

University of Miami Law School University of Miami School of Law Institutional Repository


University of Miami Race & Social Justice Law Review

7-6-2017

The American Child Welfare System: The Inconspicuous Vehicle for Social Exclusion

Zachary Auspitz

Follow this and additional works at: <http://repository.law.miami.edu/umrsjlr>

 Part of the [Family Law Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Zachary Auspitz, *The American Child Welfare System: The Inconspicuous Vehicle for Social Exclusion*, 7 U. Miami Race & Soc. Just. L. Rev. 59 (2017)

Available at: <http://repository.law.miami.edu/umrsjlr/vol7/iss1/5>

This Note is brought to you for free and open access by University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Race & Social Justice Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

The American Child Welfare System: The Inconspicuous Vehicle for Social Exclusion

Zachary Auspitz*

I believe the best service to the child is the service closest to the child, and children who are victims of neglect, abuse, or abandonment must not also be victims of bureaucracy. They deserve our devoted attention, not our divided attention.

—Kenny Guinn

I. INTRODUCTION	60
II. ANALYSIS	63
A. <i>The Adoption and Safe Families Act: Haven or Hazard?</i>	63
B. <i>The Elephant in the Room: The Shortcomings of State Efforts</i>	65
C. <i>Considerations of Race in Private Adoptions Hinder Child Placement</i>	69
III. RECOMMENDATIONS	73
A. <i>Seal the Cracks of the ASFA</i>	73
B. <i>Cultural Competence</i>	74
C. <i>Reduction of Caseloads</i>	76
D. <i>Modification of AACWA’s “Reasonable Efforts” Provision</i>	78
IV. CONCLUSION.....	78

* J.D. Candidate, University of Miami School of Law, 2018, B.A. University of Miami, 2015. A special thank you to Professor Bernard Perlmutter at the University Of Miami School Of Law for his guidance in preparing this article and for his unrelenting dedication to correcting the social injustices of the child welfare system.

I. INTRODUCTION

Although commonly referred to as the “safety net” for vulnerable children, the current American foster care system is inherently flawed.¹ When a child enters the foster care system, States generally aim to achieve two immediate goals: to ensure that the child’s safety and general well-being is not endangered and to assist the child in quickly finding a safe permanent home.² Unfortunately, the current system does not provide the necessary foundation to transform these goals into realities. Ironically, the purported “safety net” seemingly exacerbates conditions for these endangered children, as evidenced by the racial disproportionality in the lengths of stay in the current foster care system.³

In regard to foster children, a “length of stay” refers to the amount of time that an individual child spends in the foster care system.⁴ In other words, the clock begins when the child enters foster care and stops when the child either achieves permanency or ages out of the system.⁵ Case plans are developed to establish goals to ultimately achieve permanency for the children in the foster care system.⁶ A child may achieve permanency and ultimately leave foster care in a number of ways.⁷ Case plans frequently include permanency goals such as reunification with parents, adoption, and permanent guardianship with a relative.⁸

In the early 1990s, the American foster care system had essentially reached its lowest point.⁹ In 1996, state governments were responsible for

¹ See generally Jennifer Sapp, Note, *Aging Out of Foster Care: Enforcing the Independent Living Program Through Contract Liability*, 29 CARDOZO L. REV. 2861 (2008).

² See Emily W. McGill, *Agency Knows Best - Restricting Judges’ Ability to Place Children in Alternative Planned Permanent Living Arrangements*, 58 CASE W. RES. L. REV. 247, 247 (2007).

³ CHILD WELFARE INFORMATION GATEWAY, ADDRESSING RACIAL DISPROPORTIONALITY IN CHILD WELFARE 4 (2011) [hereinafter ADDRESSING RACIAL DISPROPORTIONALITY IN CHILD WELFARE].

⁴ CHILD WELFARE INFORMATION GATEWAY, FOSTER CARE STATISTICS 2015, at 7 (2016), <https://www.childwelfare.gov/pubPDFs/foster.pdf> [hereinafter FOSTER CARE STATISTICS 2015]; see 45 C.F.R. §1355.20(a) (2016).

⁵ FOSTER CARE STATISTICS 2015, *supra* note 4, at 7.

⁶ *Id.*

⁷ *Id.* at 6.

⁸ *Id.* at 5.

⁹ Logan Nakyanzi, *Foster Care System Faces Problems*, ABC NEWS (Dec. 19, 2011), <http://abcnews.go.com/Primetime/story?id=132011&page=1> (Attributes the emergence of crack cocaine and the economic recession of the 1990s to the substantial increase of foster children at that time).

526,112 foster children.¹⁰ In addition to the large number of juveniles in foster care, these foster children generally spent “long periods” of time in the system before achieving permanency.¹¹ Furthermore, the foster care system frequently moved children who required out-of-home care from placement to placement, essentially delaying these children from achieving permanency.¹² In 1997, the Adoption and Safe Families Act (“ASFA”) was enacted to address the deleterious effects of the broken system.¹³ The ASFA set forth specific guidelines to promote timely permanency and provide protection for the welfare of foster youth.¹⁴ The provisions of this legislative enactment include “reasonable efforts” to preserve and reunify families, concurrent planning of alternative guardianship during the attempt to reunify, more precise methods of documentation in the adoption process, reformation of the process of termination of parental rights, mandatory criminal record checks, and the implementation of an absent parent locating service.¹⁵ The ASFA also includes procedural reformation by providing foster and pre-adoptive parents the opportunity to participate in case reviews and hearings.¹⁶ In addition to the implementation of stringent guidelines, the ASFA developed a system to incentivize state agencies to place foster children in safe, permanent homes at a faster rate.¹⁷ The incentive-based program furnished States with additional funding if those states achieved the goals of expedient permanency set forth by the legislation.¹⁸ For instance, the ASFA includes a provision that grants \$4000 for each adoption that surpasses a federally-established adoption quota.¹⁹ In addition, the ASFA requires that courts must hold permanency plan hearings within the first 12 months of the child entering the system.²⁰ The legislation further requires that the United States Department of Health and Human Services

¹⁰ CONNA CRAIG & DEREK HERBERT, THE STATE OF THE CHILDREN: AN EXAMINATION OF GOVERNMENT-RUN FOSTER CARE, NATIONAL CENTER FOR POLICY ANALYSIS 7 (1997), <http://www.ncpa.org/pub/st210?pg=4>.

