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LEGISLATIVE REFORM

TERMINATION OF PARENTAL RIGHTS: STATISTICAL STUDY AND PROPOSED SOLUTIONS

*Hilary Baldwin**

I. INTRODUCTION

Those who implement the current laws on the termination of parental rights often presuppose that parents are inferior to other caregivers.[1] The history of termination laws in this country reflects Congress's attempt to address child abuse and neglect. However, congressional response has been mostly political, stemming from horror stories about children living in poverty (especially those who were returned from foster care and re-abused), motivated by lobbyists, and made in an effort to catch up with state reforms. In the first section of this paper, I will look at the legislation Congress has enacted to help children while still preserving families. Looking at federal termination laws over ten years, one can see a cycle emerge. Agencies and policies are created, regulations drafted, panels convened, and incentives given to states in an to attempt to prevent child abuse and its causes. Yet, the novel approach adopted by one federal act is seen as part of the problem in the next. Experts in children's rights and children's relationships with parents give graphic testimony to congressional subcommittees about how the current policy has the wrong focus, failing to correct the very problem it seeks to address. More legislation passes calling for a new answer to an old problem, and the cycle repeats. This highlights the fact that there is no one answer to the question of child abuse and neglect.

Each child is unique. Therefore, each child deserves an individualized care plan. The temptation when facing a social evil like child abuse is to pass sweeping federal legislation aimed at combating the "problem."

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1. *See* Smith v. Org. of Foster Families for Equality & Reform, 431 U.S. 816, 836 n.40 (1977) (implying in dicta that a child's removal from his natural family to foster care occurs when the family is "inadequate").

However, there is no one cause or one solution for child abuse. The current federal legislation implements a framework that facilitates termination and adoption, excluding other possible alternatives.

In the second part of this paper, I will highlight the very real effects that the current federal law has on mothers who came to the Notre Dame Legal Aid Clinic for assistance. Each of these mothers could have benefited from more state services to help them care for their children. Each of them faced the current federal fifteen-month time limit, which eventually forced them to give up their parental rights in the hope of receiving post-adoption visitation with their children.

These mothers are not alone. In the third section of this paper, I will outline the effects that the changing federal laws have had on terminations in St. Joseph County, Indiana over the last ten years. The Adoption and Safe Families Act has resulted in more involuntary terminations, and an increase in the number of cases with adoption as the stated post-termination plan. However, the judge rarely, if ever, determines what is best for the child in these termination hearings, but instead defers to the Guardian Ad Litem (GAL) or the Court Appointed Special Advocate (CASA). Although these advocates are supposed to be objective fact-finders, many of the cases I reviewed showed their prejudice.

In the final section, I discuss how the current Adoption and Safe Families Act favors adoption to the exclusion of other options. Before the Adoption and Safe Families Act, there was a presumption that family reunification was in the best interest of the child. The current federal law shifts that presumption. Now the law presumes that termination is in the child's best interest if services to reunite the family do not work within fifteen months. The state is saddled with conflicting roles: seeking termination as a statutory requirement after fifteen months, as well as investigating and providing evidence of why termination is not in the child's best interest. This confuses the traditional adversarial roles. The state must make a motion to terminate, but is also responsible for opposing that motion.

The state will usually not make this determination without a report by a Court Appointed Special Advocate ("CASA") for a child or Guardian Ad Litem. ("GAL"). These CASAs and GALs are supposed to be the eyes and ears of the state, making the required investigative judgments about the child's needs. However, GALs and CASAs are minimally trained. They are not required to have any knowledge of child psychology or social work. Thus, CASAs and GALs often insert their own biases into their reports, influencing the prosecutor who files the termination. These advocates also carry incredible weight with the judge, who often follows their recommendation even in the rare case when the prosecutor has decided to go against it.

Another problem with the current federal law is that it requires states to seek termination but gives them no incentive to provide services to help families reunite. Instead, Congress rewards states that minimize costly non-temporary placements and increase the number of children they make available for adoption. Squeezing every case into the framework of minimal "reasonable efforts" to assist families does not effectively combat the problem of child abuse and neglect. We need to give parents meaningful services, which will require a financial commitment to these families by the state. CASAs and GALs must be better trained and follow uniform investigative procedures to ensure that objective information is given to the state. We need to go back to a truly adversarial system where the prosecutor and the parent can call witnesses, such as the CASAs and GALs, and confront them on cross-examination under the rules of evidence. This means doing away with judicial rubber-stamping of case plans, in favor of informed and impartial judgments that fit the circumstances of each case individually.

II. BRIEF HISTORY OF CHILD ABUSE TREATMENT IN AMERICA

The child welfare policy in America is linked to the history of indentured servitude where poor children were essentially leased to wealthier families to have a better life.[2] However, policies soon equated poverty with neglect.[3] In the late nineteenth century, orphanages "rescued" children from poor homes;[4] what appeared to be rescuing was emotionally tearing children from families struggling to make ends meet. Orphanages were soon viewed as cruel environments for children that promoted rigid discipline, hardly resembling true family life.[5]

By the turn of the century, President Theodore Roosevelt hosted a conference on child welfare whose participants called for the preservation of the natural family.[6] Most states began adopting preliminary social welfare policies by giving income supplements called Mother's Pensions, to allow

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2. *See* Libby S. Adler, *The Meanings of Permanence: A Critical Analysis of the Adoption and Safe Families Act of 1997*, 38 HARV. J. ON LEGIS. 1, 13 (2001).

3. *See id.* (citing Marsha Garrison, *Why Terminate Parental Rights?*, 35 STAN. L. REV. 423, 426-442 (1983)); *see also* Jenkins, *Child Welfare as a Class System*, *in* CHILDREN AND DECENT PEOPLE 3 (A. Schorr ed. 1974); *Smith*, 431 at 834 (indicating that poverty continued to be seen as detrimental to children in the early 1970s:

> Studies also suggest that social workers of middle-class backgrounds, perhaps unconsciously, incline to favor continued placement in foster care with a generally higher-status family rather than return the child to his natural family, thus reflecting a bias that treats the natural parents' poverty and lifestyle as prejudicial to the best interests of the child. (citations omitted)).

4. *See* Adler, *supra* note 2, at 14.

5. *See id.*

6. *See id.*

single and widowed mothers the freedom to stay at home with their young children.[7] In exchange for the money, mothers had to go to church, refrain from smoking, and otherwise keep a satisfactory home-life.[8] Even from this early period, the government sought to make sure children in poor families became "assets, not liabilities, to a democratic society."[9]

African-American families received this money less often because there were fewer pension programs for their neighborhoods.[10] For children who could not live at home, "placing-out" to surrogate families was the common solution.[11] This was followed by a brief movement to "cottage homes" where a small collection of orphaned children lived together under a matron, learning how to be good citizens.[12] Yet, in none of these social policies was child abuse or neglect addressed in any specific way, partly because by the New Deal Era, politicians had more sweeping socio-economic policies to pursue.[13]

Child abuse was not recognized as a social issue until the late 1950s.[14] The fear of violence in America, especially among youths, highlighted the need for agency intervention even when unsolicited.[15] Politicians and social workers thought this "aggressive casework" would remedy surging juvenile delinquency.[16] Vincent DeFrancis, the lawyer at the head of the Children's Division of the American Human Association, brought national attention to the issue of child abuse and neglect by calling a conference in 1955 for child welfare professionals.[17] Although he advocated creation of abuse/neglect departments within existing child welfare agencies, his emphasis was on treating neglectful parents, not removing children from their homes.[18] In 1957, The United States Children's Bureau followed DeFrancis' lead by issuing a report recommending that states investigate child abuse and

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7. *See id.* (This phenomenon was somewhat motivated by the increase in poor widows whose husbands died in World War I.)

8. *Id.* at 15.

9. *See id.* (quoting WINIFRED BELL, AID TO DEPENDENT CHILDREN 4 (1965)).

10. *See id.* ADLER, *supra* note 2, at 15.

11. *See id.*

12. *See id.* at 16.

13. *See id.* (citing LEROY ASHBY, ENDANGERED CHILDREN: DEPENDENCY, NEGLECT AND ABUSE IN AMERICAN HISTORY 101-124 (1997)).

14. *See* ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT, ch. 9: *The Pediatric Awakening*, 164, 165 (1987).

15. *See id.* at 164 ("The fear of violent crime in the 1950s stimulated the rediscovery of family violence. Various social commissions in that decade reported that muggings, assaults, and murders committed by youths were getting out of hand. The caseload of juvenile courts quadrupled in the two decades after 1940. Whether an epidemic of juvenile delinquency had occurred is difficult to know. Certainly the public had grown apprehensive." (citations omitted)).

16. *See id.*

17. *See id.*

18. *See id.*

neglect, and four years later published a listing of available child protective services.[19] Emphasis at this time was on the attentive caseworker as a close family helper, providing in-house services to families in need.[20] DeFrancis advised caseworkers to pay close attention to family circumstances, including their living conditions and neighborhood, as well as the moral, spiritual and sexual attributes of the parents.[21] The Children's Bureau expected caseworkers to recruit day care or live-in homemakers to improve these conditions.[22]

The medical profession also recognized family dynamics as instrumental in child abuse cases. A leading pediatrician, Dr. C. Henry Kempe, collaborated with radiologists and psychiatrists to write the article "The Battered-Child Syndrome," characterizing child abuse as "a set of symptoms associated with a disease, namely, inadequate parenting."[23] Doctors who saw first-hand the trauma inflicted on children in abusive homes parted company with earlier reports by advocating the temporary removal of children from the abusive parent, and a greater involvement by the courts.[24] They envisioned a system of temporary foster care while parents were rehabilitated.[25] Although there were some early statistics indicating that poverty correlated with abuse, the medical profession insisted in the 1950s that child abuse could strike anyone.[26] This "classlessness" created sympathy for parents and spurred laws that focused on reporting cases of abuse rather than punishing parents.[27] This was the first time that child abuse was viewed as a

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19. *See id.* at 166 (citing U.S. Children's Bureau, *Child Welfare Services: How They Help Children and Their Parents* (Washington, D.C: U.S. Department of Health, Education, and Welfare, 1957)).

20. *See id.* PLECK, *supra* note 15, at 165.

21. *See id.*

22. *See id.* at 166.

23. *Id.* at 169, 171 (citing C. Henry Kempe, *The Battered Child Syndrome*, JOURNAL OF THE AMERICAN MEDICAL ASSOC., v. 181, 17-24 (1962)); *see also* Frederick E. John, *Child Abuse- The Battered Child Syndrome*, 2 AM. JUR. PROOF OF FACTS 2d, § 1 (2000):

> Since 1961 legal scholars, legislators, physicians, sociologists, psychologists and members of the mass media have written much about the problem of child abuse. As a result the terms for and definitions of the problem have varied. For example, child abuse has been defined as the "intentional, nonaccidental use of physical force, or intentional, nonaccidental acts of omission, on the part of a parent or other caretaker interacting with a child in his care, aimed at hurting, injuring, or destroying that child"; also as "any situation in which a child is physically mistreated by an adult to the point that care or protection by a source outside the family is needed"; and as "a condition of injury to a child resulting from the lack or suspension in a nominally responsible adult of the parental protective function accompanied by a release of unrestrained instinctual energy toward the child." (citations omitted).

24. *See id.* PLECK, at 170-71.

25. *See id.* at 170.

26. *See id.* at 172 (citing MURRAY STRAUS ET. AL., BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY, 31 (1980) (parents earning less than $6,000 a year were twice as likely to report physically harming or threatening their children, than those who earned over $20,000, in a representative sample)).

27. *See id.* PLECK at 173.

problem for which causes could be identified. Before, no one questioned why children were abused. Shaping the problem was the first step in treating it. Soon, studies began to discover causes of child abuse.[28] Some studies found men more likely than women to commit abuse, while others found the opposite.[29] Further studies found that abusive parents could not cope with the stress of raising children, and parental dynamics lead to abuse.[30]

The emerging theory was a "cycle of violence"[31] where those who were themselves mistreated as children began to abuse their children.[32] This again took the emphasis away from parental blame and led to multi-faceted solutions that addressed the circumstances surrounding the "cycle."[33] However, research studies seeming to support this theory lacked statistical control groups and large samples.[34] The studies failed to prove a link between an abusive childhood and adult abusers because "abused children grew up in deprived, multi-problem families, where other factors [than just parental history of abuse] may have contributed to early learning of aggression."[35] Yet, the cycle theory prevailed despite evidence that child abuse did not have just one cause.[36] If children were admitted to the hospital, hospital staff called child-services within a day, and evaluations on whether or not the child should return home were made in less than a week.[37] Model treatment programs included a team of pediatricians, nurses, psychiatrists and caseworkers assigned to families, one of whom was available around the clock.[38] Parent's aides might visit the abuser twice a week for almost a year, or the whole family could live in a treatment center.[39]

These preliminary reporting laws, and the multi-faceted parental rehabilitation that ensued, quickly were seen as not enough.[40] In a background paper written for the House Select Subcommittee on Education, physician Keith L. Smith stated that "[d]espite the mandatory reporting laws in most states . . . many professionals . . . do not report all of the suspected child abuse incidents which come to their attention."[41] The House concluded that effective programs existed only in some communities and their federal sup-

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28. *See id.* at 174.
29. *See id.*
30. *See id.* at 173-74.
31. *Id.* at 174 (noting "cycle of violence" occurs when the abused children grow up to be abusers.).
32. *See id.*
33. *See id.* at 173-75.
34. *See id.* at 175.
35. *Id.*
36. PLECK, *supra* note 14, at 165.
37. *See id.*
38. *See id.*
39. *See id.*
40. *See id.* at 175-76.
41. *See* H. R. REP. NO. 93-685, (1973), *reprinted in* 1973 U.S.C.C.A.N. 2763, 2765.

port was limited.[42] In fact, each act that Congress passed to address child abuse was motivated in part by the idea that current efforts were failing. The Adoption Assistance and Welfare Act of 1980 stated that the problem with the current system was that it placed too great an emphasis on foster care.[43] This Act addressed the concern that the system did not place enough responsibility on parents.[44] Finally, the current Act attributes the problem to lingering parental or foster care involvement, requiring laws to focus on adoption because it is seen as a permanent placement for children.[45]

CHILD ABUSE PREVENTION AND TREATMENT ACT OF 1973

Congress's original solution, the Child Abuse Prevention and Treatment Act, originated from a conference hosted by the White House that advocated increased federal funding to combat child abuse and neglect.[46] Following that the conference, Congress created a subcommittee focused on children that heard testimonials, including graphic stories of child abuse.[47] Although Congress had earlier considered child abuse legislation, the executive branch at that time "did not believe there was a need for the legislation."[48] The Child Abuse Prevention and Treatment Act of 1973,[49] created in this subcommittee, was the first federal legislation to address this issue.[50] In the House Report, Congress acknowledged that although doctors were often the first to see the repeated pattern of abuse, it was usually after permanent psychological and physical damage had already occurred.[51] Thus, the Act defined child abuse broadly, encompassing physical, mental and sexual abuse to children by any adult responsible for their care.[52] The Act created national centers of personnel trained in "prevention, identification and treatment of child abuse and neglect cases, to provide a broad range of services" which included satellite centers in smaller communities and provided advice to other agencies.[53] Specific emphasis was placed on "parent self-help" and "prevention and treatment of drug-related child abuse."[54] The Congressional

42. *See id.*

43. *See* Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980).

