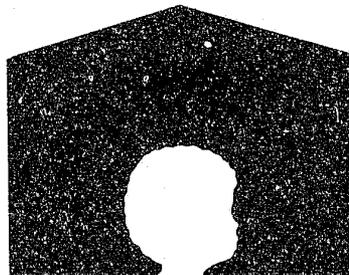




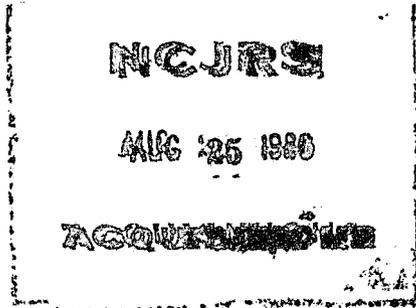
WHO CARES?

A National Study on the Licensing of
Public Child Care Facilities

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INTERSTATE CONSORTIUM
ON RESIDENTIAL CHILD CARE, INC.



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INTRODUCTION

Since its inception in 1977, the Interstate Consortium on Residential Child Care has been a strong and determined advocate of the regulation and licensing of child care agencies and facilities.

The licensing of privately operated child care facilities is a well established practice in this country. The Child Welfare League of America's comprehensive licensing survey* clearly documents that in all 50 states at least three, and more frequently 4 or 5, categories of children's residential facilities were subject to some form of licensing by an office or bureau specializing in this activity and generally located within a department or division responsible for family and children's services.

The same report, however, indicated that in only 15 states were publicly operated facilities subject to approval or regulation by the same office. The report did not explain, however, the extent, method and scope of the regulation of public facilities though extensive information on the regulation of private facilities was provided. Since about half of the children in residential facilities are in publicly operated programs, it seemed essential to determine the scope of regulation of public child care residential facilities.

Questionnaires were sent to the 50 agencies responsible for child care licensing asking them to supply information regarding:

*Comparative Matrices of Licensing Practices in 50 States, Child Welfare League of America New York, 1980.

1. whether or not they "licensed, monitored, inspected, regulated or oversaw public facilities;
2. what other agencies were involved;
3. which categories of facilities they regulated;
4. whether "licensing" requirements are the same for public and private facilities;
5. whether licensing procedures are the same;
6. whether children in public care receive the same protection as children in private facilities;
7. what sanctions are available if a public facility does not conform and what actions have been taken;
8. what numbers of children are in public and private facilities.

Forty-three licensing offices responded to the full questionnaire; 7 states responded to parts of the questionnaire. For certain questions, responses were insufficient or confusing. Based on what we have, however, some conclusions can be drawn. These are:

1. That of the 50 states responding, 29 replied that they did "license, monitor, inspect, regulate or oversee" some public children's facilities;
2. That although the child welfare licensing agency in 29 states regulate some public child welfare facilities, only 10 regulate juvenile correction facilities and only 9 regulate juvenile detention facilities;
3. That there are approximately 61,100 children in

privately run residential facilities and approximately 64,000 children in publicly run residential facilities;

4. That there are many agencies involved in the regulation of residential facilities;
5. That there is considerable confusion over terminology, not only over the meanings of "license, monitor, regulate, etc." but also over the terminology applying to the various types of children's institutions;
6. That where states have regulations governing both public and private facilities, licensing requirements are generally the same and the licensing procedures are essentially similar although sanctions vary greatly;
7. That, generally, there are few procedures for effectively sanctioning public facilities and that the actions available to the relevant enforcement body in the 50 states vary tremendously and are seldom fully enforced;
8. That often a licensing agency within a state is unfamiliar with the roles of other regulatory bodies in monitoring services in various types of children's facilities;
9. That the licensing of public facilities is on the increase.

10. Licensing of public child placing agencies is at least as important as licensing of public child care services. The fact that this study does not address licensure of those services is not a reflection of an attitude that it is less important. Every study has limits and this one simply was designed to focus on child care only and not include child placement.