¹¹ See *Adoption and Safe Families Act (ASFA)*, CHILD AND FAMILY SERVICES, <https://training.cfsrportal.org/section-2-understanding-child-welfare-system/2999> (last visited Mar. 25, 2017).

¹² See *id.*

¹³ See *id.*

¹⁴ *Id.*

¹⁵ Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.).

¹⁶ See *id.* at 2120.

¹⁷ See *id.* at 2122-27.

¹⁸ See *id.* at 2122.

¹⁹ CARMELA WELTE, DETAILED SUMMARY OF THE ADOPTION AND SAFE FAMILIES ACT STRESSES CHILD SAFETY IN ALL PLACEMENT DECISIONS, AND PROVIDES INCENTIVES FOR ADOPTION, CASA ASSOCIATION (1997).

²⁰ *Id.*

(HHS) provide technical assistance to states to quickly and effectively place foster children.²¹

In 2013, the HHS indicated that 402,378 children were in foster care.²² That same year, another study found that while the average length of stay for white children in foster care was approximately 18.3 months, African-American children spent roughly twenty-nine months waiting for appropriate placement.²³ The complexity of this issue cannot be simplified to a singular cause, but rather a combination of various factors. These factors include, but are not limited to governmental action, cultural stereotypes, and socioeconomic disparity. Although the ASFA was created to both protect children and expedite the permanency process, the legislation potentially constructed a system in which marginalized children of ethnic minority groups fall through the cracks.

The following roadmap provides the organization and structure of this note. This article addresses the potential causes of the extensive racial disproportionality that has plagued the American foster care system. The analysis in Part II begins with a comprehensive dissection of the ASFA and its potential correlation to racial disproportionality. In section B of the analysis, the article then proceeds to argue that the failure of multiple states to provide adequate prevention services and programs likely contributes to the race gap in regard to lengths of stay in foster care. In section C, the third and final contention asserts that the consideration of race in the child placement process, specifically private adoptions, hinders the child's ability to achieve permanency. In Part III, after a thorough analysis of the potential sources of the deeply-engrained racial disproportionality experienced by children of ethnic minorities in the current foster care system, this article provides several policy recommendations directed towards both the federal and state governments to alleviate this widespread racial disproportionality. The conclusion then recapitulates and reemphasizes the major points of this note.

²¹ *Id.*

²² U.S. DEP'T OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, THE AFCARS REPORT (2014), <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport21.pdf>.

²³ *Seven Important Facts CASA/GAL Volunteers Need to Know When Advocating for Children of Color*, CASA, http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.6561107/k.34B1/7_Facts_About_Advocating_for_Children_of_Color.htm#_ednref3 (last visited Mar. 25, 2017).

II. ANALYSIS

A. *The Adoption and Safe Families Act: Haven or Hazard?*

Since its inception, the ASFA has brought noticeable reformation to the significantly damaged child welfare system.²⁴ By increasing awareness of the deep-seated pitfalls of the foster care system, this legislative enactment encouraged a stronger, widespread emphasis on resolving these pressing issues.²⁵ The beneficial effects of the national enforcement of the ASFA include a substantial increase in the adoptions of foster children and the formation and optimization of data collection systems.²⁶ Within four years of the implementation of the ASFA, the number of foster child adoptions increased from 31,000 to 50,000 annually.²⁷ Furthermore, by 2001, a total of thirty-seven states had either partially or fully developed systems that enhanced existing methods of case management and data collection.²⁸ Although many factors may have played a role in the substantial decrease in the total number of children in the foster care system in the past two decades, one can argue that this statistic is the ASFA's most notable accomplishment.²⁹ Although these statistics reflect positive impacts on the defective child welfare system, various repercussions of the legislation's implementation are frequently overlooked.

The ASFA shifted the child welfare system's primary focus.³⁰ Prior to the ASFA's enactment, the foster care system generally made efforts to develop preventative services and to promote reunification of foster children with their biological parents.³¹ The ASFA approached child welfare issues with an iron fist. In contrast with the previously employed method of encouraging reunification with biological parents, the new

²⁴ See *Implementation of Adoption and Safe Families Act of 1997, Hearing on H.R. 867 Before the Subcomm. on Human Resources*, 108th Cong. 1 (2003) (statement of Wade F. Horn Ph.D., Assistant Secretary for Children and Families, U.S. Dep't of Health and Human Services).

²⁵ See *id.* at 9 (“[I]t increased our national emphasis on results and reaffirmed the importance of accurate data collection and reporting to track results; it expanded resources for services; and it focused specific attention on promoting adoption.”).

²⁶ See *id.*

²⁷ *Id.* at 8.

²⁸ *Id.* at 11.

²⁹ See Madelyn Freundlich, *Legislative Strategies to Safely Reduce the Number of Children in Foster Care*, NAT'L CONFERENCE OF STATE LEGISLATURES (2010), http://www.ncsl.org/documents/cyf/strategies_reducing_the_number_of_children_in_foster_care.pdf.

³⁰ See DOROTHY E. ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 105 (2002).

³¹ See *id.*

legislation established policies that vigorously promoted the termination of parental rights.³² This abrupt transition is likely attributed to the ASFA's expressed preference for adoption.³³ While the strategy of terminating parental rights for the purpose of expediting placement of foster children may appear ostensibly progressive, the ASFA's policies may impede permanent placement for certain individuals.³⁴

The ASFA's heightened focus on adoption as an effort to expedite the placement process for foster children often required States to terminate the parental rights of the child's biological parents.³⁵ This "fast track" process, encourages courts to terminate parental rights when a child has received out-of-home care for fifteen to twenty-two months.³⁶ Consequently, the cases in which the court terminated parental rights exponentially increased.³⁷ Although accelerated child placement might be viewed as substantial advancement of the impaired system, this aspect of the legislation potentially marginalizes children of ethnic minority groups.³⁸ The ASFA's emphasis on removing children from the custody of biological parents for the purpose of adoption significantly impacts the African American community.³⁹ Although African American Children only constitute 13.8 percent of the national population of minors, more than twenty-four percent of the national foster youth population is comprised of African Americans.⁴⁰ In addition to this considerable overrepresentation, in 2014, thirty-six percent of the African American children lived below the poverty line.⁴¹ Thus, race as well as poverty plays a role in child welfare intervention.⁴² The ASFA's fast track approach

³² *See id.*

³³ *See id.* at 106.

³⁴ *See generally id.*

³⁵ *Id.* at 109.