44. *See* Child Abuse Prevention and Treatment Act Amendments of 1996, Pub. L. No. 104-235, 110 Stat. 3063 (1996).

45. *See* H. R. REP. NO. 105-77, *reprinted in* 1997 U.S.C.C.A.N 2739, 2740.

46. *See* PLECK, *supra* note 14, at 176.

47. *See id.*

48. *See* H. R. REP. NO. 93-685, (1973), *reprinted in* 1973 U.S.C.C.A.N 2763, 2765.

49. Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974).

50. *See* PLECK, *supra* note 14, at 176.

51. *See* H. R. REP. NO. 93-685, at 2765 (1973).

52. *See* Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4, 5 (1974).

53. *Id.* at 6.

54. *Id.*

Committee wanted to "insure that, among applicants for assistance, parental organizations received preferential treatment."[55]

States that wanted funding for programs aimed at prevention, identification of and treatment for abuse were required to have a child abuse and neglect law, providing immunity to those who reported abuse.[56] When abuse reports were substantiated, states had to provide immediate help to the abused child and any other children living in the home.[57] This shifted the emphasis of state laws away from simply reporting to requiring intervention and treatment.[58] States had to provide information on available treatments to its citizens and prove that their administrative procedures and trained personnel effectively combated the problem within the state.[59] States demonstrated financial commitment to these programs by not reducing their funding and using federal funds to enhance treatment programs.[60] The Federal Government required that records be kept confidential, that police and courts be involved, and that guardian *ad litems* be appointed in every case to represent the child.[61] Although these reporting requirements were often disregarded, Congress felt that documented intervention was the best solution.[62]

The Act also created a National Center on Child Abuse and Neglect under the Secretary of Health, Education, and Welfare.[63] The Center was required to publish an annual summary on research of child abuse and neglect,[64] to keep a list of all programs, private and public, that were successful in detecting and treating child abuse,[65] to provide training materials and technical assistance to public or non-profit agencies,[66] and to create an advisory board comprised of members of various federal agencies.[67] Thus began federal review and coordination of state efforts to combat child abuse, which up to this point had been viewed as lacking "a focus within broader social service programs."[68] Although the Act was driven by the need to find "an ultimate solution"[69] to the problem of child abuse, its solution was actually

55. *See* H. R. REP. NO. 93-685, at 2768.

56. *See* Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 5, 6 (1974).

57. *See id.* at 6.

58. *See* H. R. REP. NO. 93-685, at 2765.

59. *See* Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 6-7 (1974).

60. *See id.* at 7 (noting the federal funds are channeled directly to the programs, instead of using them to build facilities to house those programs).

61. *Id.* The list of requirements for state child abuse prevention and treatment programs are found in Sec. 4(b)(2)(A)-(J). The state had to meet these requirements in order to receive funding.

62. *See* H. R. REP. NO. 93-685, at 2765.

63. *See* Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974).

64. *See id.* at 5.

65. *See id.*

66. *See id.*

67. *See id.* at 7-8.

68. *See* H. R. REP. NO. 93-685, (1973) *reprinted in* 1973 U.S.C.C.A.N. 2763, 2765.

69. *Id.* at 2766 (quoting Secretary of Health, Education and Welfare, Caspar W. Weinberger on Oct. 16,

multi-disciplinary.[70] The Committee even recognized that these programs had to remain "informal and nonbureaucratic to be effective."[71]

Congress renewed the Child Abuse Prevention and Treatment Act several times[72] and imposed further regulations on states, requiring them to add protective custody laws that met federal guidelines.[73] The state welfare agency could remove a child in danger for three days while the caseworker filed for custody of the child in juvenile court.[74] Although these proceedings did not require the termination of parental rights, they linked reporting systems directly to legal sanctions.[75] However, reviews during the three-day period were not standardized, often resulting in a return of the child to the home because the parents were not thoroughly investigated.[76] Parents underwent home remedies while retaining custody of their child.[77] Removal of a child to the foster care system was seen as necessary only when social services could not adequately protect him or her.[78]

In 1978, Anna Freud, a noted child psychologist, Albert Solnit, a Yale professor of pediatrics, and Joseph Goldstein, a lawyer, collaborated to write *Beyond the Best Interests of the Child.*[79] In this book they stressed a child's need for stability and for contact with the biological parent.[80] In mild cases, multi-faceted social programs and in-house programs would be enough.[81] However, in cases of severe abuse, the authors recommended immediate removal, termination of parental rights, and adoption.[82] "They and other social welfare advocates argued that only by attacking poverty, unemployment, inadequate housing and health care, and the lack of day care would one solve the problem of child abuse and neglect."[83] By the mid 1970s, there was growing recognition that child abuse and neglect had many causes.[84] More reporting increased the number of substantiated cases, over-

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1973 that "an ultimate solution" is needed to the child abuse and neglect problem in the United States).

70. *See id.* at 2767 (attention was called to the need for cooperative efforts of people from many disciplines and the Committee Stated its desire "that the demonstration grants and contracts be awarded to a wide variety of recipients for a variety of programs and projects aimed at preventing, identifying and treating child abuse.")

71. *Id.* at 2768.

72. *See* PLECK, *supra* note 14, at 177.

73. *See id.*

74. *See id.*

75. *See id.* at 178.

76. *See id.*

77. *See id.*

78. *See* PLECK, *supra* note 14, at 178.

79. *See id.* at 179.

80. *See id.*

81. *See id.* at 180.

82. *See id.* at 179.

83. *Id.* at 180.

84. *See* PLECK, *supra* note 14, at 180 (noting "the issue was more complex than originally thought").

whelming child welfare agencies.[85] Although child abuse awareness had increased dramatically since the 1950s, the state solutions seemed to produce both negative and positive results.[86]

There was also a vocal group of foster parents in America upset with the procedures used to remove children from their care. A large lobby of foster parents sued the state of New York in the landmark case *Smith v. Organization of Foster Families for Equality & Reform*, 431 U.S. 816 (1977). In *Smith*, the foster parents brought a civil rights class action suit under 42 U.S.C. §1983. The foster families alleged that the foster care removal procedures violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment because all interested parties had a right to a hearing on the removal of the foster child.[87] The foster parents claimed that after one year of foster care, the ties between child and foster parent made the foster home "the true psychological family" of the child.[88] Therefore, that family had "a 'liberty interest' in its survival as a family protected by the Fourteenth Amendment."[89] And, the "child cannot be removed without a prior hearing satisfying due process."[90]

New York law had provided appeals for removal decisions after they were made, but no hearing was held before removal.[91] Although the foster parents were entitled to ten days prior notice of removal, they had to request a conference within those ten days if they wished to contest the decision.[92] The expressed policy behind these laws was "the child's need for a normal family life [which] will usually best be met in the natural home."[93] Therefore, the law provided that any parent who voluntarily placed their child in foster care could have that child returned within twenty days notice.[94] Further, the parent did not give up legal custody to the child but only charge over their daily living.[95] Only if the child was placed with different foster parents did the New York City Human Resources Administration allow a hearing before removal.[96] Any child in foster care over eighteen months could have his case reviewed by petitioning the New York Family Court.[97]

85. *See id.* at 181.
86. *See id.*
87. *Smith*, 431 U.S. at 822.
88. *Id.* at 839.
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.*
93. *Id.* at 823.
94. *Smith*, 431 U.S. at 825.
95. *Id.* at 828-29.
96. *Id.* at 831.
97. *Id.* at 831-32.

Statistics at the time showed over 80 percent of all children placed in foster care in New York were placed there by their parents.[98]

The Supreme Court held that these hearings were adequate because foster families did merit the same level of Due Process protection as natural families.[99] The Court wrote that "there does exist a 'private realm of family life which the state cannot enter . . . that has been afforded both substantive and procedural protection. But is the relation of foster parent to foster child sufficiently akin to the concept of 'family' recognized in our precedents to merit similar protection?"[100] To answer the question, the Court noted that the usual family implied biological ties.[101] However, the Court stated that the most prized relationship in society was marriage, for which there were no biological ties.[102] "Thus the importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in 'promot[ing] a way of life' through the instruction of children, . . . as well as from the fact of blood relationship."[103] However, the Court noted that unlike the natural family, the foster family has its origin in contract law and is, by definition, a creature of the state.[104] "Whatever emotional ties may develop between foster parent and foster child have their origins in an arrangement in which the State has been a partner from the outset."[105] Therefore, the Supreme Court concluded that the contractual nature of the foster family and its limited recognition by New York made any constitutionally protected liberty interest limited.[106] Therefore, while the Court did not completely rule out a constitutionally protected right of a foster parent in her family, it said that the New York statutory scheme was adequate.[107]

The *Smith* case also produced significant dicta about the state of the foster care system. The Supreme Court acknowledged that the New York government believed its system functioned according to the timetables set out in the statute and that foster care was only a temporary placement.[108] Yet, the Court found that the median time spent in foster care was four

98. There is no differentiation here between parents who consented to placing their children in foster care voluntarily and those influenced by the state's ultimatum of putting their child in the system or facing an involuntary termination proceeding.

99. *Smith*, 431 U.S. at 847.

100. *Id.* at 842 (citation omitted).

101. *Id.* at 843.

102. *Id.* at 844.

103. *Id.* (citation omitted).

104. *Id.* at 845.

105. *Smith*, 431 U.S. at 845.

106. *Id.* at 846.

107. *Id.* at 848.

108. *Id.* at 833.

years.[109] The Court recognized that "from the standpoint of natural parents, such as the appellant intervenors here, foster care has been condemned as a class-based intrusion in the family life of the poor."[110] To support this contention, the Court found that over fifty percent of the children in New York foster care were from female-headed households receiving governmental aid, and at least seventy-seven percent of the children were minorities.[111] The Court also found that not all allegedly voluntary placements were in fact voluntary.[112] Social workers of middle class backgrounds were inclined to favor higher-status foster families, "thus reflecting a bias that treats the natural parents' poverty and lifestyle as prejudicial to the best interests of the child."[113] Nevertheless, the Supreme Court also acknowledged that social work caseloads were very high, and that finding suitable foster families was often difficult.[114] Although any removal of a child from any home was traumatic, the Supreme Court still recognized that "too warm a relation between foster parent and foster child is not the only possible problem in foster care."[115] The need to keep the relationships short resulted in an average of three foster placements for each child.[116] Yet, "even when it is clear that a foster child will not be returned to his natural parents, it is rare that he achieves a stable home life through final termination of parental ties and adoption into a new permanent family."[117] The Court summed up the current problem: "the State, the natural parents, and the foster parents, all of whom share some portion of the responsibility for the guardianship of the child... are parties, and all contend that the position they advocate is most in accord with the rights and interests of the children."[118]

This summary highlights the very problem with any legal system surrounding children's rights: no one solution is always best. However, faced with having to make a decision in the case, the Supreme Court ultimately held that the rights of the natural parents are absolute.[119] Therefore, no hearing is constitutionally required to remove a child from foster care in order to return him to his natural family. Although the foster family may in many respects, including psychological aspects, resemble a family, it does not have a constitutionally recognized liberty interest in preservation, and therefore no

109. *Id.* at 836.
110. *Id.* at 833.
111. *Smith*, 431 U.S. at 833-34.
112. *Id.* at 834.
113. *Id.*
114. *Id.* at 836.
115. *Id.*
116. *Id.* at 837.
117. *Smith*, 431 U.S. at 837.
118. *Id.* at 842.
119. *Id.* at 846.

standing to request a hearing before removal occurs.[120] Not surprisingly, the underlying question of what would be in the child's best interest was left unresolved. The Supreme Court acknowledged that foster care had both pros and cons because it allowed a safe temporary home for children yet also made it hard for children to readjust to new placements because of the psychological bond formed between children and their foster parents.

ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF 1980

The dicta in the *Smith* case highlighted the growing concern that children were spending far too long in foster care, an average of four years in New York.[121] "Choices had to be made between treatment or punishment, too much intervention or not enough, and between ensuring parental liberties or protecting children."[122] In 1980, Congress enacted the Adoption Assistance and Child Welfare Act of 1980.[123] It changed child welfare policies by attempting to move children out of foster care and return them home or to place them up for adoption.[124] Aid to Families with Dependent Children (AFDC) under Title IV-A of the Social Security Act provided money to families where one parent was absent.[125] The Federal Government also matched state funds to children in foster care who received AFDC at home, thereby making money paid to the foster care families exceed that paid to similarly situated poor families.[126] Despite this funding, Congress noted that the quality of foster care was inadequate and child welfare programs under Title IV-B of the Social Security Act were over ninety percent funded by the states.[127] Of the total money spent, seventy-three percent went to foster care while three percent went to subsidizing adoptions.[128] Nonetheless, Congress wrote about foster conditions similar to those found by the Supreme Court in the *Smith* case. Most of the states investigated by Congress had significant problems managing their foster care programs.[129] Congress found numerous indications that the foster care system was detrimental to children.[130] The

120. *Id.* at 847.
121. *See id.* at 836.
122. *See Smith*, 431 U.S. at 847.
123. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980).
124. *See* S. REP. NO. 96-336, (1997) *reprinted in* 1980 U.S.C.C.A.N. 1448, 1450.
125. *See id.* at 1459.
126. *See id.*
127. *See id.* at 1460.
128. *See id.*
129. *See id.* at 1458.
130. *See* S. REP. NO. 96-336, (1997) *reprinted in* 1980 U.S.C.C.A.N. 1448, 1459.

national average foster care placement was two and a half years.[131] The federal government was not closely monitoring state programs, which were authorized to receive over 220 million dollars from the national budget, but never got more than fifty-six million.[132]

The Adoption Assistance and Child Welfare Act of 1980 was therefore designed to "de-emphasize the use of foster care and encourage greater efforts to place children in permanent homes."[133] The Act forced states to provide a detailed plan for reducing the number of children in foster care over two years.[134] Congress did not want to sink funds into a foster care system where the average placement was greater than two years because the system was not seen as a permanent solution.[135] Congress most likely also believed that in order to really improve the foster care system and monitor state programs, the full projected amount of over $220 million a year would have to be spent. This belief is reflected in the Act's fiscal distribution that capped federal funds for state foster care, and created an adoption assistance program that was "open ended."[136] Further, the Act provided over $250 million for strengthening child welfare services designed to prevent the separation of children from their families, restoring them to their families, or placing them for adoption.[137]

The Act emphasized avoiding foster care or limiting a child's time in the program. In order to receive extra federal funds to assist with adoptions and foster care, states had to create a child placement plan that met numerous requirements.[138] First, it stated that for each child, "reasonable efforts" should be made to avoid a child's removal from her home or return the child home.[139] Second, the state had to develop a case plan for each child,[140] detailing how the child would be cared for and what steps would be taken to return the child home or place the child up for adoption.[141] The case plan required services be provided to the parents, foster parents, and child with

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131. *See id.*
132. *See id.* at 1449.
133. *See id.* at 1461.
134. *See id.* ("States would be required to establish goals as to the maximum number of children who will remain in foster care for in excess of 24 months."); *see also* Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500, 502 (1980).
135. *See* S. REP. NO. 96-336, at 1460.
136. *Id.* at 1461.
137. *See* Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500, 519 (1980).
138. *See id.* at 503.
139. *See id.*
140. *See id.*
141. *See id.* at 511.

the goal of permanency.[142] This case plan would be reviewed to make sure the child was put in the "least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child."[143] The review had to occur at least every six months to determine how well the case plan was followed and if the current placement was still necessary and appropriate.[144] Further, the review had to assess the amount of progress made in alleviating the problems that initially required foster care, and to estimate a date when the child could return home or be placed up for adoption.[145] These periodic reviews were supplemented by a dispositional hearing, occurring no later than eighteen months after placement and periodically thereafter, to determine the "future status of the child."[146] Although the "future status" could include returning to the parents, continuing foster care temporarily or more permanently, or adoption, the child's future was not limited to those options.[147] These dispositional hearings were considered procedural safeguards that attempted to insure the parent's rights would be considered, including any change in visitation.[148]

However, the Act did not guarantee that children were protected. In *DeShaney v. Winnebago County Department of Social Services*, a guardian *ad litem* sued the local government for failing to protect Joshua DeShaney from child abuse.[149] Joshua lived with his divorced father Randy.[150] Randy's second wife complained to authorities that Randy beat Joshua.[151] Winnebago County Department of Social Services ("Social Services") did not pursue the allegations after Randy denied them.[152] A year later Joshua was admitted to the hospital with multiple bruises, the doctor suspected abuse and again Social Services was called.[153] Although Social Services gathered a team of doctors, detectives and a lawyer, they decided there was insufficient evidence to place Joshua with the custody of the court.[154] The team did recommend preschool for Joshua and counseling services for Randy, which he

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142. *See id.*
143. *See* Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500, 519 (1980).
144. *See id.*
145. *See id.*
146. *Id.*
147. *See id.*
148. *See id.* ("Procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.")
149. DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189 (1989).
150. *Id.*
151. *Id.* at 192.
152. *Id.*
153. *Id.*
154. *Id.*

agreed to voluntarily.[155] Nevertheless, Joshua's condition worsened because Randy continued to beat him.[156] A caseworker visited the home monthly and suspected child abuse, but she did nothing more than record her findings in a file.[157] Eventually, Randy's beatings sent Joshua into a coma and emergency brain surgery revealed hemorrhages from traumatic head injuries over a period of years.[158] Joshua will spend the rest of his life in a home for the severely retarded.[159] Despite these horrific facts, and Social Services' negligence, the Supreme Court found that Joshua had no right to be protected by the state.[160] The Due Process Clause was a limit on state power, said the Supreme Court, not a "guarantee of certain minimal levels of safety and security."[161] This means that Joshua had "no affirmative right to governmental aid, even where such aid may be necessary to secure life."[162]

Although the Adoption Assistance and Child Welfare Act required periodic reviews of a child's situation to facilitate a permanent solution to his problem, the Act did not guarantee that helpful aid would be given. Although the main purpose of the Act was to keep families together by facilitating in-house monitoring like that performed by the social worker in *DeShaney*, the Act recognized that in some situations, foster care, even long-term, was the best option for the child. However, there was a clear awareness of the fiscal costs of keeping children in temporary placements. These rising fiscal costs helped motivate Congress to create adoption incentives. Therefore the Act focused on parent's rights, like those illustrated in the *Smith* case, and funded solutions to prevent removal of the child in the first place. After seeing the detrimental affect of foster care on children illustrated by *Smith*, the Act sought to preserve nuclear families or at least to decrease the time in state placement by creating adoption incentives. Although *DeShaney* was seen as a tragedy,[163] intervention beyond the case plan and periodic family visits was never a goal of the Act. Increased intervention was seen as costly and against the common presumption, despite *DeShaney*, that the best place for a child was in his nuclear family.

155. *DeShaney*, 489 U.S. at 192.
156. *Id.* at 193.
157. *Id.*
158. *Id.*
159. *Id.*
160. *DeShaney*, 489 U.S. at 195.
161. *Id.*
162. *Id.* at 196.
163. *Id.* at 191.

WELFARE REFORM ACT OF 1996

In the fifteen years that followed the Adoption Assistance and Child Welfare Act, the country became increasingly frustrated with the economic and social costs of the Welfare and Medicaid systems and deemed them failures.[164] This prompted Congress to enact the Welfare Reform Act, or Personal Responsibility and Work Opportunity Reconciliation Act of 1996.[165] The majority of the Act concerned itself with the dismantling of the federally funded Aid to Families with Dependent Children ("AFDC") program and creating a block grant program giving Temporary Assistance for Needy Families.[166] It was an instrumental part of a program to reform the Federal Budget.[167] Title V of the Act addressed child protection.[168] It provided for a national random sample study of children at risk for child abuse or neglect.[169] The study was to follow abused children for several years, report on the circumstances that lead to their removal from the home, and the nature and duration of subsequent placements.[170] Secondly, the Act endorsed state statutory preferences for placements with an adult relative of the child who meets caregiver standards, over non-related caregivers.[171]

CURRENT LAW: ADOPTION AND SAFE FAMILIES ACT OF 1997

The major overhaul in child placement outside of the home, however, occurred with the Adoption and Safe Families Act of 1997.[172] Although the Adoption Assistance and Child Welfare Act of 1980[173] favored permanent placements and created incentives for adoption, the Adoption and Safe Families Act of 1997 mandated that if reasonable efforts to keep a family together failed, a permanent home for the child should be found quickly, probably through adoption.[174] Allowing Social Services to get out of the "reasonable efforts" requirement left room for dire situations like that of Joshua DeShaney. The 1997 Act de-emphasized foster care because it was both temporary and costly. The House Subcommittee on Human Resources

164. *See* H. R. REP. NO. 104-65, *reprinted in* 1996 U.S.C.C.A.N. 2183, 2184 ("There is little doubt that the current welfare system is a failure . . . . Most devastating of all, it fails the Nation's children").

165. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, 2105 (1996).

166. *See id.* at 2113.

167. *See* H. R. REP. NO. 104-65 at 2191.

168. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, 2277 (1996).

169. *See id.*

170. *See id.* at 2278.

171. *Id.*

172. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997).

173. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980).

reported that the foster care caseload was almost a half a million, and children could expect to stay in foster care for almost three years.[175] Recall that this is an increase from the two-year average found by the Senate Finance Committee in 1980.[176] The Adoption Assistance and Child Welfare Act of 1980 merely increased adoption incentives in response to the foster care problem, while still funding solutions that prevented child removal and protected parents' rights. The Adoption and Safe Families Act of 1997, however, committed the nation to adoption as *the* best solution to the problem of abused children who must be removed from their home. The push for adoption came largely from adoption lobbyists who sought to free more children for adoption. The House Ways and Means Committee held hearings on the Act, inviting testimony from adoptive parents and the heads of private adoption organizations, like The National Child Welfare League.[177] These lobbyists pushed for the elimination or diminishment of the "'reasonable efforts' provision [because it] may result in children being left with or returned to abusive families, and may be a barrier to permanent placement and adoption of children."[178]

The House Report recognized "that adoption is *an* effective way to assure that children grow up in loving families and that they become happy and productive citizens as adults."[179] This language acknowledges that adoption is simply one solution for abused children. There is no evidence in the legislative history that adoption is always preferable over other alternatives. In fact, for children of color and older children, adoption is usually unrealistic. However, the Act provides these children with little assistance, taking away money from other alternatives that could be of use to them, like foster care.

The Adoption and Safe Families Act also sought to clarify the vagueness of the "reasonable efforts" standard as written in the Adoption Assistance and Child Welfare Act of 1980.[180] The House Report criticized the previous "reasonable efforts" standard as a barrier to expedited adoption.[181] Although, the Report noted that the "reasonable efforts" standard helped to prevent permanent removal by providing services to families, it

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174. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, 2115 (1997).

175. *See* H. R. REP. NO. 105-77, *reprinted in* 1997 U.S.C.A.A.N 2739, 2740.

176. *See* S. REP. NO. 96-336, *reprinted in* 1980 U.S.C.A.A.N 1448, 1461.

177. *See* Hearings on Adoption and Safe Families Act, 105th Cong. Serial No. 104-76, before the House Ways and Means Comm., June 27, 1996.

178. *Id.*

179. *See* H. R. REP. NO. 105-77, at 2740.

180. *See* Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980).

181. *See* H. R. REP. NO. 105-77, at 2740.

hindered adoption because it favored parental rights.[182] Yet, the House report recognized that it was not the federal statute alone, but the social worker and court interpretation of "reasonable efforts" that led to "long spells of foster care."[183] Further, the Report acknowledged that a large barrier to permanent placements was overworked caseworkers that believed that children already in foster care were safe, and thus gave them and their families "less attention than they deserve."[184]

Despite the indications that the "reasonable efforts" standard was not the true heart of the problem, Congress decided to amend the criteria to speed up adoptions.[185] Instead of authorizing a study or convening a panel to investigate why "reasonable efforts" to reunite a family took so long, and if those efforts were necessary, Congress assumed those efforts were not worth the trouble. Although Congress claimed to recognize "the importance and essential fairness of the reasonable efforts criterion," it made specific mention of the "well over" four and a half billion dollars spent to help families combat the causes of child abuse, as if to highlight its exacerbation.[186] Congress called for a "measured response" to aid states in terminating parental rights in more cases, more quickly.[187] Congress devalued the "reasonable efforts" used to help families stay together because they often resulted in children staying longer in temporary placement. This temporary status meant that government had to pay for programs to rehabilitate their families while also paying for the foster care. Therefore, Congress pushed for what they felt was a more cost-effective solution: adoption.[188]

Although the first section of the Act is titled "Clarification of the Reasonable Efforts Requirement," it only addressed *when* those "efforts" should be used, not *what* they entail.[189] Although the Act stated that "the child's health and safety shall be the paramount concern," it did not place

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182. *See id.*

> One barrier is the "reasonable efforts'" criterion in the federal statute. This criterion requires States to make reasonable efforts to prevent removing a child from its home and to facilitate returning children to their homes if removal has been necessary. The intent of this policy is to provide services to families so that they can continue to fulfill their child rearing function. However, there seems to be a growing belief that federal statues, the social work profession, and the courts sometimes err on the side of protecting the rights of the parents. As a result, too many children are subjected to long spells of foster care . . . .

183. *Id.*

184. *Id.* at 2741.

185. *See id.* at 2740.

186. *See id.*

187. *See id.*

188. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, 2129 (1997) (although the Act mandates a study on kinship care, no study on the causes of child abuse is undertaken, in contrast to the other acts).