THE SURVEY PROCEDURES

The questionnaire was sent to the 50 agencies responsible for licensing child welfare services. Some 27 states responded promptly. This was followed up three months later by a second letter and, if there was still no response, telephone calls were made until all states had responded. Seven states gave questionnaire responses over the phone.

In the following pages, we have attempted to tabulate and/or summarize the results. What was immediately obvious was that as a discipline licensing does not have a common vocabulary. There is no mutual comprehension of the terms "license, monitor, inspect, regulate or oversee" and the survey did not attempt to define these. It is not the function of a survey of this nature to define professional terminology. However, in hindsight, this was probably a mistake that led to confusion on the part of some respondents.

It is apparent from our range of responses that the solicited agency is not always fully aware of the degree of involvement by other departments in the regulatory control of children's public facilities in their state. Our study does, however, give some idea of the variety of types of facilities regulated and the numbers of regulatory agencies involved.

Unfortunately, we cannot assume that respondents included all relevant regulatory agencies in their states. While some of the licensing offices have mentioned the Fire Marshall, for example, others have not. We have no way of

knowing whether this has been omitted by oversight or whether the Fire Marshall is, in fact, not involved. Similarly, when dealing with children's facilities that fall operationally outside of the division of the licensing office, we are reliant on the answers given by the person returning the questionnaire. Again, is it true that Corrections do not monitor county or court run detention centers or is it just that the respondent does not know?

We cannot even guarantee the veracity of the answers in respect to the responsibilities of the solicited agency. One state was inadvertently sent two requests for information. One reply suggested that the state DID regulate public facilities, while a reply to the identical questionnaire from another person in the same office categorically stated that the agency did NOT regulate. We have since clarified the matter by telephone. The incident was, however, not reassuring.

Obviously then, there are problems in putting too much weight on the survey's findings. A detailed phone survey of each state including interviews with various offices responsible for operating and regulating public facilities will have to be conducted to get more definitive answers. However, this study, flawed as it is, does give us much useful information.

ANSWERS TO SURVEY QUESTIONS

DOES YOUR AGENCY LICENSE, MONITOR, INSPECT, REGULATE, OR OVERSEE PUBLIC FACILITIES?

Of the 50 states responding, 29 replied that they performed one or more of the above regulatory functions for at least some public facilities. The complete breakdown of responses is included in "Table 1."

It is interesting to compare these responses to the findings of the 1980 C.W.L.A. Survey, in which 15 states reported the "approval or regulation" of public facilities. Overall this would indicate a net increase of at least 14 states.

However, responses indicated that 3 states who had indicated in the 1980 survey that they did approve or regulate private facilities now indicated that they did not. It is difficult to give an interpretation of this without further research, but this is some indication that the regulation of public facilities is increasing overall.

It should be noted in passing that recent discussions with state personnel in Ohio, Mississippi and South Dakota indicate that these states are seriously considering changing their licensing laws to mandate licensing of more types of publicly run facilities.

TABLE 1

YES = 29	NO = 21
Alaska	Alabama
Arkansas	Arizona
California	Delaware
Colorado	Florida
Connecticut	Georgia
Idaho	Hawaii
Illinois	Kansas
Indiana*	Kentucky
Iowa	Maine
Louisiana*	Missouri
Maryland	Montana
Massachusetts*	Nevada
Michigan*	New Hampshire
Minnesota	North Carolina*
Mississippi*	North Dakota
Nebraska	Oklahoma
New Jersey*	Rhode Island*
New Mexico*	South Dakota*
New York*	Vermont
Ohio*	Washington
Oregon	Wyoming
Pennsylvania*	
South Carolina	
Tennessee	
Texas*	
Utah	
Virginia	
West Virginia*	
Wisconsin	

*States who "licensed" public facilities in C.W.L.A. Survey, 1980.

DOES YOUR AGENCY LICENSE, MONITOR, INSPECT, REGULATE AND/OR OVERSEE PRIVATE FACILITIES?