³⁶ *See id.* ("[P]utting children on a fast track from foster care to safe and loving permanent homes."); *see also* ADDRESSING RACIAL DISPROPORTIONALITY IN CHILD WELFARE *supra* note 3, at 14 (noting that the ASFA compels courts to terminate parental rights for foster children who have spent 15-22 months outside of the home receiving protective services.).

³⁷ *See generally* Hilary Baldwin, *Termination of Parental Rights: Statistical Study and Proposed Solutions; Legislative Reform*, 28 J. OF LEGISLATION 239, 241 (2002) (observing that states increased the termination of parental rights to make more children available for adoption in conformity with the tenets prescribed by the ASFA).

³⁸ John McMahon et al., *African American Children in Foster Care*, 6 Children's Services Practice Notes (N.C. Division of Social Services and the Fam. and Children's Resource Program), May 2001, at 1.

³⁹ *Id.* at 4

⁴⁰ CHILD WELFARE INFORMATION GATEWAY, RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE 7 (2016).

⁴¹ POVERTY IN THE UNITED STATES, NATIONAL POVERTY CENTER (2015), <http://www.npc.umich.edu/poverty/>

⁴² *See generally id.*

imposes a major obstacle for impoverished families. This component of the legislation, which pushes courts to terminate the parental rights of the parents of foster children who have received out-of-home care for fifteen to twenty-two months essentially marginalizes the most vulnerable group of individuals that it purports to protect.⁴³ The disproportionate number of African American children in the foster care system in conjunction with the rate of poverty within the African American community makes African American child is the most likely candidate to be trapped in the system for fifteen to twenty-two months. Moreover, in a study conducted in San Francisco, when compared with other races and ethnicities, African American children maintained the largest disparity in the amount of time between the termination of parental rights and subsequent adoption.⁴⁴ Although the ASFA's strategy of shifting focus from reunification to adoption appears to be an effort to expedite placement of the nation's most vulnerable children, the legislation may actually extend the time that foster children of ethnic minority groups spend in the system. As evidenced by the correlation between socioeconomic status and the rate of child welfare interventions, the ASFA's fast track approach establishes potentially insurmountable requirements for impoverished families. Although purported to be a safeguard, the ASFA essentially serves as the catalyst in extending the length of stay for foster children of ethnic minority backgrounds.

B. The Elephant in the Room: The Shortcomings of State Efforts

Each state takes a unique approach in the implementation of its child welfare policies.⁴⁵ States generally analyze qualitative data and develop practice models for child welfare agencies to improve outcomes for both families and children in need.⁴⁶ One of the major components of a well-constructed practice model is the state's provision of necessary services.⁴⁷

⁴³ See generally *id.*

⁴⁴ See Charlene W. Simmons & Emily Danker-Feldman, *Parental Incarceration, Termination of Parental Rights and Adoption: A Case Study of the Intersection Between the Child Welfare and Criminal Justice Systems*, 7 JUST. POL'Y J. 20 (2010) (Chart 5).

⁴⁵ See generally JAN MCCARTHY, DEVELOPING AND IMPLEMENTING CHILD WELFARE PRACTICE MODELS, NAT'L CHILD WELFARE RESOURCE CTR. FOR ORGANIZATIONAL IMPROVEMENT (2012).

⁴⁶ See *id.* at 4.

⁴⁷ See generally *id.* at 1 (A clearly articulated practice model "helps child welfare executives, administrators, and managers identify the outcomes they hope to achieve; develop a vision and consistent rationale for organizational and policy decisions; decide how to use agency resources; define staff performance expectations; develop an array of services, create a qualitative case review system; collaborate with families and youth; and work across systems.").

Although many states have made considerable progress in this aspect of enhancing the child welfare system within their borders, these efforts frequently fail to assist the most vulnerable classes of individuals.⁴⁸ The shortcomings of state efforts in providing the necessary and appropriate services to families of ethnic minority backgrounds possibly correlates to the racial disproportionality in the length of stays of children in the foster care system.⁴⁹

In 2007, the United States Government Accountability Office determined that several factors may directly influence the amount of time a child spends in the foster care system before obtaining permanent placement or aging out.⁵⁰ The report emphasized that impoverished families endure substantial adversity in maintaining stable households.⁵¹ These families require additional assistance to surmount these obstacles and preserve safe and permanent homes.⁵² African American families constitute a substantial number of these individuals who require additional support.⁵³ In the context of state failure to provide adequate services and programs, two major factors may directly contribute to the systemic racial disproportionality in the lengths of stay in the foster care system: the lack of affordable housing options and lack of substance abuse treatment for African American parents.⁵⁴ The repercussions of the widespread failure to provide these essential services impacts multiple minority groups in addition to African American families.⁵⁵

What constitutes “state efforts?” In response to these prevalent issues, states often establish and implement preventative programs to alleviate the problems associated with child welfare, which widen the race gap.⁵⁶ Some of these efforts include, but are not limited to culturally appropriate

⁴⁸ See generally U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-816, AFRICAN AMERICAN CHILDREN IN FOSTER CARE: ADDITIONAL HHS ASSISTANCE NEEDED TO HELP STATES REDUCE PROPORTION IN CARE 1 (2007).

⁴⁹ See generally *id.* at 5-6.

⁵⁰ See *id.* at 25.

⁵¹ *Id.* at 2.

⁵² See *id.*

⁵³ *Id.*

⁵⁴ *Id.* at 30 (observing that “nearly half of the states reported a lack of affordable housing options for African American parents, and state and county child welfare officials said that housing issues often delay family reunification, resulting in longer lengths of stay in foster care.”). “An HHS study found that state officials lack the resources to provide substance abuse and other types of treatment services sufficient to help African American families and those of other racial and ethnic minorities move toward reunification and adoption.” *Id.*

⁵⁵ See generally ADDRESSING RACIAL DISPROPORTIONALITY IN CHILD WELFARE, *supra* note 3, at 6.