189. *See id.* at 2116.

any emphasis on other criteria, such as preserving the psychological bond between the parent and child.[190] The goal was to move children to permanent safe environments as soon as possible. With that as the goal, Congress assumed that adoption was usually the preferable solution. Congress attempted to speed up the adoption process by reducing the amount of time social workers have to use "reasonable efforts" to reunite a family. Congress placed no value on alternative placements, and left little time to find them. In fact, the Act mandates that state child protection services be evaluated based on the number of children in foster care, the length of those placements, and the number of adoptions.[191] The Secretary of Health and Human Services uses these evaluations to rate states annually, giving financial incentives to the ones with the best scores.[192] What suffers is individualized attention for each child, and therefore the quality of the placements given the child's particular circumstances.

In changing the "reasonable efforts" standard to increase the speed of adoptions, Congress effectively eliminated time to seek other alternatives. Most notably, states only have to provide family reunification services for the first fifteen months after the child enters foster care.[193] Congress has thus determined that "efforts" to reunite the family are only "reasonable" within those first few months because the state has no obligation to family unity beyond that point. "Reasonable efforts" at reunification can stop even earlier if they are considered inconsistent with the child's "permanency" plan.[194] Previously, a permanency plan and a dispositional hearing created by the Adoption Assistance and Child Welfare Act occurred within eighteen months of a child's entering foster care.[195] In these hearings, all possible options were discussed for the child including returning to the parents, or staying in foster care for longer periods.[196] These dispositional hearings were considered procedural safeguards that insured the parent's rights would be considered, including any change in visitation.[197] Now the "permanency" hearing and must occur within one year.[198] The hearing no longer considers

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190. *Id.*

191. *See id.* at 2126.

192. *See id.*

193. *See id.* at 2131.

194. *See id.* at 2116.

195. *See* Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500, 511 (1980).

196. *See id.*

197. *Id.* ("[P]rocedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.")

198. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, 2740 (1997). Could not locate this page

the "future status" of the child but forces the courts to determine whether the child will be returned to the parent.[199] If the child is not returned to the parent there must be a "planned permanent living arrangement" for the child.[200] Congress "intentionally deleted non-relative long-term foster care from this list to emphasize that such an arrangement should be rarely used and should not be considered a permanent placement."[201]

Foster parent lobbyists, including the director of Family Preservation Services, reminded Congress that children in temporary care usually develop ties to those homes. With that in mind, foster parents and any pre-adoptive parents or relatives are now required to have notice of these permanency hearings[202] and an opportunity to state why they would be the best caregiver for the child.[203] This broadens the scope of the hearing by allowing all interested parties to show what they could offer the child. This effectively overrules *Smith*, because it gives non-traditional families an opportunity to be heard. Although these interested parties may not have legal standing, judges are giving them a voice in court. However, parents who are struggling to find their feet are directly compared to foster parents and pre-adoptive parents as if to highlight the ways in which they do not measure up. The relationship between the child and his biological parents is no longer the focus of the hearing, destroying the rebuttable presumption that children benefit by being with their real parents. The "procedural safeguards" of the dispositional hearing insuring careful consideration of parents' rights to visitation are eliminated. The focus is taken off the "future status" of the child and placed on the question of which person can offer a "permanent" solution. If parents can not demonstrate that they are ready to take their child back permanently, they are not part of the "permanency plan" for their child. Within one year, the "reasonable efforts" to reunite a child with a family can cease, forcing the state to find a quick, permanent placement.

States are required to initiate the termination of parental rights if the child has been in foster care for fifteen of the last twenty-two months.[204] This is true even when the child is not returned home sooner because the state delayed in providing services required in the case plan. Congress presumes that after fifteen consecutive months in foster care it is always in the best interest of the child to consider terminating parental rights! This is manifestly unfair when the state delays providing the requisite services.

199. *See id.* at 2128.
200. *See id.* at 2128-29.
201. H. R. REP. NO. 105-77, *reprinted in* 1997 U.S.C.C.A.N. 2739, 2746.
202. 111 Stat. at 2128.
203. 111 Stat. at 2128.
204. *See id.* at 2118. (codified at 42 U.S.C. § 675(5)(E) (2000)).

Instead of fifteen months of "reasonable efforts," there are often many months of no efforts to help a family. "Reasonable efforts" should require that actual efforts be made. "Reasonable efforts" should not be reduced to a mere time limit allowing states to get out of providing services simply because fifteen months have passed. The Adoption and Safe Families Act is designed to force states to quickly seek a hearing on termination, to facilitate permanent adoptions, rather than waste time and money on temporary solutions!

Although states can just wait fifteen months and file for termination, they can also take an active role in speeding up termination. They can do this by categorizing some of their cases as statutory "aggravated" circumstances. States can by-pass family reunification altogether if the parent committed, or aided in the commission of murder or manslaughter of another one of their children, or had their parental rights to another child terminated, or other "aggravated" circumstances.[205] States are free to decide what they consider "aggravated," but Congress indicates abandonment, torture, and chronic or sexual abuse as possibilities.[206] The legislative history on this section indicates that it is Congress' intent to deprive these children immediately deprive these children of contact with their parents: "States are allowed to by-pass the Federal reasonable efforts criteria and instead would be *required* to make efforts to place the child for adoption."[207] Congress endorses only two real options for children: staying with parents or being adopted. Reasonable efforts, seen as a "barrier" to adoption, are gladly removed if the parents are prejudged unfit by falling into one of these categories. Perhaps this is justified when parents have actually murdered a child, but what about battered women who courts might judge "failed to protect" their child against the abuse they could not escape themselves?[208] In addition, what about those who had the rights to a previous child terminated? This suggests that no matter what changes the parent makes in her life, if she lost a child before, she is unfit. What is the point of "reasonable efforts" if one is not allowed to make them?

Judicial discretion has to come in to play to soften these statutory requirements. Imagine a mother who was in an abusive relationship at eighteen. She does not have a high school education or enough job skills to work outside of the home. Her boyfriend abuses her, and her child. Worst of all

205. *See id.* at 2116. (codified at 42 U.S.C. § 671(a)(15)(D)(i) (2000)).

206. *See id.*

207. H. R. REP. NO. 96-336, 105-77, at 8 (1997), *reprinted in* 1997 U.S.C.C.A.N. 2739, at 2740 (emphasis added).

208. *See* In re B.R., 6699 N.E.2d 347 (Ill. App. Ct. 1996); In re Julie E., 451 N.W.2d 576 (Mich. Ct. App. 1990); In re L_E_E_, G_J_J, 839 S.W.2d 348 (Mo. Ct. App. 1992).

he is controlling and does not let allow her to leave the house, or even to work. Although this may sound extreme, battered women face situations like this frequently. If child protective services get involved, they could decide this mother has failed to protect her child from the abuse by her boyfriend. In so doing, she is now in an "aggravated" circumstance according to the Act and termination can occur without "reasonable efforts." Sadly, it is in situations like this, where state services could be most beneficial. Without outside help, a battered woman may not have the financial means to leave her abuser. There is nothing in the legislative history that accounts for these situations. In fact, one could think up countless other situations in which a parent falls into an "aggravated circumstance" category but still deserves "reasonable efforts" at reunification with their child. This merely reemphasizes that "reasonable efforts" should not be a formality. Each case, like each child, is unique. Judicial discretion must be present to differentiate between the battered woman and someone who purposefully harms her child.

Further, the state is not limited to murders, aggravated circumstances, or previous terminations, but is free to use its "discretion" to determine when efforts to reunite the family should not be made at all.[209] This undercuts the entire statutory scheme crafted in Section 101(a) of the Adoption and Safe Families Act. "Reasonable efforts shall be made to preserve and reunify families" but the state has full discretion to decide that parents are unfit to deserve these services. Not only do states have discretion to bypass "reasonable efforts" at reunification, "Committee Members [writing the House Report on this Act] recognize that in certain extreme cases, no efforts to reunite the family are reasonable."[210]

Arguably, the Act provides an alternative for states if termination is not in the best interest of the child, or if a relative is currently caring for the child.[211] But, to exercise this option, however, the state must provide a compelling interest as to why termination is not presumptively in the child's best interest.[212] Yet, the state is simultaneously required by the Act to seek termination. Before the Adoption and Safe Families Act, the law presumed that termination was not in the child's best interest, forcing the state to list the reasons why it believed otherwise. Now, the Act makes the opposite presumption. The state has must move for the requisite termination hearing and then provide evidence as to why it believes termination is not in the child's best interest, if they feel that this is the case. A caseworker that who wants

209. 111 Stat. at 2116. (codified at 42 U.S.C. § 671(a)(15)(D) (2000)).
210. *See* H. R. REP. NO. 105-77 at 11 (1997), *reprinted in* 1997 U.S.C.CA.N. 2739, 2743.
211. *See* 111 Stat. 2118. (codified at 42 U.S.C. § 675(5)(E)(i) (2000)).
212. *Id.* (codified at 42 U.S.C. § 675(5)(E)(ii)). *See id.* at 2116.

to dismiss the required termination petition must do additional work. If the social worker thinks that the parent and child should stay together, he or she must explain why the state should go against its statutory duty to try to terminate the parent's rights. Absent the state's efforts to show a compelling interest in keeping the family together, the general rule that requires states to terminate parental rights can prevail. This general rule has nothing to do with permanency, or even adoption. States terminate parental rights regardless of whether there is an actual adoptive home available for that child.

Congress presumes that by terminating parental rights, children will be more attractive for adoption. Instead of looking for the best possible placement for a child by evaluating multiple options, Congress pushes adoption. "Reasonable efforts" for family reunification are sustained only to the extent that parents are worthy of them,[213] and they do not take too long.[214] Congress wanted to emphasize "the State's responsibility for taking specific actions to find and finalize adoptive families."[215] Adoption is encouraged with the addition of the by-pass on "reasonable efforts" to reunite families, and with financial incentives.[216] The Federal government gives $4,000 for each foster care adoption ($2,000 for any special needs adoption) which exceeds a base amount.[217] States are also required to document the steps taken to find an adoptive family or other permanent placement for the child.[218] The federal government will not give money to states that "denied *or delayed* the placement of a child for adoption when an approved family is available outside of the jurisdiction."[219]

Increasing the state's adoption rate for foster care children is the clear goal of the Adoption and Safe Families Act.[220] Congress wanted to be sure that even "while family reunification might be the preferred goal for a particular child, caseworkers could also begin adoption planning, so that if family reunification is unsuccessful then termination of parental rights can be started immediately."[221] But when the "reasonable efforts" standard is diluted and adoption incentives are created, caseworkers have less encouragement to find the best solution for each child. Congress noted that "[w]hile adoption was the permanency goal for fifteen percent of foster chil-

213. *See* 111 Stat. at 2117.

214. *See id.* at 2130.

215. H. R REP. NO. 105-77 at 14 (1997), *reprinted in* 1997 U.S.C.CA.N. 2739, 2747.

216. 111 Stat. at 2122. (codified at 42 U.S.C. § 673(b) (2000)).

217. *See id.*

218. *See id.* at 2121. (codified at 42 U.S.C. § 675(5)(1)(E) (2000)).

219. *Id.* at 2125 (emphasis added) (codified at 42 U.S.C. § 674(e)(1) (1997), repealed by Child Support Performance and Incentive Act of 1998, Pub. L. 105-200, § 301(c), 112 Stat. 645, 658).

220. *See* H. R. REP. NO. 105-77, at 7 (1997), *reprinted in* 1997 U.S.C.C.A.N. 2739 ("the bill (H.R. 867) to promote the adoption of children in foster care").

221. *Id.* at 2743.

dren in 1990, only eight percent of the children who left care in that year were adopted."[222] How is making adoption the goal for more children going to "produce a substantial increase in adoptions in the years ahead"[223] if less than the desired adoptions are occurring currently? Congress admitted, "it is not clear that earlier reviews [i.e. permanency hearings occurring at twelve instead of eighteen months] have expedited the adoption process."[224] What then is the point of encouraging faster adoption proceedings when they will not necessarily lead to more adoptions? Perhaps the answer is found in the Congressional Budget Office's estimation that the Act will "produce budgetary savings by moving children from foster care to less expensive adoption placements."[225] The Adoption and Safe Families Act's promotion of adoption is motivated in large part by budgetary savings, which help craft the policy of quicker terminations and less options for children.

CLINICAL EXPERIENCE

In order to understand how the Adoption and Safe Families Act has played out in actual cases, I want to share the stories of two clients from the Notre Dame Legal Aid Clinic. In practice, the two main problems with the current Act are 1) the lack of services for struggling parents and 2) the required termination at fifteen months. With these formidable obstacles, lawyer and client come face to face with their lack of choices. And sadly, once a termination case has been opened, it is sometimes best to advise your client to consent to the termination and ask for post-adoption contact.

One of my clients at the Notre Dame Legal Aid clinic is a woman I will call Iris.[226] Iris's daughter, Mary Jane, was sexually molested by her father.[227] The prosecutor pressed charges against the father, convicted and jailed him. Iris divorced this man and later re-married. However, Mary Jane needed counseling to recover from the abuse. Mary Jane's therapist recommended that she stay as an inpatient at the local mental health facility. Initially Medicaid paid for this inpatient care. But eventually, Iris ran out of Medicaid assistance and could not afford to pay for Mary Jane's stay at the hospital. Therefore, Iris gave the care of Mary Jane over to the state so that it could shoulder the fiscal responsibility for the inpatient bills. This was the only way Iris could continue to give Mary Jane the kind of psychological

222. *Id.* at 2744.

223. *Id.* at 2740.

224. *Id.* at 2757.

225. *Id.* at 2753.

226. Although Iris has consented to my telling her story in this paper, I am giving her a fictitious name to keep our confidentiality.