As expected, all 50 states license private facilities although 9 states mentioned that they currently have or are anticipating problems with the licensing of church-run programs. Two states noted that they are legislatively prohibited from licensing residential facilities run by fraternal orders. Two other states noted with a great deal of concern that there are specific private facilities in their states that they are prohibited from licensing for political reasons.

WHAT OTHER AGENCIES, IF ANY, ARE INVOLVED IN THE REGULATION OR OVERSIGHT OF PUBLIC FACILITIES?

It is apparent from our range of responses that the solicited agency was not always fully aware of the degree of involvement of other departments in the regulatory control of children's facilities. The survey does, however, give some idea of the variety of types of facilities regulated and the numbers of regulatory agencies involved - including, among others, the County Building Inspector, the State Fire Marshall, the State Health Inspector, Department of Mental Health, Department of Corrections, Department of Industry and the Department of Agriculture, in addition to Child Welfare agencies.

Unfortunately, we cannot assume that respondents included all regulatory agencies. While some of the

licensing offices have mentioned the Fire Marshall, for example, others have not. We have no way of knowing whether this has been omitted by oversight or whether the Fire Marshall is, in fact, not involved. Similarly, when dealing with children's facilities that fall operationally outside the division of the licensing office, we are reliant on the answers given by the person returning the questionnaire. Again, is it true that the Department of Corrections does not monitor county or court-run detention centers or is it just that the respondent is unaware of it?

Because of the incompleteness of responses to this item, we have decided not to share individual state reports.

It should be noted that four states indicated that their Department of Correction facilities are currently involved with an accreditation process sponsored by the American Correctional Association (ACA). We are aware, however, that more than ten states have had one or more juvenile correction facility accredited by ACA which does offer some minimal assurances of safety.

**PLEASE INDICATE WHICH WORD BEST DESCRIBES YOUR AGENCY'S
RELATIONSHIP WITH EACH CATEGORY OR FACILITY (LICENSE,
MONITOR, INSPECT, REGULATE, OVERSEE, NONE)**

A summary of Table 2 shows that state licensing of public facilities is, in all cases, applied to child welfare facilities. States are much less likely to regulate facilities run by other State agencies. (See Table 2)

Table
2

	Child Welfare Long Term	Child Welfare Residential Shelter	Mental Health Treatment	Mental Rehabilitation	Juvenile Correction Long Term	Juvenile Detention
Alaska	n/a	n/a	L	L	MIR	
Arkansas			L	L	C	
California	n/a	LM IR	LM IR	LM IR		
Connecticut	M	n/a	M		M	
Colorado	n/a	L				
Idaho	M	M				
Illinois	L	L				
Indiana	L	L				
Iowa	S	I A			S	I A M
Louisiana	LC	L	L	LC		L
Maryland	R	P	LI	LI		
Massachusetts*	L	L	L	L	L	L
Michigan	LA	LA	LA	LA	LA	LA
Minnesota	LIR	LIR	LIR	LIR		
Mississippi**	L	L				
Nebraska	L	L		L		
New Jersey	IR	IR				
New Mexico		LIR	LIR	LIR		
New York	LM IR	LM IR				
Ohio	L	L				
Oregon	L	L				M
Pennsylvania	LM IP	LM IR	LM IR	LM IR	LM IR	LM IR
South Carolina			LM			
Tennessee	M	R				
Texas	R	R				
Utah	IO	LMP				
Virginia	L		LC	LC	C	C
West Virginia			RAM	RAM	RAM	RAM
Wisconsin		LM IRO	MRO	MRO	MO	IN
Total - 29	21	23	15	14	10	9

L= License I= Inspect S= Supervise C= Certify
 A= Approve O= Oversee R= Regulate M= Monitor
 n/a= Not applicable

*Where children under 16 years
 **If requested or where DPW purchases services

The number of states which regulate the various types of facilities are as follows:

Child Welfare Long Term	21
Child Welfare Residential	23
Mental Health Treatment	15
Mental Retardation	14
Juvenile Correctional Long-term	10
Juvenile Detention	9

It should be noted that there are about 40,000 children in public run detention and correctional facilities. Only 9 states regulate these types of programs using the same type of mechanism that they use to ensure appropriate care in other facilities that hold children.