⁵⁶ See *id.* at 5 (“Prevention services can strengthen families and decrease the number of children entering care, regardless of race or ethnicity.”).

prevention programs and the provision of in-home services.⁵⁷ The primary purpose of the provision of culturally appropriate services is to embrace cultural distinctions and effectively respond to these differences.⁵⁸ The recent influx of immigrants and thus the exponential growth of the immigrant population necessitates that States take a more culturally-sensitive approach in establishing child welfare preventative services.⁵⁹ Although the concept of these programs appears objectively simple, a number of states fail to administer these essential services.⁶⁰ In the first round of a Children’s Bureau’s Child and Family Services Review, the final report indicated that more than half of the states in the review identified language barrier issues in their provided services.⁶¹ Further, the second round of the review determined that less than half of states earned a positive rating in regard to state efforts to implement culturally-appropriate recruitment methods for potential foster parents.⁶²

In 1980, Congress enacted the Adoption Assistance and Child Welfare Act (AACWA).⁶³ The AACWA was enacted in response to the rampant “foster care drift” issue that involved thousands of foster children frequently moving from placement to placement.⁶⁴ In addition to the formation and enforcement of individual statutory policies, the AACWA further established that states make “reasonable efforts” in the provision of services for families and children in the cases of child welfare interventions.⁶⁵ What constitutes “reasonable efforts”? The answer is subjective and ambiguous.⁶⁶ Although federal law establishes that reasonable efforts “are made when the child and his or her family are

⁵⁷ See *id.* at 5-7 (Observing that a number of states identify risk factors that contribute to disproportionality and establish culturally appropriate programs and in-home services as preventative efforts.).

⁵⁸ *Id.* at 5.

⁵⁹ See Alan J. Dettlaff & Rowena Fong, *Conducting Culturally Competent Evaluations of Child Welfare Programs and Practices*, 90 CHILD WELFARE 49, 50 (2011).

⁶⁰ See ADDRESSING RACIAL DISPROPORTIONALITY IN CHILD WELFARE *supra* note 3, at 4.

⁶¹ RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE, *supra* note 40, at 7.

⁶² *Id.* at 7. “Only 21 States (40 percent) received a positive rating on the first round CFSR indicator regarding whether a State’s recruitment efforts for foster and adoptive parents reflected the racial and ethnic diversity of children in need of out-of-home care.” *Id.*

⁶³ Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in scattered sections of 42 U.S.C.).

⁶⁴ Ramesh Kasarabada, *Fostering the Human Rights of Youth in Foster Care: Defining Reasonable Efforts to Improve Consequences of Aging Out*, 17 CUNY L. REV. 145, 157 (2013).

⁶⁵ See 42 U.S.C. § 671(15) (2012); see also CHILD WELFARE INFORMATION GATEWAY, REASONABLE EFFORTS TO PRESERVE OR REUNIFY FAMILIES AND ACHIEVE PERMANENCY FOR CHILDREN 1 (2016).

⁶⁶ See REASONABLE EFFORTS TO PRESERVE OR REUNIFY FAMILIES, *supra* note 65, at 1 (“The statutes in most States use a broad definition of what constitutes reasonable efforts.”).

provided with services that are relevant to their situation,” states maintain a surprisingly wide latitude of discretion in forming their respective child welfare statutes.⁶⁷ In other words, each state establishes its own definition of “reasonable efforts” and the circumstances which warrant their provision.⁶⁸ The “reasonable efforts” provision of the AACWA still remains as the prevailing requirement for states to ensure the safety and appropriate placement of children in the foster care system.⁶⁹ The ambiguity of this case-by-case approach is detrimental to the well-being of the families who require the protective supervisory services of state agencies.⁷⁰

South Carolina, New York, Oregon, and Massachusetts constitute several states that qualify as some of the lowest scoring states in terms of child welfare.⁷¹ The heterogeneity of this cluster of states supports the notion that the shortcomings of these states cannot be attributed to factors such as geography or culture, but rather the policies set forth in statutory guidelines.⁷²

The state of South Carolina is the posterchild for loose interpretation of the reasonable efforts guideline.⁷³ In January 2015, child welfare advocates filed a federal lawsuit against South Carolina’s Department of Social Services (“DSS”) claiming that the state agency failed to adequately protect thousands of children in the foster care system.⁷⁴ The plaintiffs alleged that DSS failed to properly manage excessive caseloads for its social workers, failed to administer sufficient and appropriate mental health care, and that the agency negligently placed large numbers of children in unsafe foster homes.⁷⁵ The lawsuit stems from multiple incidents including, an incident where DSS allegedly placed a seventeen year-old foster child in a detention center because the department failed to

⁶⁷ See *id.* at 2 (Some reasonable efforts include, but are not limited to child care, drug and alcohol abuse counseling, health-care services, and child care.).

⁶⁸ See *id.*

⁶⁹ See Kasarabada, *supra* note 64, at 158 (“[T]he ‘reasonable efforts’ provision is the principal enforcement mechanism for providing services to children and families involved in the foster care system.”).

⁷⁰ See generally *id.* at 158-59.

⁷¹ FOUNDATION FOR GOV’T ACCOUNTABILITY, RIGHT FOR KIDS RANKING: WHICH STATE CHILD WELFARE SYSTEMS ARE RIGHT FOR KIDS? 9 (2012).

⁷² *Id.* at 9. “There is no apparent size, geography, relative wealth, or ethnic profile of a top performing state. What matters is not the physical characteristics of a state, but how states act and what programs and policies they have.” *Id.*

⁷³ Sam P.K. Collins, *How South Carolina’s Foster Care System is Failing the Most Vulnerable Kids*, THINKPROGRESS (Jan. 14, 2015), <https://thinkprogress.org/how-south-carolinas-foster-care-system-is-failing-the-most-vulnerable-kids-fcf2c4d0dccb#.93b3hdbut>.

⁷⁴ *Id.*

⁷⁵ *Id.*

locate an appropriate placement for him.⁷⁶ The dysfunctional foster care systems of South Carolina and many other states increase the length of stays for foster children.⁷⁷ In South Carolina, both African American and Hispanic foster children spend a longer amount of time waiting for permanency and are less likely to be adopted.⁷⁸ Although states must adhere to federal law in making “reasonable efforts” to ensure the provision of adequate child welfare programs, the vagueness and subjectivity of this guideline provides states with unbridled authority to make loose interpretations of its obligations to its foster children. This article asserts that the shortcomings of state efforts in providing essential services to the most vulnerable families and foster children directly influences the racial disproportionality in the length of stays of children in the foster care system.