227. Mary Jane is a fictitious name.

care she needed. Thus, the Indiana Department of Children and Family Services ("DCFS") through its Child Protective Services ("CPS") division declared Mary Jane a Child in Need of Services, or CHINS. The court shifted custody of Mary Jane to the state and she remained an inpatient. Further, the court appointed a Guardian Ad Litem for Mary Jane. CPS made a case plan for Mary Jane outlining goals for all involved, including Iris and the GAL. This plan originally stated that Mary Jane should return home after her hospitalization.

Mary Jane remained hospitalized during her initial treatment but as she appeared to improve, counselors allowed her to return home to visit her mother and siblings. Mary Jane's Guardian Ad Litem agreed that this was appropriate. She understood that Mary Jane was in state custody in order to get the care she needed, but the case plan indicated she should eventually return home to live with her family. However, during one of these home visits, Mary Jane molested one of her siblings. CPS then modified the case plan, and required that Iris give Mary Jane a separate room away from the other children when she eventually returned home. This required Iris to try to move to a bigger house, which she was financially unable to do. Iris began to understand that she might never be fully compliant with her case plan because she was too poor to comply. Although the state was paying Mary Jane's care expenses first at the hospital and then at a foster home, there was no state money available to Iris to secure a separate room for Mary Jane. At this point, state financial aid to assist Iris in complying with her case plan might have resolved the situation. In the meantime, Mary Jane returned to the hospital.

Once this care was over, however, the state did not return Mary Jane to Iris. Instead, the state sent Mary Jane to a therapeutic foster home outside of the county. Iris was allowed to visit Mary Jane once a week at the central offices of the agency that coordinated the therapeutic foster care. A liaison from the foster home agency would bring Mary Jane to the office and Iris could visit her there. However, Iris's weekly visits were scheduled back-to-back with Mary Jane's counseling sessions. Since Mary Jane was now out of the county, it took longer for her to get to her therapist. This reduced the amount of time Iris could see Mary Jane. We asked the CPS caseworker to create a different schedule, which would allow Mary Jane to see her therapist and her mother on separate days. Instead, CPS decided to "solve" this problem by switching Mary Jane to a therapist in her own county. This new therapist was not familiar with Mary Jane's case. It was certainly not necessary for Mary Jane to change therapists in the middle of treatment. Furthermore, the first therapist had understood Mary Jane's need to return home to her mother, Iris, as soon as she was able.

The situation was further complicated when an argument occurred between Iris and the therapeutic foster home liaison. In front of Mary Jane, the liaison asked Iris if CPS intended to terminate her parental rights. This made Iris upset and the two argued briefly. However, the liaison relayed this conversation to the CPS caseworker who then became upset at Iris for discussing termination in front of Mary Jane. The CPS caseworker relayed this information to the GAL who then wanted to stop Iris from seeing Mary Jane at all.

Iris was not without blame, however. She often acted childish. Iris had been the baby in her own family, and was used to getting her way by throwing temper tantrums. Another member of her family had come forward, offering to house Mary Jane. Iris wanted Mary Jane to live with her. She was so upset at the relative who seemed to be taking Mary Jane away from her. Therefore, Iris threw a temper tantrum of sorts, yelling at family members and threatening them. No one in her own family actually believed her, but this behavior did not go over well with CPS or the GAL.

All of this came to a head when Mary Jane's placement was reviewed at her six-month CHINS hearing. At that hearing, the GAL stated she felt that Iris should no longer be able to visit Mary Jane. She supported her opinion with a psychological evaluation of Iris that recommended termination despite the fact that her psychological profile was normal. Everyone else at the hearing, including the prosecutor, who represents CPS, and Mary Jane's therapist recommended Iris be allowed to visit her daughter. However, the judge at the hearing was sitting pro-tem, and stated he was not familiar with the case. Therefore, he felt obliged to go along with the GAL. We were shocked that a mother who had done so much for her child's well being was no longer able to visit with her. After the hearing, however, we talked to the therapist who said that the psychological evaluation had originally recommended visitation. However, the Office of Family and Children called the psychologist responsible for the report and told him he had to recommend termination. The therapist changed his recommendation.

Mary Jane was later moved from therapeutic foster care to placement with relatives. However, Iris was upset that her relatives could see Mary Jane and she could not. She threw temper-tantrums and yelled at her family. Furthermore, Iris and her relatives differed on how to raise Mary Jane and as Iris later put it: "She did not give birth to her! She was not in labor with [Mary Jane], I was!"

Iris screamed those words during an office visit at the clinic. She was there to sign a voluntary consent to the termination of her parental rights. Despite Iris' substantial compliance with the case plan, Mary Jane stayed with her relatives for more than fifteen months, so the state began

termination proceedings. Although the prosecutor initially favored a simple guardianship by the relatives over Mary Jane, the Office of Family and Children and the GAL were in favor of termination. The prosecutor complied and pursued termination. Iris' anger at the situation swayed the CPS caseworker that Mary Jane would be best served away from her mother. Iris was enraged. Yet, as lawyers we had to honestly counsel our client on her chances of winning, which we felt were slim. Now GAL, the CPS caseworker, and the prosecutor felt termination was appropriate. We were convinced that that judge would rule as he did in the six-month hearing and side with GAL. Although we could oppose the termination in court, we felt voluntary termination was the best option because it allowed Mary Jane to be adopted by her relatives, who would most likely agree to post-adoption visitation.

Iris consented to the termination of her rights only after a lot of anger. Iris' new husband was there and helped us persuade her that the only way she would get to see Mary Jane, was to sign away her rights. If we opposed the termination, we told her, and the state prevailed, Mary Jane would be given up for adoption — and not necessarily to relatives. Although we could appeal the probate court's decision, we did not want to take this risk. Therefore, Iris consented to the adoption of Mary Jane.

Iris' consent was conditioned on adoption by the same relatives who had cared for Mary Jane, and on the agreement between the parties for post-adoption visitation. Although post-adoption visitation agreements can be court enforced in Indiana, if court decides that post-adoption contact is not in the best interest of the child, the agreement will not be enforced.[228] Although the term "agreement" implies that Iris' and her relatives could agree on the terms of the post-adoption contact, Indiana statute requires that CPS, and the CASA or GAL, consent to the post-adoption visitation.[229] However, once the state and the CASA or GAL consents, the parties sign the agreement and the state is no longer involved. We felt that once the state was removed, Iris and her relatives would have a chance to arrange visitation between them.

As a lawyer there were two things that troubled me about watching this unfold. The first was Iris' anger and disbelief. Iris told me, "I've learned that you should just never ask for help." She feels that the loss of her child is partly her fault: had she never called Child Protective Services,

228. *See* IND. CODE ANN. § 31-19-16-2(1) (Michie 2000) (provides that "[a] court may grant post-adoption privileges if: the court determines that the best interests of the child would be served by granting post-adoption contact privileges . . . .").

229. *See* IND. CODE ANN. § 31-19-16-2(5) (Michie 2000) ("the licensed child placing agency sponsoring the adoption and the child's court appointed special advocate or guardian ad litem appointed under IC 31-32-3 recommends to the court the post adoption contact agreement . . . .").

perhaps this would never have happened. But then again, it was important for Iris to "do the right thing" as we reminded her when she signed the voluntary termination papers. However, the only option for poor people should not be to call Child Protective Services in order to afford help for their children. A wealthy family would have never needed to call on the state for help; they would have taken care of the counseling privately. The world is a different place for poorer people, and Iris brought that point home to me.

Secondly, my experience with Iris made me aware of the lack of choices we as lawyers sometimes have to offer. There should be options for clients to weigh risks. Yet the termination hearing, as I quickly learned, was a formality. The judge does not do the fact-finding, the CASA or GAL does. They really control the case. Whatever they say goes. It was amazing to me how the rules of evidence went out the window at one of Iris' hearings. The periodic six-month review should have been an opportunity to review her placement at the therapeutic foster home. When Iris could not afford a separate room for Mary Jane, the state should have helped her meet her case plan. The periodic CHINS review is supposed to be the place to make these decisions. Instead, the judge listens to the GAL.

To call this periodic review a hearing would be inaccurate. The prosecutor was to the left of the bench, and we stood to the right. In the middle, in front of the judge, were the GAL and the DCFS caseworker. Behind them were the foster parents. Next to them were the child's psychological counselor and someone else I could not identify. The prosecutor went first, stating that this was a periodic review of Mary Jane's placement outside of her biological home. The prosecutor then asked a few questions of the DCFS caseworker about the length of Mary Jane's placement and whether or not she felt Mary Jane should stay with her uncle. The caseworker did not take the stand, and did not take an oath. The caseworker was there to represent the best interest of the child, but it soon became apparent why the GAL, the foster parents, and the psychological counselor were also present. After the caseworker was done, the judge asked the GAL if she had anything to add. Then the judge made sure the back row of people, including the foster family, had a chance to say something. None of these testimonies was under oath. The prosecutor never called these witnesses to testify. We could have cross-examined them, but nothing they said was really "evidence." In addition, we wanted to maintain a relationship with the relatives and the GAL who had to consent to post-adoption contact.

Perhaps worse than Iris' experience with the judicial system, was that of another client, Fran. Fran also voluntarily terminated her rights to a child— three children, in fact. Fran admitted herself to a mental hospital for severe depression. While she was there, Child Protective Services petitioned

the court to declare Fran's children as Child in Need of Services. Fran received notice of this first CHINS hearing but she was in the hospital and unable to attend. Although the parties should receive notice of each subsequent CHINS hearing, it is the practice in St. Joseph's County to send the first notice by mail, but give subsequent notices of hearing dates orally. That is, the next hearing date is scheduled at the previous hearing. In this way, Fran never received notice of the subsequent CHINS hearings. Meanwhile, Fran was the subject of a state case plan, but did not know it. No Child Protective Services worker ever talked to Fran about her case plan or even made her aware of it. Finally three years later, the prosecutor sent Fran a notice for a termination hearing. Terminations are separate from CHINS actions, so the court sends out a written notice. It was then that Fran's counselor from the mental hospital called the Legal Aid Clinic and asked us to help.

Sadly, Fran consented to the termination of her rights to her three children, when her oldest child, a twelve-year old girl, begged and pleaded to be able to continue to see Fran. Fran very much loved her children but did not think with her mental condition that she could take care of the three children who were the subject of the CHINS action, as well as her newborn. Fran's daughter was beside herself, and begged Fran to terminate her rights to them so that we could draft a post-adoption visitation agreement. That agreement allows Fran to see her children extensively in unsupervised visitation, including the entire summer when they are out of school. Although we might have been able to prevail at Fran's termination hearing, Fran knew the closest she would get to a guarantee that she could see her children was a voluntary termination with post-adoption contact. Just like in Iris' case, if we lost the termination case, strangers could adopt her children and there would be no post-adoption visitation.

After seeing this process, I concluded that the adversary system did not function properly. In both Iris and Fran's cases, the state should have helped the parents meet their case plans. Foster caregivers receive money from the state but natural parents are not entitled to any assistance. In both cases, the prosecutor was open to different placements for these children, perhaps guardianships, but was forced to petition for termination under the Adoption and Safe Families Act. Once this proceeding was set in motion, there were not adequate safeguards of parental Due Process rights. In Fran's case, the service of process system broke down, forcing her into of the federal act's fifteen-month termination time limit. In Iris's case, there were too many people in front of the judge. The rules of evidence were not in place, and all sorts of hearsay and irrelevant testimony came before the judge, who was free to call his own witnesses. Furthermore, the objective fact-finder,

the GAL, seemed biased again the mother. And CPS sabotaged her psychological evaluation. Yet, the judge did what the GAL recommended.

A STUDY OF TERMINATION CASES IN SAINT JOSEPH COUNTY, INDIANA OVER THE LAST TEN YEARS

After seeing what Iris and Fran went through, I wondered if all termination cases played out similarly. Did others feel the same lack of options as our clients did? Were the lack of state services and the presumption in favor of termination after fifteen months problematic in all terminations? Did the judge always follow the recommendations of the CASA or the GAL? In order to answer these questions, I decided to study the impact of the Adoption and Safe Families Act on terminations in the local probate court.[230] I reviewed all the termination cases in Saint Joseph County, Indiana, over the last ten years.[231] I wanted to evaluate the effectiveness of the current law based on facts and not political lobbies, or societal perceptions. Are we implementing the Adoption and Safe Families Act of 1998 with any greater success than its predecessors? Until we have an informed answer to this question, our law review articles, and congressional hearings are based only on conjecture.

For each case, I gathered information on the following categories:

1. Was the case a voluntary or involuntary termination?
2. The child's birthday.
3. When was the child removed from the home?
4. When was the termination filed?
5. When was the termination decided?
6. How many times did the termination case come before the judge?
7. Were the biological parents at the hearing?
8. Did the judge consider physical abuse to the child?
9. Did the judge consider sexual abuse to the child?
10. Did the judge consider abuse to the mother or domestic violence in the home?
11. Did the judge consider the mother's past?
12. Did the judge consider abuse to the father?

[230] In order to begin reviewing termination cases in Indiana, I had to agree to abide by an Indiana law requiring me sign a confidentiality agreement. *See* IND. CODE ANN. § 31-39-2-11(4) (Michie 2000). Once this agreement was signed, the probate court was required to grant my access to these records if I adequately detailed my research and the safeguards I intended to use to preserve the confidentiality of the records.

231. *See* Appendix.

13. Did the judge consider the father's past?
14. How long was the child cared for out-side of the home?
15. Did the judge consider any domestic violence in the foster home?
16. Was adoption planned for the child?
17. Did the child testify?
18. Did the judge consider the child's desired place to live?
19. Was there a Court Appointed Special Advocate (CASA) or Guardian Ad Litem (GAL) for the child?
20. Finally, did the judge consider anything else relevant in his decision to terminate parental rights?