ARE YOUR LICENSING REQUIREMENTS THE SAME FOR LICENSING PUBLIC AND PRIVATE FACILITIES?

Most states which licensed public facilities indicated that the rules were basically the same for public and private facilities. States indicated that rules on governing bodies and fiscal accountability were modified to fit the realities of public facilities. Massachusetts asserts that "in fact our statute requires that public agencies meet the same or higher standards as private agencies." A number of states point out that rules for court operated facilities are much lower than for privately operated shelters. One state noted that although all other requirements are the same, state institutions do not have the same staff-to-child ratio requirements and may sleep more than four children per room. States would like to improve this, but budget doesn't allow for additional staff and capital expenditures, and "we need the beds too badly to even begin to think about taking on the major political battle of citing these two public institutions."

ARE YOUR LICENSING PROCEDURES ESSENTIALLY THE SAME FOR REGULATING PUBLIC AND PRIVATE FACILITIES?

While most states indicated that the procedures were essentially the same for licensing public and private facilities, four states indicated that they did not visit public facilities as often as they did private facilities and three states indicated that because of fiscal constraints, they did not cite public programs for physical plant irregu-

larities unless safety issues were involved. Two states also noted that because state-run facilities had no control over intake, they were not cited for overcrowding. Some states note that they do not issue a license to public facilities, but that they "approve" public facilities which is essentially the same function.

IN YOUR OPINION, DO CHILDREN IN PUBLIC FACILITIES RECEIVE THE SAME PROTECTION AS CHILDREN IN PRIVATE FACILITIES?

The range of answers on this question was entirely unexpected. Twenty states said "yes"; twenty states said "no" and ten states did not comment.

Many states which do not license public facilities felt that children in publicly-run facilities were not as well protected since "no one is there to see and report what goes on."

Interestingly, some states which did license public facilities felt that children received less protection in publicly-run facilities citing lack of meaningful licensing sanctions and gross overcrowding.

Hawaii's comments are most encouraging: "Essentially, yes. This is because public agencies, while not subject to licensing mandates, are sensitive to providing for the care and protection of the residents. Therefore, the agencies usually have developed their own internal standards relative to staff, program, physical facilities, health requirements, after care follow-up, working agreements with residents' families, etc."

On the other hand, one head of licensing frankly said, "I cannot comment due to lack of familiarity with public facilities."

WHAT ACTIONS ARE AVAILABLE TO YOU IF A PUBLIC FACILITY DOES NOT MEET YOUR REQUIREMENTS? HAVE YOU EVER TAKEN THE ACTIONS? TO WHAT EFFECT?

The range of answers to this question indicate that some states have successfully sanctioned public facilities for failing to meet licensing standards while other states, although technically charged with overseeing publicly-run facilities, have absolutely no meaningful enforcement power.

We quote at length from Georgia's statute:

(p) Public Agencies; Inspection and Report. - Child welfare agencies and other facilities and institutions wherein children and youth are detailed operated by any department or agency of State, county or municipal government shall not be subject to license under the provisions of this Section, but the Division may, through its authorized agents, make periodic inspections of such agencies, facilities and institutions. Report of such inspections shall be made privately to the proper authorities in charge of such agencies, facilities or institutions. The Division shall cooperate with such authorities in the development of standards that will adequately protect the health and well being of all children and youth detained in such agencies, facilities and institutions or provided care by the same. The Division may recommend changes in programs and policies and if, within a reasonable time, the standards established by the Division and the recommendations of the Division are not met, it shall be the duty of the Director of the Division to make public in the community in which such agency, facility, or institution is located the report of the above mentioned inspection and the changes recommended by the Division. If any serious abuses, derelictions or deficiencies are found and are not corrected within a reasonable time, the Director shall report the same in writing to the Governor.