C. Considerations of Race in Private Adoptions Hinder Child Placement

In the 1970s, Robert and Mildred Drummond, a Caucasian couple living in Georgia, fostered a biracial child named Timmy.⁷⁹ The state’s child service agency assigned the Drummonds as Timmy’s temporary guardians after an emergency situation warranted the child’s immediate removal from his original home.⁸⁰ For two years, Robert and Mildred provided a safe, nurturing home for Timmy as his foster parents.⁸¹ The Drummonds became increasingly connected with Timmy and loved him as their own child.⁸² After their first year as Timmy’s foster parents, Robert and Mildred applied to adopt the child.⁸³ Shortly after the couple submitted their application, the adoption agency denied their request on the grounds

⁷⁶ *Id.*

⁷⁷ *Id.* “The dearth in placement often causes many of nearly 750,000 youngsters funneled into the foster care system to spend more time in group homes than preferred family environments, which complicates their transition into an independent adulthood.” *Id.*

⁷⁸ STATE POL’Y ADVOCACY REFORM CTR. SOUTH CAROLINA ADOPTION FACTS 1 (2012), <https://www.nacac.org/policy/statefactsheets/South%20Carolina%20ADOPTION%20FACTS.pdf>. Of the total children in South Carolina’s foster care system, Caucasians comprised 44.8% of those waiting for adoption in 2012 and 49% of Caucasians were adopted. In contrast, in the same year, African Americans comprised 41.5% of the children waiting, but merely 34.6% were adopted. *Id.*

⁷⁹ *Drummond v. Fulton County Dept. of Family and Children’s Services*, 563 F. 2d 1200, 1203 (5th Cir. 1977).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

that it felt that it may not be in the best interests of the child.⁸⁴ The Drummonds reluctantly agreed and eventually resubmitted a request to adopt Timmy several months later.⁸⁵ Two months after Mr. and Mrs. Drummond filed their second request, the agency conducted a large meeting and ultimately concluded that it would again deny the Drummonds' adoption application and remove the child from their home.⁸⁶ The agency primarily based its decision upon the difference in race between the Drummonds and Timmy.⁸⁷ The agency felt that Timmy's features more closely resembled those of an African American family.⁸⁸ Consequently, the Drummonds brought suit against the state adoption agency claiming that the denial of their application to adopt Timmy was an equal protection violation in that the adoption agency relied primarily on race in rendering its decision.⁸⁹ The district court denied the Drummonds' motion for a preliminary injunction, holding that the adoption agency's decision to deny the application did not constitute a deprivation of due process and equal protection rights.⁹⁰ On appeal, the court affirmed the district court's decision and ultimately decided that the agency's denial of the Drummonds' application was justified because there was no evidence of racial discrimination in rendering its decision.⁹¹

The decision in the Drummond case established a dangerous precedent: race is a factor that should be given substantial consideration in adoptions.⁹² In response to this prejudicial precedent, Congress enacted the Multiethnic Placement Act ("MEPA") in 1994 to thwart such discrimination in adoption cases.⁹³ The act prohibited adoption agencies from using race as a determinant in selecting appropriate adoptive parents.⁹⁴ Two years later, Congress enacted the Inter-Ethnic Adoption

⁸⁴ *Id.* at 1203-04 (noting that the Drummonds received an excellent rating as foster parents, but the agency concluded that "it would be best to look elsewhere for a permanent adoptive home.").

⁸⁵ *Id.* at 1204.

⁸⁶ *Id.*

⁸⁷ *Id.* ("It is clear that the race of the Drummonds and of Timmy and the racial attitudes of the parties were given substantial weight in coming to this conclusion.").

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 1205 ("[W]here race is considered in a nondiscriminatory fashion and there is 'no racial slur or stigma with respect to whites or any other race,' there is no discrimination violative of the Fourteenth Amendment.").

⁹² *Id.*

⁹³ Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518, 4056 (codified as amended in scattered sections of 42 U.S.C.). [hereinafter MEPA].

⁹⁴ MEPA § 553(a)(1)(A)-(B) ("An agency, or entity, that receives Federal assistance and is involved in adoption or foster care placements may not categorically deny any person

Provisions (IEAP) which expanded and replaced MEPA.⁹⁵ Although the IEAP prohibited federally-funded state adoption agencies from using race as a consideration in adoptions and foster placements, the legislation does not affect private adoption agencies.⁹⁶ Although state agencies responsible for child placement should have discretion in selecting adoptive parents, these private adoption agencies maintain excessive discretion in their ability to use race as a primary consideration to prohibit transracial adoptions. In 2007, private adoptions constituted roughly 38 percent of the total adoptions in the United States.⁹⁷ Private adoptions outnumbered both foster care and international adoptions that year.⁹⁸ It should be noted that 21 percent of private adoptions are transracial.⁹⁹ The low rate of private transracial adoptions by private adoption agencies influences the racial disproportionality within the length of stay of the “grossly overrepresented” number of African American children in the foster care system. Consideration of the child’s best interests is the prevailing guideline in determining the appropriate placement of a child in transracial adoptions.¹⁰⁰ Although the child’s best interests is the standard employed in all adoption cases, transracial adoptions are unique.¹⁰¹ When a transracial adoption application is submitted, child placement agencies consider an additional factor: cultural identity.¹⁰²

In addition to the arbitrary policies employed by private adoption agencies, a correlation may exist between the general preference to adopt white children and the systemic race gap in lengths of stay.¹⁰³ This

the opportunity to become an adoptive foster parent, solely on the basis of race, color, or national origin of the adoptive or foster parent, or the child involved; or delay or deny the placement of a child for adoption or into other foster care, or otherwise discriminate in making a placement decision, solely on the basis of race, color, or national origin of the adoptive or foster parent, or the child, involved.”).

⁹⁵ Andrew Morrison, *Transracial Adoption: The Pros and Cons and the Parents’ Perspective*, 20 HARV. BLACKLETTER L.J. 163, 169 (2004).

⁹⁶ *Id.* at 169-70 (“Although the IEAP shows Congress’ intent to support TRA, it has had a minimal effect because it does not reach private adoption agencies and still allows race to be used as one of many factors in placement decisions by federally funded agencies.”).

⁹⁷ CHILD TRENDS DATA BANK, ADOPTED CHILDREN 9 (2012) (Appendix 1).

⁹⁸ *See id.*

⁹⁹ SHARON VANDIVERE ET AL., U.S. DEP’T OF HEALTH AND HUMAN SERVICES, ADOPTION USA: A CHARTBOOK BASED ON THE 2007 NATIONAL SURVEY OF ADOPTIVE PARENTS 13 (2009).

¹⁰⁰ Margaret Howard, *Transracial Adoption: Analysis of the Best Interests Standard*, 59 NOTRE DAME L. REV. 503, 503 (1984).

