

## **Contempt filing could put DCS under court monitor**

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### ***Governor picks task force to lead reforms***

Tennessee's Department of Children's Services is at risk of being put under the control of a special court administrator under a contempt of court request filed in federal court yesterday by a children's advocacy group.

The request for the order charges Gov. Phil Bredesen and DCS with contempt for failing to meet the terms of an ongoing federal case challenging the state's foster-care system.

Just hours before the motion was filed at noon yesterday, Bredesen announced the appointment of seven people to a group that will determine how DCS will comply with the 2001 settlement reached under the administration of Gov. Don Sundquist.

"I'm a little disappointed they went ahead (with the motion) anyway after we tried to show we are trying to deal with those issues," Bredesen said.

On Tuesday, Bredesen fired DCS Commissioner Mike Miller for failing to get moving on a plan.

The contempt motion was filed in U.S. District Court by Children's Rights, a national advocacy organization. The group asks Judge Todd Campbell to schedule a hearing, appoint a special administrator and set new deadlines for fixing problems in the state's foster-care system.

"We've waited over two years for the governor and DCS to make good on the terms of the agreement, and they haven't even figured out what needs to be done," said Marcia Robinson Lowry, executive director of Children's Rights.

Tennessee is no stranger to special administrators. The prison system and part of the higher education system at one time were under a special master or monitor. Part of the state's Mental Retardation Division remains under a court monitor.

"It's a reflection on realities in Tennessee when we know what the right thing to do is but it takes a court order to get resources and commitment," said Linda O'Neal, executive director of the Tennessee Commission on Children and Youth and a member of the working group.

In the case of the prisons, a federal judge in 1984 declared the state system unconstitutional and appointed a special master to oversee it. The state spent \$350 million improving the system and was released from federal court oversight in 1994.

Earlier this month, a federal monitor issued a status report on DCS that found the state out of compliance on 84 of 136 agreement provisions and in compliance with only 24. The state was in partial compliance with other provisions.

"The monitor's report indicates dreadful results. We felt we had no choice but to file this contempt motion," said David Raybin, lead counsel in Tennessee in the so-called "Brian A." case.

One of the requirements in the settlement is that every child be visited by a caseworker at least once a year. The federal court monitor found the state visited only about 40% of them.

Bredesen pointed out that DCS is just in the 28th month of a 54-month deadline. "How can you not be in compliance with something two years off?" said Bredesen, who has been in office 10 months.

He conceded DCS was behind the curve in meeting certain deadlines but that "does not rise to the level of being in contempt."

Lowry said the governor's remarks were alarming.

"Children can't be put in cold storage while waiting for steps to be taken," Lowry said. By now, DCS was supposed to have taken certain steps to train case managers and improve the state adoption system, Lowry said.

Lowry expressed no confidence that progress had been made by firing Miller or by naming the group.

"The failure to achieve reform is not about one particular person," she said. It is unclear how long the group will take to come up with a plan, if it devises one, Lowry said. "Task forces often do not come up with realistic and specific plans."

The seven members of the working group, which met yesterday, were personally given copies of the settlement by Bredesen.

The working group will be starting from square one. DCS has no blueprint to turn over, Bredesen said. As recently as DCS's budget hearing on Monday, he said, officials failed to have specific dates or courses of action to train workers and improve face-to-face visits.

Steve Norris, deputy commissioner of the state Division of Mental Retardation Services, was tapped as chairman. Members are Steve Elkins, assistant legal counsel to the governor; Sue Fort-White, Family to Family coordinator at DCS; Steve Hornsby, special assistant to the commissioner at DCS; O'Neal; Freida Outlaw, director of Children and Youth, Department of Mental Health and Developmental Disabilities; and Mary Walker, general counsel at DCS.