Sometimes the relationship between state licensing agencies and public facilities is contentious. In fact in Florida, the state has instituted legal actions against two counties who have been operating facilities but refusing to be licensed.

One state answered this question quite candidly. "Although we are charged with regulating publicly-run facilities, we basically don't push too hard. We have no teeth and we know it". (See Table 3)

TABLE 3

<u>STATE</u>	<u>ACTION AVAILABLE</u>	<u>HAS ACTION EVER BEEN TAKEN?</u>	<u>EFFECT</u>
1. Alaska	no action available	-	-
2. California	a. Levy civil penalties b. Deny renewal of licence c. Revoke or suspend licence	yes	not supplied
3. Indiana	a. Issue provisional licence b. Revoke licence	not supplied	not supplied
4. Iowa	a. Issue provisional licence b. Revoke licence	yes	not supplied
5. Louisiana	a. Refusal to certify	no	not supplied
6. Maryland	a. Not supplied	not supplied	not supplied
7. Massachusetts	a. Refusal to licence	yes	Old agency closed and new one opened with rules reflecting original cause.
8. Michigan	a. Disapprove b. Report disapproval to funding body; if state funds involved, these are withheld c. Initiate order requiring corrective plan within time-frame d. Injunction or writ of mandamus through circuit court	yes, stages a, b & c	Agencies have always conformed before need for stage (d)

<u>STATE</u>	<u>ACTION AVAILABLE</u>	<u>HAS ACTION EVER BEEN TAKEN?</u>	<u>EFFECT</u>
9. Minnesota	a. Suspend b. Place on probation c. Revoke	yes	b. Agencies placed on probation generally conform. c. Revocation has forced agency out of business.
10. Mississippi	a. 30 day order of compliance, not supplied followed by revocation		not supplied
11. Nebraska	a. Suspension b. Revocation	yes	Problem corrected before need for (b)
12. New Jersey	1. For county facilities a. administrative hearing process b. reference to A.G. for court action 2. For state facilities a. internal process & report to Dept./Div. head	yes	county facilities have always complied before (b)
13. New Mexico	a. Temporary licence valid 120 days (max. 2 in one year) b. Revoke licence	a. yes	facilities have complied before (b)
14. New York	a. Refuse to reimburse local agency until corrective action taken	yes	Agency increased effort to comply.
15. Oregon	1. Public other than state a. report to governing body b. revoke or suspend licence c. apply civil penalties (monetary fines)	no	--

<u>STATE</u>	<u>ACTION AVAILABLE</u>	<u>HAS ACTION EVER BEEN TAKEN?</u>	<u>EFFECT</u>
	2. State facilities		
	a. report to governing agency, if not satisfied		
	b. report to State Legislature		
16. Pennsylvania	a. Denial of a license	no	Facility closed Compliance
	b. Revocation of a license	no	
	c. Non-renewal of a license	yes	
	d. Issue of a provisional license	yes	
17. South Carolina	a. Revoke licence	no	--
	b. Suspend licence		
	c. Withhold funds		
18. Tennessee	a. Report on failures to Chief Exec. with time lines	not supplied	--
	b. If no compliance - go public		
	c. If still no compliance - report to legislature		
19. Texas	a. Revocation of certificate	no	--
	b. Report to Governor		
20. Utah	a. Issue of provisional licence	a. yes	Facility has always complied
	b. Revocation of licence	b. no	
21. Virginia	a. Denial of licence and subsequent cut-off of funding	a. no	Facility has always complied
	b. Provisional licence	b. yes	
22. West Virginia	a. Revocation of or refusal to renew licence	no	--

STATEACTION AVAILABLEHAS ACTION
EVER BEEN TAKEN?EFFECT

23. Wisconsin

- | | | |
|--|-----------------|---------------------------------|
| a. Independent review by multi-disciplinary team | a. not supplied | -- |
| b. Independent investigation by AG's office | b. not supplied | |
| c. Dept. of Corrections staff have power to close juvenile detention units | c. yes | c. unit closed |
| d. Temporary loss of license for shelter care | d. yes | d. Facility eventually complied |

The final two questions attempted to establish the approximate numbers of children in various types of facilities run by public and private agencies. While very rough, Table 4 makes it clear that there are as many children in publicly operated facilities as there are in private facilities.