I set up a spreadsheet to record this data in each case.[232] However, I noticed almost immediately that the termination records in Saint Joseph County simply did not provide all of this information. Each case answered Questions one through six well. It was rare that a termination case did not list the child's birthday or indicate how many times the case had gone before a judge. However, the rest of the record was sparse. Most records did indicate if the court appointed a CASA or GAL. However, not all court appointed advocates wrote reports. But, if the file contained any additional background information, it was always in the CASA or GAL report to the court. Although I took notice of the facts in these reports to the court, the record does not indicate if the judge considered them

While recording this data, I took notes on my general impressions of the termination cases by year. I began by looking at the most recent cases first. In 2000, the 1997 Adoption and Safe Families Act was in full force.[233] I noticed that the files were thicker than previous years. I was hopeful that this meant the file contained more information. However, I found that this was because the form for petitioning to terminate parental rights used by the Office of Family and Children Services was longer. In addition, if a CASA or GAL was appointed to the case, they often wrote lengthy reports, unlike earlier years. However, the judge's remarks were almost non-existent. In each case I reviewed over ten years, the termination order was a form, filled out by the judge. The reasons for the termination in the judge's opinion were never given, unless the judge had to go back and make a record of facts for an appeal. The forms for the years after the enactment of the 1997 Adoption and Safe Families Act all stated:

> Children removed for at least 6 months under a dispositional de-

232. *See* Appendix.
233. *See* Sec 501(a), Adoption and Safe Families Act of 1997, 111 Stat. 2115, 2136 (1997).

> cree of this court dated ______, cause # ________. There is reasonable probability that the conditions resulting in the removal of the children from his parents' home will not be not be remedied. There is reasonable probability that the continuation of the parent child relationship will pose a threat to the well being of the Children. It is in the best interest of the child(ren) that the parent-child relationship be terminated. The St. Jo. Co. Office of Family and Children has a satisfactory plan for the care and treatment of the children which is ____________.

This last blank was usually filled-in with the word "Adoption." In fact, out of sixty-three terminations in 2000, thirty-four had adoption as the clear post-termination goal.[234] I was only able to note that adoption was the final goal if the blank in the termination order form was filled in. Often it was not. This was true as far back as 1997, when the Adoption and Safe Families Act became effective. It is my guess that this is when the court started using these termination order forms. As with any form, it is easy to forget to fill in certain blanks. Therefore, out of the thirty terminations in 2000 where adoption was not written in the file, it is impossible to tell how many of these children might have been put up for adoption.

This same form was used for terminations in 1999 and 1998. In both of those years, I found that the order forms were not always filled out, and again adoption was listed as the permanency goal only about half of the time.[235] I also noticed that there were cases where a CASA or GAL had clearly been appointed, because his report was in the file, but in the space in the termination order where their name should be was blank. In fact, one file was missing the order for termination (or the order for dismissal), making it impossible for me to know the outcome of the case.

There were nearly half as many terminations in 1999 and 1998 as there were in 2000: thirty-one and thirty-two respectively, compared to sixty-three in 2000.[236] In 1998 and 1999 I noticed the CASA or GAL reports were shorter and there were less of them. This is when I first noticed that siblings do not get separate termination orders or petitions. This was a change from earlier years when each child got his own case number. However, each of the 303 data entries I recorded refers to a separate child.[237] If two children were referred to in one case, I gave them two separate data entries. Thus, far fewer than 300 sets of parents had their rights terminated over the last ten years in Saint Joseph County.

234. *See* Appendix, Graph H.
235. *See Id.*
236. *See* Appendix, Graph A.
237. *See* Appendix, Table I.

In 1997, there were fifty-four terminations in Saint Joseph County.[238] Recall that this was the year that the current federal act became effective.[239] I noticed right away that some of these files were smaller and I thought this was because there were fewer CASA and GAL appointments in 1997 then there were in later years. Yet, the data proves otherwise. 1997 marked the year with the most CASA and GAL appointments, twenty-seven out of fifty-four cases.[240] In fact, 1997 is one of the years where CASAs and GALs were appointed in 100 percent of the involuntary termination cases.[241] I realized that even though CASAs and GALs were appointed in all the involuntary terminations in 1992, 1993, 1995, 1996 and 1997, they did not always write reports.[242] Although not 100% of involuntary terminations had CASAs or GALs in the years following 1997, most of all of those wrote reports, making the files thicker. Where CASA or GAL reports did exist, the judge always went with their recommendation, just like in Iris' case. In fact, in only three cases out of 300 in the past ten years did the judge dismiss a petition for termination.[243] In each of those cases, the CASA or GAL wrote in his report that he or she felt this option was the best. Convincing the CASA or GAL is convincing the probate judge.

Often the only indication that I had about the nature of the termination was the report by the CASA or GAL. Yet, grieving parents and family members would frequently also write to the judge, begging him to reconsider the termination proceeding. A friend of a father who was attempting to regain custody of his child wrote that she had known the father to work hard for the last six years to rebuild his life. In fact, he became a "minister" or at least deeply involved with his faith. This friend writes: "I beg the Court to please do not... take away [the Father's] parental rights.... I believe [the Father] is capable of being a good father. He has financial hardships just as many other people in this country have. He is uneducated, as are many other parents. However, he strives to improve himself and his life each day. He truly loves his child and wants the chance to prove his abilities as a parent." In this case, termination was granted. I do not know if there was another side to this story because the file did not contain a CASA report, and the judge never made any findings of fact. There was not much in the file but the standard order.

238. *See* Appendix, Graph A.

239. *See* Section 166(a)(1), Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-93, 110 Stat. 2105 (1996).

240. *See* Appendix, Graph F.

241. *See* Appendix, Graph G. In 1992, 1993, 1995, and 1997, a judge appointed either a CASA or GAL in every involuntary termination case.

242. *Id.*

243. *See* Appendix, Individual Records.

In the termination cases from 1991 to 1996, the governing federal law was the 1980 Adoption and Child Welfare Act.[244] Correspondingly, there were fewer terminations from 1991 to 1996 than from 1997 onward: 123 compared to 180.[245] Even the custodian of termination records said: "they didn't do as many of them back then." This is mirrored in the shorter one-page orders issued by the judges. Again, it's a form the judge fills out, usually fraught with typos and misspellings, giving no indication what happened in the case, often leaving blanks. To me this indicates a lack of care. I saw no indication that these cases were a court priority. It did not appear that the judge saw the parties in the case more than once. In fact, there was only one involuntary termination in 1992, and one in 1993, in which the judge saw the parties more than once.[246] Not until 1998 are there significant numbers of termination cases that come before the judge more than once: about forty-two percent in 1998, twenty-three percent in 1999, and forty-four percent in 2000.[247] There were simply fewer terminations when the 1980 Adoption Assistance and Child Welfare Act, and/or the 1996 Welfare Reform Act, were in place: eighteen in 1996, thirty-one in 1995, twenty in 1994, thirteen in 1993, thirty-three in 1992 and only eight in 1991.[248] Although this shows an increase in terminations over the years, there is unexplained fluctuation. Some of the years under the 1980 Adoption Assistance and Child Welfare Act have more than thirty terminations, some less than fifteen. By 1993, I saw a marked decrease in the number of CASA reports. Although there were only three CASAs or GALs appointed that year, all three were assigned to involuntary termination cases, and none of them filed a report that became part of the court record.[249] By 1991, there were no CASAs or GALs appointed for any terminations.[250] However, there were no involuntary terminations that year either.[251]

It is clear from Graph A that the trend is towards an increasing number of terminations.[252] There were more than fifty additional terminations in 2000, then there were just ten years before.[253] In 1997, the graph spikes up with fifty-four terminations that year, more than double the year before and at least twenty more than in the previous years.[254] Whether this is due to the

244. *See* Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 94 Stat. 500 (1980).
245. *See* Appendix, Graph A.
246. *See* Appendix, Graph J.
247. *Id.*
248. *See* Appendix, Graph A.
249. *See* Appendix, Graphs F and G.
250. *See* Appendix, Graph F.
251. *See* Appendix, Graph B.
252. *See* Appendix, Graph A.
253. *Id.*
254. *Id.*

change in the federal law is difficult to say based only on this graph. However, Graph B shows that the number of involuntary terminations mirrors the number of total terminations.[255] That is to say, when the total number of terminations increases so do the number of involuntary terminations.[256] Graph D echoes this statistic, showing that almost seventy-eight percent of all terminations in 2000 were involuntary compared to none ten years ago.[257] In 1997, the year the Adoption and Safe Families Act became effective, nearly ninety-six percent of all terminations were involuntary.[258] However, Graph D is puzzling because the percentage of involuntary terminations fluctuates significantly over the years. This is the same for the percentage of voluntary terminations in Graph E, which is logically the reverse of Graph D: peaks in the percentage of voluntary terminations correspond to reductions in the percentage of involuntary terminations.[259] I am uncertain why this cyclical pattern appears.

The number of voluntary terminations stays relatively constant over the first five years of the study, hovering near eight and a half terminations per year.[260] I think the sharp rise in voluntary terminations in recent years is due to the greater number of parents who voluntarily consent to having the state terminate their parental rights. I think these types of "voluntary" terminations are coerced. Once a child is removed from the parental home for more than fifteen months, Indiana statute, in accordance with the 1997 Adoption and Safe Families Act, must move to terminate parental rights.[261]

Knowing that a termination petition is imminent, and feeling as if they probably will not win, parents may give up their children for adoption. In fact, voluntary termination gives the parent his only chance to work out a post-adoption visitation agreement. If the termination proceeds involuntarily, the parent risks never seeing the child again. Why should the parents feel their chances at these termination hearings are so low? The fact is that only three cases out of the 303 that I studied resulted in a denied petition for termination. If statistically a parent's chance is less than one percent that the court will dismiss an open termination case, word will get around. Parents, desperate to see their children, panic when this is the reality. I believe this is why the number of voluntary terminations spikes so drastically in 1999. Although the Adoption and Safe Families Act was effective in 1997, it took

255. *See* Appendix, Graph B.
256. *Id.*
257. *See* Appendix, Graph D.
258. *Id.*
259. *See* Appendix, Graph E.
260. *See* Appendix, Graph C.
261. *See* IND. CODE ANN. § 31-35-2-4.5(1)(B) (Michie 2000).

until this time to see its drastic impact. Lawyers merely need to tell parents that the chances of dismissing an involuntary termination are remote and the clients should choose voluntary termination because it comes with the potential for future visitation.

The Indiana Court of Appeals declined to reach a question of coerced voluntary termination in *In Re The Visitation of A.R, a Minor Child.*[262] In that case, the petitioner was the biological mother of a child adopted by relatives after the voluntary termination of her parental rights. After the termination was complete, the mother sought visitation with her child. She had not, however, complied with the statutory formalities of Ind. Code § 31-19-16-2. The court held that this statute provided the exclusive means for post-adoption contact and the mother's failure to comply with its requirements barred her from seeking visitation as a third-party non-parent after the adoption.[263] The court writes in footnote 1:

> we note that in her reply brief, [the mother] questions whether her consent to the adoption was voluntary. The issue of voluntariness is pertinent to the question of whether the adoption should be set aside. No motion to set aside the adoption has been filed, and we will consider neither the legal issue nor the factual issues pertinent thereto.[264]

In fact, termination orders for cases in 1998, 1999, and 2000 have a provision on the basic form certifying that "no competent evidence of probative value that fraud or duress was present when the written consent was given or that either of the parents were incompetent."[265]

Regardless of how much effort judges may put into discovering coercion at the termination hearing, the Indiana Supreme Court has set a low threshold. In *Ellis v. Catholic Charities*, the court found that consent to adoption was voluntary even when the eighteen year-old girl was under the assumption that she would be allowed to visit her son post-adoption.[266] In that case, the mother, Ellis, signed a termination of her rights a day after she was discharged from the hospital for complications from childbirth. Catholic Charities then filed a petition for termination of Ellis' rights in order to make the baby available for adoption. Ellis, who received notice of this hearing, appeared and asked to withdraw her consent. Ellis claimed that she only consented to the termination of her rights under the belief that she

262. 723 N.E.2d 476 (Ind. Ct. App. 2000).
263. *Id.* at 479.
264. *Id.* at 480.
265. IND. CODE ANN. § 31-32-9 (Michie 2000).
266. 681 N.E.2d 1145 (Ind. 1997).

would be allowed to visit her son.[267] Catholic Charities told Ellis, however, that post-adoption visitation agreements may not be enforceable in Indiana, and that there was no legal right to an open-adoption allowing for visitation.[268] There was enough evidence that the mother was aware that post-adoption visitation may not occur: "all she clung to was a hope, not any notion of legal rights."[269] Therefore, the Indiana Supreme Court held her consent to the termination to be voluntary: "emotion, tensions, and pressure are . . . insufficient to void a consent unless they rise to the level of overcoming one's volition."[270]

Graphs F and G address Court Appointed Special Advocates and Guardian Ad Litems. Graph F indicates that there has been a steady increase in the number of cases with CASAs or GALs. In 1997, twenty-nine termination cases had a CASA or GAL appointed: one for every single involuntary termination.[271] Involuntary terminations, however, do not always result in the appointment of a CASA or GAL. In 1994, 1998, 1999 and 2000, less than all of involuntary termination cases had a CASA or GAL.[272] I am not sure why judges do not appoint CASAs or GALs in all termination cases. In 1992, 1993 and 1995, years before the enactment of the 1997 Adoption and Safe Families Act, all of the involuntary terminations had either a CASA or GAL. The appointment of a CASA or GAL does seem to be increasing overall, as indicated by Graph F, but there is no explanation I can give for why every involuntary termination case does not have a CASA or GAL.[273] Perhaps this is statistical confirmation of judicial discretion in these appointments.