¹⁰¹ *See id.* at 504

¹⁰² *Id.* at 504 (noting the difference between same-race adoptions and transracial adoption is that the latter contains an additional component of “the child’s interest in his or her cultural identity as a member of a minority group.”).

¹⁰³ *See generally Six Words: ‘Black Babies Cost Less to Adopt’*, NPR (June 27, 2013), <http://www.npr.org/2013/06/27/195967886/six-words-black-babies-cost-less-to-adopt>.

correlation is evident in the striking disparity in the costs associated with private adoptions.¹⁰⁴ It costs roughly \$8000 less to adopt an African American child than a non-African American child.¹⁰⁵ What causes such a substantial difference in costs? The concept of supply and demand is the driving force that widens the race gap.¹⁰⁶ The foster care population is comprised of twenty-four percent African American children, approximately double the total national population of African Americans.¹⁰⁷ In addition, in fiscal year 2015, the majority of children entering the American foster care system were non-whites.¹⁰⁸ It is clear that children of ethnic minority backgrounds constitute the majority of children entering and currently in foster care.¹⁰⁹

Caucasians make up the majority of adoptive parents in private adoptions.¹¹⁰ In consideration of the sweeping majority of Caucasian adoptive parents, evidence supports the clear existence of a race bias in the racial preferences in the adoption process.¹¹¹ In other words, adoptive parents may generally avoid transracial adoptions because they would like the child to be perceived as their own biological child.¹¹² In 2015, the prices for private adoption in the United States was approximately \$41,000-\$47,000.¹¹³ By contrast, the average state adoption in the United States costs roughly \$2744.¹¹⁴ The substantial costs of private adoptions in

¹⁰⁴ Dean Schabner, *Why it Costs More to Adopt a White Baby*, ABC NEWS (Mar. 12, 2002), <http://abcnews.go.com/US/story?id=91834>.

¹⁰⁵ Mariagiovanna Baccara et al., *Child-Adopting Matching: Preferences for Gender and Race*, 6 AMERICAN ECONOMIC J. APPLIED ECONOMICS 133, 150 (2014).

¹⁰⁶ *See id.* at 153.

¹⁰⁷ *See* U.S. DEP'T OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, THE AFCARS REPORT 2 (2016), <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport23.pdf>; U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, THE BLACK POPULATION: 2010 3 (2011) (Table 1), <https://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf> [hereinafter BLACK POPULATION 2010].

¹⁰⁸ *See* BLACK POPULATION 2010, *supra* note 107, at 3 (Table 1).

¹⁰⁹ *See id.*

¹¹⁰ Baccara et al., *supra* note 105, at 135 (noting that the prospective adoptive parents (PAPS) were “predominantly Caucasian so one might conjecture that a desire for children that resemble PAPS in looks, who can potentially pass as their biological children, is at the root of some of the racial preferences we identify.”).

¹¹¹ *See id.*

¹¹² *Id.*

¹¹³ *How Much Does It Cost to Adopt a Child? A List of Private Adoption Costs*, AMERICAN ADOPTIONS, http://www.americanadoptions.com/adopt/why_does_private_adoption_cost_so_much_money, (last visited May 30, 2017) (noting that the study also found that an “agency-assisted” program costs \$34,000-\$38,000.).

¹¹⁴ *Comparing the Costs of Domestic, International and Foster Care Adoption, Which Type of Adoption is Best for Your Family?* AMERICAN ADOPTIONS,

conjunction with rigid screening processes presumptively serve as a deterrent for those potential adoptive parents of less socioeconomic means and thus impede the rate of transracial adoptions.¹¹⁵ This article asserts that the arbitrary adoptive parent selection processes, the overwhelming majority of Caucasian potential adoptive parents, and the prevalence of the social tendency to adopt children of the same race contribute to the racial disproportionality of length of stays in the child welfare system. Further, the overrepresentation of African American foster children in conjunction with the scarcity of African American adoptive parents, and the high costs of private adoption act in aggregation as the wedge between races in terms of length of stays for foster children.

III. RECOMMENDATIONS

Through legislative enactments such as the ASFA, AACWA, MEPA, IEAP, and the Indian Child Welfare Act of 1978, Congress has combatted racial disproportionality in the child welfare system and in an effort to reduce the social injustices that have plagued the system since its inception.¹¹⁶ Although congressional action has gradually alleviated the discrimination in the American foster care system, there still exists a disconcerting rate of racial disproportionality.¹¹⁷ This article asserts that Congress' efforts fall short. Rather than correcting the inherent, deeply-rooted flaws of the child welfare system, Congress has merely addressed the outcomes of these issues and ultimately failed to eliminate the roots of the problems. To effectively address the nucleus of the racial disproportionality situation, Congress must direct its attention to several critical issues: the subtle deficiencies of the ASFA, excessive social worker caseloads, the dearth of cultural competence within child welfare agencies and communities as a whole, and the ambiguity of the requirements of the AACWA.

A. *Seal the Cracks of the ASFA*

Since the enactment of the ASFA nearly two decades ago, child welfare has improved tremendously. However, whether through

https://www.americanadoptions.com/adopt/the_costs_of_adopting (last visited June 4, 2017)

¹¹⁵ See Morrison, *supra* note 95, at 189.

¹¹⁶ See generally Kasarabada, *supra* note 64.

¹¹⁷ ADDRESSING RACIAL DISPROPORTIONALITY IN CHILD WELFARE, *supra* note 3, at 2 (“A significant amount of research has documented the overrepresentation of certain racial and ethnic populations—including African-Americans and Native Americans—in the child welfare system when compared with their representation in the general population.”).

inadvertence or conscious disregard, Congress reformed a system that has ultimately exacerbated circumstances for the most vulnerable classes of citizens.¹¹⁸ As previously mentioned, the ASFA has implemented a “fast track” approach, which emphasizes accelerated child placement through swift termination of parental rights rather than reunification efforts.¹¹⁹ Although this approach may serve as a safeguard for the child’s safety and general well-being, this article argues that the decision to abruptly terminate parental rights should be made on case-by-case basis. The logic behind this approach rests on the notion that each family’s situation is unique. For instance, the state of South Carolina removed Debra Harrell’s child from her custody when she provided her nine-year-old daughter with a cell phone and dropped her off at a park all day.¹²⁰ Harrell left her child in the park because she had no other choice as she had to go to work.¹²¹ Harrell, who works for minimum wage, was eventually charged with unlawful conduct toward a child and her daughter was removed from her custody.¹²² In such cases, states should deviate from the fast-track approach and focus on therapeutic methods to maintain healthy family dynamics.¹²³ In cases that involve heinous abusive treatment, state agencies should certainly terminate the rights of the abusive parents as the child’s immediate safety is clearly threatened. However, this article asserts that a blanket use of the fast track approach is inappropriate. Although courts maintain the discretion to make the ultimate determination as to the child’s best interest, the ASFA should shift its focus from immediate termination of parental rights to a case-by-case system to avoid marginalization of the most vulnerable families.