TABLE 4

	<u>Private</u>	<u>Public</u>
Child Welfare - Long-term	35,958	2,826
Child Welfare - Residential Shelters	2,500	1,365
Mental Health Treatment	11,116	8,525
Mental Retardation	*	*
Juvenile Corrections - Long-term	8,325	34,100
Juvenile Detention	320	15,700

*Information too incomplete to be useful.

THE CONSORTIUM'S VIEWS ON THE LICENSING OF PUBLIC FACILITIES

The Interstate Consortium has consistently taken the position that publicly operated facilities should be regulated using the same requirements for the regulation of privately operated facilities.

Since licensing requirements for private facilities are statements of the minimal conditions required to protect the health, safety and well-being of children in care, it seems to us beyond reason to suggest that the children in public facilities should not be similarly protected.

There is, in our view, absolutely no reason to suppose that public facilities cannot meet the same requirements as private facilities. Children in public facilities have the same human needs as any other children. To our mind, the external evaluation of a public facility's program using state licensing requirements is an absolutely essential protection of the interests of children in care.

Public facilities have a long and unfortunate history of isolation from professional and public opinion. The regulation of public facilities, the external evaluation of their services by national child care groups and new policies of community involvement seem to us to be necessary actions to end this history.

There is real concern that the courts will intervene in this area. It would be possible for a sufficiently

embittered private provider group to challenge state licensing requirements on the basis that conditions existing in public facilities demonstrate that such requirements are excessively high. It is even more likely that a parent or parent group will use state requirements to demonstrate that children in public facilities are not receiving services which the state itself considers necessary.

A frequently used major objection to the regulation of public facilities is the notion that state regulation of a state service constitutes an unacceptable conflict of interest. In our opinion, state regulation of private facilities, which provide a service provided by the state competitively, is a much more serious conflict of interest - particularly if state facilities are not required to meet the same requirements of care as private facilities. Theoretically, the state can use licensing to ensure that its own services are not priced out of the market. Some private providers claim that this is the effect, if not the intent of some state regulatory programs.

Can the state regulate its own operations? The experience of states where public facilities are already regulated suggests that there are indeed problems, but that the benefits far outweigh the drawbacks.

The problems are not with the regulatory process - regulators are able to be objective about state-run agencies.

The difficulties are political. Will one department of state government (e.g., Corrections) allow another department

(e.g., Human Services) to tell them what to do? Will the administrator of a department permit one unit of his department to put another unit out of business? Will judges allow anyone to tell them how to run their detention facilities? Will judges use the argument of separation of power to claim that direct services they administer are judicial services? Do we believe that youths in detention homes and training schools deserve reasonable safeguards for humane care?

Another serious problem lies in a public facility's ability to quickly respond to licensing infractions, particularly if response requires the allocation of funds. Public agencies do not, by and large, have the degree of control over their budgets which private agencies have. At the very least, budgeting generally is a more lengthy process.

Although the present study has some serious methodological limitations, it is clear that while many states do regulate some types of publicly run children's residential facilities, many children and youths are not protected by the requirements of licensing. We are particularly concerned about the large number of children in juvenile correction and juvenile detention facilities that are not regulated by any independent review.

We, the members of the Interstate Consortium, urge states to begin regulation of public facilities. We further urge states to share ideas and concepts related to the implementation of such regulation. We feel that such action is essential to protect the interests of children in care at public facilities.

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