It is clear, however, that adoption is increasingly becoming a stated option for children after termination. It is important to remember that many case files simply do not state the post-adoption plan for the child. Cases where adoption was noted, however, are on the rise. In fact, the pro-termination policy advocated by the 1997 Adoption and Safe Families Act seems to be working. In 1996, adoption was the post-termination plan for the child in only seven cases.[274] By 1997, the number of stated adoption plans more than quadrupled.[275] After the implementation of the 1997 Adoption and Safe Families Act, more than sixty-six children were to be put up

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267. *Id.* at 1149.
268. *Id.* at 1150.
269. *Id.*
270. *Id.* at 1151, (quoting Matter of Adoption of Hewitt, 396 N.E.2d 938, 942 (Ind. Ct. App. 1979)).
271. *See* Appendix, Graphs F and G.
272. *See* Appendix, Graph G.
273. *See* Appendix, Graphs F and G.
274. *See* Appendix, Graph H.
275. *Id.*

for adoption in Saint Joseph County after their parents rights were terminated. This is more than the entire pre-Adoption and Safe Families Act years combined.[276] Graph I is even more telling because it looks at the percentage of cases where adoption was the stated post-involuntary termination goal.[277] In 1997, the year the Adoption and Safe Families Act became effective, 100 percent of all involuntary terminations had adoption as the post-termination goal.[278] It is important to pause here and recall the other options available to children, including long-term foster care, relative placements, and guardianships. Yet, in none of the 1997 involuntary terminations were these options pursued: a testimony to the effect of the federal legislation on changing state policies. Although only forty percent of the cases in 1999 stated explicitly that adoption was the plan, the judge may have left blank the space concerning future arrangements for the child.[279] This is sad. The termination hearing exists to consider the best possible placement for the child, yet the judge often does not take a moment to indicate on the record what was decided and why. In 1999, the Saint Joseph County Probate judges saw the fewest number of terminations since the Adoption and Safe Families Act was implemented.[280] Even in 2000, when there were more terminations than ever before, the judge could have taken the time to individualize his termination orders. In 2000 there were sixty-three terminations, which averages to less than six a month.[281] The judge rarely sees termination cases more than once.[282] In fairness, I know that the judges see many CHINS, or Children in Need of Services cases, and could be familiar with the facts before the case reaches the termination stage. Only about half of the terminations in 2000, however, came before the judge more than once.[283]

I think this underscores the fact that the termination hearing is a formality; the judge fills out a blank termination order form and proceeds to the next case. Only in 1999 and 2000, do we begin to see voluntary termination cases come before the judge multiple times.[284] This may indicate that not all "voluntary" terminations are, in fact, free of coercion. A case in which a parent gives their child up for adoption at birth does not come before the judge more than once. Voluntary cases where the parents start by fighting

276. *Id.*
277. *See* Appendix, Graph I.
278. *Id.*
279. *Id.*
280. *See* Appendix, Graph A. I would have information that is much more accurate if at each of these terminations the judge had taken the time to draft a specific order, tailored to the facts of the case.
281. *Id.*
282. *See* Appendix, Graph J.
283. *Id.*
284. *Id.*

the termination and then consent may explain why the case comes before the judge more than once, accounting for the presence of voluntary cases on Graph J.[285]

Graphs K, L, and M address the age of the child when the termination occurs.[286] The mean age of the child at the time of the termination is on the rise.[287] The average age of a child at termination ten years ago was less than one year old.[288] In 2000, the average age was eight.[289] Since the adoption of the Adoption and Safe Families Act in 1997, the average age of a child whose parents' rights are terminated, is on the rise.[290] I think this is mainly due to the federal mandate that after fifteen months away from the mother, the state should move to terminate parental rights.[291] In addition, before the federal law pushed for adoption, the court terminated parental rights to older children less frequently because guardianships or long term foster care was seen as a possible option. In 1998, the first year in which the Adoption and Safe Families Act was fully effective, Saint Joseph County saw terminations of rights to children who were on average nine years old.[292]

The Adoption and Safe Families Act seeks to keep children from growing too old in foster care, by placing them up for adoption at an early age.[293] The act has been successful at this because the mean age of children at involuntary termination is rapidly declining.[294] Notice if the mean age of terminations for involuntary children is declining while the age of overall children in terminations is on the rise, this indicates that the age of children in voluntary terminations must be rising faster than the decline in children in involuntary terminations. Graph M confirms that in some years the mean age of a child in a voluntary termination can be as high as six.[295]

Graph S indicates that the mean time between filing a voluntary termination and getting the final order is on the rise.[296] In 2000, the time between filing and final order leapt from less than a year to almost two years.[297] It was on the rise since 1998, the year the Adoption and Safe Families Act became fully effective. This may again reflect the fact that not all "volun-

285. *Id.*
286. *See* Appendix, Graphs, K, L, and M.
287. *See* Appendix, Graph K.
288. *Id.*
289. *Id.*
290. *Id.*
291. 42 U.S.C. § 675(5)(E) (2000).
292. *See* Appendix, Graph K.
293. Adoption and Safe Families Act of 1997, Pub. L. 105-89, 111 Stat. 2115 (1997) (codified as amended in scattered sections of 42 U.S.C.).
294. *See* Appendix, Graph L.
295. *See* Appendix, Graph M.
296. *See* Appendix, Graph S.
297. *Id.*

tary" terminations are in fact voluntary. Parents start out fighting for custody but then consent to termination, such as in Iris' or Fran's cases.[298] Further, there are fewer "voluntary" terminations than involuntary ones. These "voluntary" terminations can occur with older children, while the overall age of terminations can be on the decline, since far more terminations are involuntary and they are now occurring at earlier ages.

In 1992, the average age for a child in an involuntary termination in Saint Joseph County was nine years old.[299] In 2000, the average age at involuntary termination was about two years old.[300] Now that children can only spend fifteen months of the last twenty-two months in foster care before a termination proceeding occurs, the mean age of a child in an involuntary termination case is not much older than twenty-two months, or two years.[301]

Graph M, depicting children's mean ages at voluntary terminations in the last ten years, is slightly harder to interpret.[302] Most years the child is less than a year old when the parents voluntarily consent to terminate their rights.[303] In 1994 and 1998, however, the average age of children in voluntary terminations was about six years old.[304] I conjecture that these were two years heavily impacted by federal reform. In 1996, Congress passed the Welfare Reform Act, threatening imminent financial aid reductions to families with dependent children.[305] It is quite possible that poor parents felt they would no longer be able to care for their children, and thus gave them up for adoption. In 1998, the first full year of effectiveness for the Adoption and Safe Families Act, lawyers were telling their clients how difficult it would be to defeat the mandatory termination petition. Out of fear, parents who wanted to retain custody of their children consented to voluntary termination in the hopes of obtaining a post-adoption visitation agreement.

Graph N shows that children spend far less time in foster care under the 1997 Adoption and Safe Families Act than they did prior to its enactment.[306] Before this change in federal law, children could spend on average as much as five years in foster care in Saint Joseph County.[307] Now, children are in foster care for no more than about two years.[308] The Adoption and

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298. *See supra* note 225.
299. *See* Appendix, Graph S.
300. *Id.*
301. *Id.*
302. *See* Appendix, Graph M.
303. *Id.*
304. *Id.*
305. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105 (1996).
306. *See* Appendix, Graph N.
307. *Id.*
308. *Id.*

Safe Families Act has reduced the time children spend in foster care by requiring a termination hearing after fifteen months away from a parent.[309] Except for 1999, which appears to be an outlier, the average age for children in involuntary terminations is going down while the average age for children in voluntary terminations has increased.[310] This is again, most likely due to the 1997 Adoption and Safe Family Act mandated termination proceedings. In involuntary terminations, the mandatory termination proceedings keep the average age of children low. The fear of loosing a child permanently to an involuntary termination proceeding, however, is real, increasing the mean age of children in voluntary placements.

Finally, I graphed data relating to time between the filing of termination petitions and their disposition.[311] By 1997, parents waited nearly eight and a half months before a termination decision was reached in their case.[312] After the implementation of the Adoption and Safe Families Act, the mean time delay between filing and final order was down to around two and a half months.[313] I do not think this reflects a less crowded judicial docket. Instead, I think this shows that the termination proceeding is a formality. It proceeds rather rapidly once it is initiated. As noted in Graph J, far more termination cases come before the judge multiple times now than ever before.[314] The judicial docket is not so crowded that a judge cannot entertain several hearings on a petition for termination. From 1991 to 1999, the average time between filing and hearing on a voluntary petition for termination was about two and a half months.[315] Recently, however, this has shot up to over a year, indicating that voluntary terminations now are comprised not solely of those who give their babies up at birth.[316] Voluntary terminations now include those who struggle with the decision after having parented their child for some time. Parents now realize that the 1997 Adoption and Safe Families Act facilitates petitions for termination. An experienced lawyer can tell a client that they have little chance of defeating such a petition once a termination case has started.

309. *See* Adoption and Safe Families Act of 1997, Pub. L. 105-89, 111 Stat. 2115, 2118 (1997).
310. *See* Appendix, Graphs O and P.
311. *See* Appendix, Graphs Q, R, and S.
312. *See* Appendix, Graph Q.
313. *Id.*
314. *See* Appendix, Graph J.
315. *See* Appendix, Graph S.
316. *Id.*

DISCUSSION

As the statistics indicate, the Adoption and Safe Families Act of 1998 has resulted in an increased number of total terminations, the majority of which are involuntary.[317] In 1997, the year the Adoption and Safe Families Act became effective, nearly ninety-six percent of all terminations in St. Joseph's County were involuntary.[318] The majority of the information I received about the nature of the termination case came from the CASA or GAL report in the file. These court-appointed advocates have enormous influence on the judge. This is because the judicial hearings in these cases are informal, and those without standing in the case, such as the CASAs and GALs, are allowed to speak freely. The rules of evidence do not govern their testimony. This is only part of the problem. Prosecutors in these cases are forced by the current federal law to seek termination after a child is in foster care for fifteen of the last twenty-two months.[319] The Adoption and Safe Families Act now presumes that termination is in the child's best interest.[320] The state is responsible now for both filing the termination and rebutting this presumption when they feel termination is not in the child's best interest. This has serious due process implications because it saddles the state prosecutor with dual roles: petitioning for the termination of parental rights after fifteen months as well as dismissing that petition when it is not necessary. Ideally, the Act should be changed to reverse this presumption. The state should have just one role to play. Further, case plans for families should include reasonable goals and parents should be given state services to meet these goals. The termination hearing should not be held until it is shown that the state services were provided to the family with sufficient time for them to make an impact. Finally, in seeking to give children permanent placements in adoptive homes, the Adoption and Safe Families Act ignores other possible solutions. Each child should be treated separately, and all options for that child should be explored.

THE CASA/GAL PROBLEM

Graph F indicates that the use of CASAs and GALs in cases is on the rise. In almost all involuntary terminations since the inception of the Adoption and Safe Families Act, a CASA or GAL has been involved.[321] In fact,

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317. *See Appendix*, Graphs A and B.
318. *Id.*
319. *See* Adoption and Safe Families Act of 1997, Pub. L. 105-89, 111 Stat. 2115, 2130 (1997).
320. *Id.* at 2116.
321. *See* Appendix, Graph G.

the only background information I received when reviewing the termination cases in Saint Joseph County came from the reports written by the CASA or the GAL. Not all of the CASAs or GALs investigated the same way, interviewed the same witnesses, or wrote the same kinds of reports. Their opinions were just that, their own personal opinions. Because these opinions are usually determinative of the outcome of the case, they are important factors in parental rights terminations. When a CASA or GAL decides that termination would be the best option for the child, the judge is usually persuaded. If the personal opinions of CASAs and GALs are going to have this much influence, then they should be based on uniform factors. These court appointed advocates should have specialized training in child psychology or at least a degree in social work. The National Association for Court Appointed Special Advocates does not hide the fact that CASAs can come from all different backgrounds:

> People who give their time to CASA come from many different places. Some have years of education and professional experience working for children and families. Some have themselves grown up in the foster care system and felt the sorrow of having to move from home to home, others may have flourished in a warm and loving family, never once imagining that there were children who didn't have caring parents.[322]

This is precisely the problem. The diverse backgrounds of the CASAs are not tempered with enough uniform training. Although the national program for CASAs advocates a forty-hour training course, the materials are adopted differently in every local community.[323] As a CASA volunteer has so aptly put it: "The lawyers know the statutes, the social workers the regulations. But the CASA volunteer is assigned to know the child."[324] The problem is that how a CASA or GAL gets to know a child, and reports on that child's life is different with each CASA or GAL. Whatever training these CASAs or GALs receive, their personal prejudices are often still present.

For example, in one case a CASA remarked on a child's "quick and painless adaptation to the change in foster homes. I do not think I would adapt as fast and as well if I took my family and moved to the next block, let alone left my family behind." In the next paragraph, however, the same CASA says that the child cannot bond well, saying that he lacks this ability.

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322. *See* http://www.nationalcasa.org/casa/confer.htm (last visited Mar. 2, 2002).

323. *See* http://www.nationalcasa.org/volunteer/index.htm (last visited Mar. 2, 2002).

324. *See* http://www.nationalcasa.org/volunteer/anna-quindlen.htm (last visited Mar. 2, 2002) (quoting from Quindlen, *Foreword*, LIGHTING THE WAY: VOLUNTEER CHILD ADVOCATES SPEAK OUT (National Court Appointed Special Advocate Organization ed., 2001)).