B. *Cultural Competence*

To fulfill the needs of all who require its services, the child welfare system must establish and embrace cultural awareness.¹²⁴ However, the

¹¹⁸ See McMahon et al., *supra* note 38, at 4.

¹¹⁹ See ROBERTS, *supra* note 30, at 109.

¹²⁰ Kelly Wallace, *Mom Arrested For Leaving 9-Year-Old Alone at Park*, CNN (July 21, 2014), <http://www.cnn.com/2014/07/21/living/mom-arrested-left-girl-park-parents/>.

¹²¹ *Id.* (Noting that the child had a key to the home and could have returned at any time she wished. Further, in the past, Harrell frequently left her daughter with friends so that she could work). *Id.*

¹²² *Id.*

¹²³ Such methods may include culturally-appropriate preventative programs and state-subsidized day care.

¹²⁴ See generally JOHN FLUKE ET AL., THE ANNIE E. CASEY FOUNDATION, RESEARCH SYNTHESIS ON CHILD WELFARE DISPROPORTIONALITY AND DISPARITIES 59 (2010), http://www.cssp.org/publications/child-welfare/alliance/Disparities-and-Disproportionality-in-Child-Welfare_An-Analysis-of-the-Research-December-2011.pdf.

system is fraught with bias.¹²⁵ A group of studies reflect that children and families of minority ethnicity are subject to discriminatory treatment.¹²⁶ For instance, social stereotypes within both child welfare organizations and the surrounding community may contribute to more minority children entering the system.¹²⁷ Although such treatment may not be deliberate, the studies indicate that the extensive bias originates from institutional racism.¹²⁸ The research further asserts that such prejudicial treatment likely contributes to the racial disproportionality in the child welfare system.¹²⁹

The lack of cultural awareness is the crux of the issue. The solution to this complex impediment to social equality requires extensive social reform, not congressional action. To achieve such substantial change, both child welfare agencies and the surrounding communities must generate opportunities to establish cultural sensitivity. Child welfare agencies must modify their training methods to instill the significance of cultural competence in their caseworkers.¹³⁰ The child welfare system is comprised of a diverse population of children.¹³¹ Thus, cultural communities subscribe to their respective cultural standards that in certain cases conflict with the standards employed by the American child welfare system.¹³² Social workers maintain discretion to determine if the child's placement is safe and ultimately decide in the best interests of the child.¹³³ Thus, subjectivity of this discretion is substantial.¹³⁴ The implementation of programs to enhance social workers' cultural competence enhances social workers' cultural sensitivity and enables them to make decisions for the child with a stronger understanding of cultural diversity which in turn reduces inherent biases.¹³⁵

Programs aimed at communities are also necessary to effectuate such change.¹³⁶ The community should give prominence to the prevalence of

¹²⁵ See *id.* at 16.

¹²⁶ See *id.*

¹²⁷ See *id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ See *id.* at 18 (finding that 2008 study in Texas suggested that "cultural competence trainings" of child welfare agency employees was a "way to reduce racial disparities.").

¹³¹ See Nell Clement, Note, *Do "Reasonable Efforts" Require Cultural Competence? The Importance of Culturally Competent Reunification Services in the California Child Welfare System*, 5 HASTINGS RACE AND POVERTY L.J. 397 (2008).

¹³² See *id.* at 415.

¹³³ See *id.* at 416.

¹³⁴ *Id.* ("Subjectivity by state actors often allows for individual biases and personal values to enter into decisions in child welfare cases and serve as a standard for measuring parental compliance and fitness.").

¹³⁵ *Id.*

¹³⁶ See FLUKE ET AL., *supra* note 124, at 18.

racial disparities in child welfare and encourage cultural competency through community-based initiatives.¹³⁷ Finally, as part of their employee training, child welfare agencies should incorporate Undoing Racism discussions, which are programs that focus on eliminating racism by educating people and promoting cultural awareness.¹³⁸ The focus on potential racism in the workplace contributes to overall employee cultural awareness and ultimately encourages progressive reform of the entire child welfare system.¹³⁹ Society's ability to accept and embrace cultural differences is the genesis of major social reform. Therefore, culture competence amongst both child welfare agencies as well as communities is critical in the reduction of racial disproportionality in the length of stays of children in the child welfare system.

C. *Reduction of Caseloads*

Those who dedicate their time to serve as child welfare social workers generally experience high levels of stress and emotional exhaustion.¹⁴⁰ Consequently, child welfare agencies often encounter issues with worker retention.¹⁴¹ Additionally, several states have reduced child welfare budgets.¹⁴² The emotional pressure of this profession in addition to other factors such as budget cuts contributes to the prevalent child welfare issue of decreased worker retention.¹⁴³ As a result of the inflated rate of case worker turnover, the remaining agency workers become responsible for additional cases.¹⁴⁴ Research suggests that a correlation may exist between the efficacy of the child placement process and the size of caseloads for

¹³⁷ *See id.*

¹³⁸ *See id.*; see also *Undoing Racism*, THE PEOPLE'S INSTITUTE FOR SURVIVAL AND BEYOND, <http://www.pisab.org/our-principles>.

¹³⁹ *Id.* (nothing that in addition to increased cultural awareness amongst the community and child welfare agency employees, the 2008 study found that the Undoing Racism workshops encouraged "most participants anticipated that the training would have a positive impact on both their practice and their motivation to 'collaborate and improve the [child welfare] system' as a whole.").

¹⁴⁰ *High Caseloads: How do they Impact Delivery of Health and Human Services?*, SOCIAL WORK POL'Y INSTITUTE (2010), <http://www.socialworkpolicy.org/wp-content/uploads/2010/02/r2p-cw-caseload-swpi-1-10.pdf> [hereinafter *High Caseloads*] (noting that nine studies found that emotional exhaustion is a significant factor in the prediction of worker retention.).

