or more times. For a small County there were often a dozen or two children who were reported 14 times, or 15 times, or 16 times. Obviously this raises the question of whether child protection screened in any of these reports and what happened to these children. Did they get help ever? Or were they simply churning through the system. Another simple report was to show on a quarterly or monthly basis how many cases by county were tracked to Family Assessment versus the traditional response. Now you can only obtain that information in the annual report which typically comes out 10 or 11 months after the end of the calendar year.

The other areas of non-responsiveness are ones that we have written or talked about many times. They are the Family Assessment practices that we believe put children at risk of harm, and frequently actually do result in children being seriously harmed or killed. These include the classic practices of determining that a case is sufficiently low risk to be assigned to family assessment based simply on the initial phone report, without any protocol to follow-up later to see if that risk assessment was accurate, then giving the adults in the household advance notice of a child protection visit so they can for example clean up the meth lab or coach the child on what to say. Then interviewing children in front of the alleged perpetrators, not doing fact-finding, and not putting a report into SSIS about what was discovered. These are all stunning practices that put children in terms way and would've been unthinkable throughout most of the professional history of child welfare. Yet here we are with these practices common across many states.

So, while it does seem a bit odd to be advocating for the state legislature to exert more power, especially since we see so many bad examples of abuse of legislative power at both the national level and in other states, we do think that the legislature in Minnesota should push back much harder on the deliberate obstinacy or simply lack of performance of DHS.

As mentioned, I have seen city councils, county board of commissioners, and state legislators use their role in the budget process to get leverage over a reluctant or recalcitrant department. I

mentioned cutting a few key staff positions but often the politics are more subtle than that. For example the state Secretary or Commissioner or whatever they call them in a particular state may have fought hard in the budget process to get a new position. So that is a perfect one to go after in any threatened budget cut. Or perhaps the state Commissioner has a deputy or assistant commissioner who is a particularly close confidant. So that's a great position to go after in a budget squeeze. Or as mentioned often departments have favored pilot projects, for example perhaps to ramp up a promising mental health strategy for youth aging out of foster care, or a new solution for homelessness, or something similar. Going after those projects, even if only as a gambit, is actually more effective at getting people to the table to seriously negotiate over performance and priorities than say a 5% across-the-board budget cut.

These kind of laser focused budget threats are the legislative counterpart to the famed Washington Monument ploy. This is one in which, for example, the National Park Service is told to make a certain percent across-the-board cut, so they come back with a proposal to close the Washington Monument, the Statue of Liberty, and Yellowstone. It is such a transparent move as to be laughable, except only slightly more subtle versions of that ploy can actually work.

Parenthetically, that across-the-board budget cut is one of the worst tools that a legislature can use. It punishes well run operations and programs without improving the bad ones. It is really an example of legislative laziness to find out enough about the departments they work with to responsibly oversee them. But more than another time.

It should be said that I don't know whether the relationship between the legislature and the Department of Human Services is typical even in Minnesota. It's possible that the balance of power is more appropriate for example between the legislature and the judiciary or the Department of Health. But I do know that it's out of kilter with the Department of Human Services.

So in sum we really think it's important for the legislative committees that relate to Minnesota DHS put their frustration to good use and get a little mad. We think that if they do so they could find ways to use powers they already have to make things better for children. The risk of course is that they will get carried away, start to micromanage the Department, start to throw their weight around inappropriately, etc. but right now we are pretty far away from worrying that. For our part, we will continually encourage our legislative supporters and friends to start pushing back, and get some of these important pieces of work done.