¹⁴¹ *Id.*

¹⁴² Nicholas Johnson et al., *An Update on State Budget Cuts*, CTR. ON BUDGET AND POL'Y PRIORITIES, <http://www.cbpp.org/research/an-update-on-state-budget-cuts> (last updated Feb. 9, 2011) (referring to states such as Connecticut, New York, Virginia, Wisconsin, and several others who have made budget cuts on "child care assistance.").

¹⁴³ *See High Caseloads*, *supra* note 140.

¹⁴⁴ *Id.*

child welfare social workers.¹⁴⁵ Other studies have found that in counties where levels of child abuse are relatively low, child welfare agencies pay their employees higher salaries and experience less employee turnover.¹⁴⁶ Moreover, research has further suggested that a connection exists between caps on caseload size and reduced time of stay in the foster care system.¹⁴⁷

As time has progressed, the number of children in the foster care system has gradually decreased.¹⁴⁸ Despite the decrease in foster children, child welfare case workers still experience excessive caseloads.¹⁴⁹ The overwhelming number of cases detracts the caseworkers' focus from the children and families who require their utmost attention.¹⁵⁰ Given the abundance of evidence that indicates a correlation between heavy caseloads and increased lengths of stay, it is imperative that child welfare agencies make the appropriate changes to reduce caseloads for its case workers. To effectuate such reform, state governments must eliminate child welfare budget cuts. Further, states should provide their child welfare agencies with additional funding to improve the workplace and thus increase worker retention.¹⁵¹ In addition to funding, the agencies must modify their structure and operation. For instance, directors of these agencies should sufficiently train the caseworkers, impose a concrete limit on the number each employee may undertake, emphasize the importance of accountability, and reconstruct their organizational structure.¹⁵² Although a reduction of social worker caseloads is not a panacea for racial disproportionality with regard to length of stays in foster care, it is a major component of the reformation of a damaged system.

¹⁴⁵ *See id.*

¹⁴⁶ *Id.* (In reference to a 2006 study that found that in Californian counties with lower reports of child abuse, social workers are generally paid higher salaries and agencies experience better rates of worker retention).

¹⁴⁷ *Id.* (a study in Illinois in 2003 found that “[i]nvestments in low caseloads, was offset by reduced child removal, reductions in residential placements, and shorter lengths of stay in foster care.”).

¹⁴⁸ *See* FOSTER CARE STATISTICS 2015, *supra* note 4, at 3 (Exhibit 1) (noting that in 2006, the United States had 510,000 foster children. By 2015, 415,129 children remained in the foster care system).

¹⁴⁹ *See High Caseloads, supra* note 140.

¹⁵⁰ Sara Munson, CHILDREN’S DEFENSE FUND, *Components of an Effective Child Welfare Workforce to Improve Outcomes for Children and Families* 3-4 (2006), <http://www.childrensdefense.org/library/data/components-of-an-effective-child-welfare-workforce.pdf>.

¹⁵¹ *See id.* at 2 (The report indicates that child welfare budget cuts may negatively impact the workplace in child welfare agencies and place psychological stress on their employees.).

¹⁵² *See id.* at iii.

D. *Modification of AACWA's "Reasonable Efforts" Provision*

The AACWA imposes a highly subjective requirement on states to make "reasonable efforts" in addressing child welfare issues.¹⁵³ In 1992, Justice Rehnquist authored a controversial majority opinion, which directly affected children's rights under the AACWA.¹⁵⁴ The Supreme Court essentially precluded plaintiffs from utilizing the AACWA as a vehicle to bring suit against state agencies for failing to meet the reasonable efforts obligation.¹⁵⁵ The judiciary's decision has effectively rendered the AACWA a "dead letter."¹⁵⁶ It is clear that the subjectivity of the reasonable efforts requirement in addition to the lack of its enforcement has permitted state governments to loosely interpret the legislation.¹⁵⁷ The ambiguity and the relaxation of the reasonable efforts provision has essentially diluted the requirement and adversely affected those individuals it was originally designed to protect.¹⁵⁸ This article asserts that a modification of the reasonable efforts provision of the AACWA is crucial. The burden rests on Congress' shoulders to provide state governments with a more specific definition of "reasonable efforts," and thus increase state requirements for child welfare. Further, to adequately enforce these heightened requirements, akin to the ASFA's incentive-based program, the federal government should provide tax incentives for those states who consistently demonstrate positive growth. However, for those states who persistently fail to meet the more strictly enforced requirements, the federal government should impose sanctions.

IV. CONCLUSION

Although the child welfare crisis has improved considerably, the system is still in critical need of reform.¹⁵⁹ Despite decades of congressional action, the system remains replete with racial

¹⁵³ Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in scattered sections of 42 U.S.C.).

¹⁵⁴ See *Suter v. Artist M.*, 504 U.S. 347 (1992).

¹⁵⁵ See *id.* at 361.

¹⁵⁶ See Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation*, 12 B.U. PUB. INT. L.J. 259, 260 (2003) ("[t]he reasonable efforts clause has become a dead letter, and the Court's preclusion of suits by private plaintiffs [in *Suter*] contributed significantly to the demise of this federal requirement.").

¹⁵⁷ See REASONABLE EFFORTS TO PRESERVE OR REUNIFY FAMILIES, *supra* note 65, at 1.

¹⁵⁸ See, e.g., Collins, *supra* note 73 (describing South Carolina's child welfare failures and the correlation to the negative effects on foster children of ethnic minority backgrounds.).

¹⁵⁹ See generally ADDRESSING RACIAL DISPROPORTIONALITY IN CHILD WELFARE, *supra* note 3.

disproportionality, specifically in regard to the length of stays of children in foster care.¹⁶⁰ The core of this prevalent issue is complex. It is comprehensive matter that is nourished by both organizationally-generated factors and inherent social biases. A panacea does not exist. The narrowing of the race gap requires a collaborative effort from the federal government, the states, the child welfare workforce, and the community. At the federal level, the legislation in place is in dire need of modification. The ASFA and AACWA require congressional action to address the shortcomings of these legislations. Moreover, the federal government should work to reduce caseworker caseloads, cease budget cuts to foster care agencies, and reallocate these funds to promote a more capable and robust child welfare workforce.

The child welfare system also requires immediate social reform. The burden to accomplish such reform rests on the shoulders of state agencies and the community. It is imperative that society places a compelling emphasis on the significance of cultural competence in both the workplace and the community. Inevitably, there will always be children who require the protective services of state agencies. However, through congressional action and communal effort, the elimination of racial disproportionality in the child welfare system is an attainable goal.

¹⁶⁰ See *id.*