How can this be when the CASA just wrote that the child was adapting quick and painlessly? This CASA concluded her report by highlighting the fact that there was no available funding to find someone to do a competent psychological review of the child. She could not find a local therapist skilled in diagnosing and treating children with attachment problems. I think she got one thing right: a skilled psychologist needs to make an attachment disorder diagnosis. Nevertheless, the state has funded the CASA, and the judge listens to these unprofessional opinions.

In another alarming example of CASA incompetence, a CASA makes a personal judgment about a mother's alcoholism and psychiatric treatment. In a 1997 case, a mother who had been sexually abused started drinking. Her child was removed from her care by CPS. The CASA wrote that the women complied with the case plan, was making "excellent progress," and attended all the requisite alcoholism meetings. "If she continues there is every reason to think she'd be a good mother and a good person." The CASA, however, still recommended termination because "the stress of being a mom could drive her to drink again," even though the CASA specifically acknowledged that the mother was capable of identifying the signs of any relapse and coping with them. The CASA understood how anxious the mother was to be a good parent.

In yet another example, a CASA chastises a mother for not contacting her son by letter. The CASA says "the excuses were lame. [Mother] stated that she was afraid and that she couldn't find the right words." The CASA went on to write that because the mother offered to tape record a message to her son instead of writing, she was not making enough of an effort. I wondered right away if the mother could read and write. Even if she could, wouldn't a tape-recorded message be so much more personal? Moreover, isn't the mother trying to communicate? Furthermore, I was shocked to discover that the reason for the termination was the mother had an unlivable home. The state of the mother's house is completely unrelated to her ability to write a letter. Yet, the CASA recommended termination and it was so.

Frequently CASAs would write about children as being "adoptable" as if they were marketing a doll. One CASA remarked that the children "are both delightful and very adoptable children." In another case, a CASA wrote that "although [she] is a special needs child, she is very sweet, loving and very adoptable." What is an adoptable child?

Finally, on the rare occasion that a CASA decided termination was not in the child's best interest, the language in the CASA or GAL report would read, for example, "it would be devastating to lose the connection with the only person who has a significant relationship with her." Why is it

not always devastating to lose contact with someone with whom you have a significant relationship?

In a poignant letter, a grandmother, whose daughter was about to lose custody of her two children, writes wrote that her daughter was sick, lost her job, and had to move to the homeless center. The kids went to foster care. The grandmother wondered why her daughter could not keep the kids. She questioned the judge, "the case worker tells the foster parents they are going to terminate [my daughter's] parental rights and give them [sic] adoption. I thought the final decision was yours and not theirs?"

That letter was written in an involuntary termination case in 1997. Recall that the 1997 Adoptions and Safe Families Act shifted the burden of proof in termination cases.[325] The state must file a termination petition after a child has been out of the home for at least fifteen months.[326] Although the state can also move the have the petition they just filed dismissed, they must provide a compelling reason as to why the termination is not presumptively in the child's best interest.[327] If the state simply files the termination petition, doing no other work, the presumption favors termination and it will occur. To stop these routine terminations, the state must do more work by finding facts that support reunification. The state has two roles: it must carry out the federal mandate for a termination hearing after fifteen months in foster care, and it must police its own decision to remove the child from the home, finding facts to support reunification. Before this 1997 change in federal law, the presumption was that termination was not in the child's best interest and it forced the state to list reasons to the contrary.

Forcing a CASA or GAL into these dual roles requires that he or she is impartial. Nevertheless, I have yet to find a report from a CASA that only found facts, without taking sides or giving an opinion. In a 1997 case, the Indiana Appellate Court reviewed an involuntary termination. They held that the CASA was not a fair fact finder.[328] The parents petitioned for GALs for their children because they felt the CASA could "no longer objectively report to the Court [on the children's best interests] . . . . It is in the best interest of the children to have an independent reporter to the Court at this time who is not an interested party in this cause of action." The parents' request was denied by the Saint Joseph County probate court.

The appellate court acknowledged that the CASA in this case exercised her right pursuant to I.C. § 31-35-2-4 which allows a CASA, GAL,

325. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, 2116 (1997).
326. *Id.*
327. *Id.*
328. *See* Lodholtz v. St. Joseph County Office of Family and Children and the Saint Joseph County CASA, 715 N.E.2d 23 (Table, Ind. App. 1999) (unpublished).

attorney for OFC,[329] or prosecutor, to initiate the termination of parental rights. However, the appellate court found that the CASA must always protect the best interest of child regardless of whether they filed the petition. The appellate court cited I.C § 31-32-3-6 stating that "the legislature obviously contemplated that a CASA may become an adversarial party toward the parents of a child he or she represents." However in this specific case, failing to re-appoint a CASA (or as the parents wanted, a GAL) for proceedings in the trial court for the actual termination hearing was not reversible error, "especially where the evidence of record indicates that the best interest of the children were adequately represented."

The parents, however, contended that substantial justice was hindered because "the CASA's recommendations for termination may have been influenced by false and misleading information provided by ... an OFC caseworker who openly expressed hostility and contempt toward [the biological mother]." The Appellate court held that:

Without objective and truthful information concerning Parents and the children, it is questionable whether the CASA, whose petition for termination of parental rights was based in part upon the information provided by [the OFC caseworker], adequately represented and protected the best interests of the children. Considering the totality of the circumstances in the instant case, we cannot conclude that the trial court's error was harmless.[330]

The CASA said that one of the biological twins born to the mother died because the mother was addicted to drugs during her pregnancy. The CASA got this misinformation from the OFC caseworker and did not investigate it herself. She just looked at the file. However, there was no positive drug screen for the baby at birth, making CASA's reliance on OFC unfounded. The child in question was one of two twins who died due to a non-drug-related complication. A doctor had told the OFC caseworker that no form of pre-natal care would have helped the child. The caseworker then told the foster care agency that the mother had "killed the twin... and [the mother] didn't deserve to see any of her children, much less the new baby."

Further, the OFC caseworker said that when all visitations at the foster care agency were cancelled because it was Election Day, the mother did not deserve "extra" visitation time. In short, it was documented that the caseworker thought the mom was, as the appellate court found, "a loser, a drunk, a drug user, and that she would see to it that her children were adopted out."

329. The Office of Family and Children is a sub-section of the Department of Children and Family Services (DCFS).

330. *See Lodholtz* at 9.

The Indiana Appellate court thankfully noticed this despicable behavior. The court concluded that:

> We cannot say that, based upon the apparent hostility of [OFC] worker toward [the mother], [the CASA] possessed the information necessary with which to represent and protect the best interest of the children in the termination of parental rights proceedings at issue. While we do not hold that the trial court was required to appoint a GAL as requested by the Parents, as opposed to appointing a new CASA or re-appointing the same CASA, we find that the trial court's intentional refusal to follow IC § 31-35-2-7 prejudiced the children's right to adequate representation during the termination proceedings.[331]

However in footnote 11, the appellate court continued:

> We note that, at the hearing... counsel for OFC requested a formal re-appointment of CASA. The trial court refused, insisting that CASA was already a party to the action. The trial court's disregard for the statutory requirements compounds its mistake and further supports our conclusion that the children's substantial rights were prejudiced. We further note that, at that this same hearing, the trial court declared that, "[I]f the parties want the GAL, the parties are going to have to pay for it." Supp. Record. at 13. IC §31-32-3-19 provides that any fees which arise from the appointment of a CASA or GAL will be paid for as provided in IC § 31-40. IC §31-40-1-2-(a)(1), in turn, states that the trial court "shall pay" costs incurred for "any services ordered by the juvenile court for any child or the child's parent, guardian, or custodian." Thus, the trial court improperly informed Parents that they would have to pay for a GAL. Moreover, subjecting a CASA or GAL's compensation to the whims of the very parents who may be antagonistic toward the representative potentially undermines that representative's loyalties to the children whom he or she is duty-bound to protect.[332]

Although this scathing chastisement of the local probate judiciary was appropriate, I think the appellate court could have gone one step further by stating that the caseworker's prejudice stems in part from her lack of training. CASAs, caseworkers, and GALs act here like fact-finding juries. Although real juries are often not juries of one's peers, it bears noticing that CASAs, GALs and caseworkers are not peers to the parents whose cases

331. *Id. See also* IND. CODE ANN. § 31-35-2-7 (Michie 2000) (appointment of guardian ad litem or court appointed special advocate).
332. *Id.* at 10, n. 11.

they review. These people may or may not be parents, and are certainly better off financially. Whether or not these differences motivated the OFC caseworker's disdain for the parents in this case may never be known.

It is essential that the CASA, GAL, or caseworker have training. They are the ones responsible for monitoring the parent's compliance with the case plan. Training could create a uniform system to check compliance. CASAs, GALs, and caseworkers can not be allowed to judge others. This should be the judge's job. If Indiana is going to continue to use CASAs, GALs, and caseworkers, they must understand the vast power they give these individuals. As an example, one mother incarcerated for minor drug offenses lost her child because the CASA had a "gut feeling" that the mother was not going to be a good parent. The mother was outraged because she felt betrayed by the "system" as she called it. She wrote a letter to the probate judge stating that although she had used drugs and realized her children suffered because of her abuse, she was never given any state services. She said she waited for two years for a "homemaker" from the state to come and help her organize her home once a week. That person never came. All along she felt as if the caseworker was on her side, telling her what she needed to do to get her children back. Then one day, the caseworker visited her in jail and told her that she was asking the state to terminate parental rights. In disbelief the mother writes:

> I have only missed one visit that was ever set up for visiting before me being incarcerated. I would be doing as much as possible in a case plan when ... the caseworker would decide to extend the plan after I had truly finished it. She would say, 'it is my gut feeling that you are not ready.' Therefore the plan would continue and prolong the return of my children.

Ultimately, this mother's parental rights were terminated, despite the lack of state services and the fact that she did all her case plan requested of her. This illustrates just how much power a CASA, caseworker or a GAL has over a parent. It is really the court appointed advocate, and not the judge, who decides if a parent can get back together with her child. Parents are correct when they complain that they can do everything to comply with the case plan and are still denied reunification, as in Iris' case. Alternatively, they comply with one case plan and the CASA or caseworker lengthens the plan. The Indiana Appellate court has acknowledged that "while the [probate] court must assess the parents' ability to care for the children at the time of the termination hearing, a component of that determination includes an evaluation of the parents' patterns of conduct to determine the probability of

future neglect and deprivation."[333] If only the judiciary performed this function with procedural safeguards. If we are going to continue to allow caseworkers, CASAs and GALs to determine a parent's future pattern of conduct, it is imperative that we train them how best to do this. Especially when CASAs, GALs and caseworkers are being certified as experts on child development, as in one appellate case I reviewed. The mother, who was hearing impaired was deemed unable to care for her child. The probate court qualified the CASA as an expert on how the mother would handle her son during periods of stress. The appellate court writes that:

> "to qualify as an expert, the subject matter must be related to some scientific field beyond the knowledge of the average lay person and the witness must have sufficient skill, knowledge or experience within the field to make it appear that the witness's opinion or inference will aid the fact-finder."[334]

The appellate court thought the CASA was a qualified expert because she had a degree in social work from Goshen College and had experience as the mom's caseworker and caseworker for others. I think this ruling was wrong. CASAs, GALs, and caseworkers are experts in nothing other than societal norms. They have no psychological training to predict future behavior accurately. Court appointed advocates for children need to be trained properly and uniformly. Although the national program for CASAs provides certain training, there is no guarantee that training will be uniform.[335]

The lack of training is only half of the problem. The CASAs and GALs need to be treated not as other parties in the case, but as witnesses called by the state prosecutor. In this way, their testimony can be subject to a cross-examination by counsel for the natural parents. The CASA's or GAL's lack of training can then be highlighted. The judge will then be aware of the amount of time the CASA or GAL spent with the child, and the people he or she interviewed. Most importantly, the cross-examination will flush out any prejudice or animosity the CASA or GAL may have. Only with a thorough cross-examination following the rules of evidence, can the natural parent insure that the opinions of the CASA or GAL are examined.

If the CASAs and GALs are treated as witnesses, the judge will become the impartial fact finder. Gone will be what happened in Iris' case, where no less than six different groups of people were present before the bench: the mother's representatives, the prosecutor, the GAL, the DCFS caseworker, the foster parents, and the child's psychologist. The only people

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333. In re Wardship of R.B. 615 N.E.2d 494, 497-98 (Ind. Ct. App. 1993).

334. *See Lodholtz* at 9, *citing* Corbin v. State, 563 N.E.2d. 86, 92-93 (Ind. Ct. App. 1990).

who were actually parties to the termination case were the mother and the prosecutor. The other four groups of people should be witnesses for the state.

When multiple people are heard, without the safeguards provided by the rules of evidence, it is not surprising that the judge implements the recommendations of the CASA or GAL because the judge relies on them as impartial fact finders instead of witnesses. The United States Supreme Court recognized this problem in *Smith v. Organization of Foster Families*, when it noticed that "the State, the natural parents, and the foster parents, all of whom share some portion of the responsibility for guardianship of the child . . . all contend that the position they advocate is most in accord with the rights and interests of the children."[336] The judge needs to make the impartial differentiation envisioned by the Supreme Court, instead of relying solely on the CASA, GAL or caseworker, who is not professionally trained, and who may be misinformed. The judge needs to re-assume his role as fact finder by putting more time into termination hearings, and requiring that opposing sides present full cases, and comply with the rules of evidence. The judge can only be the true fact-finder, however, when the CASAs and GALs are treated as witnesses subject to cross-examination.

DUE PROCESS CONCERNS

The extreme influence held by the CASA or GAL is a result of the state's reliance on their opinions. The state prosecutor does not have the time or resources to conduct his own investigations in each case. The state is busy trying to comply with the statutory requirements of the Adoption and Safe Families Act. As previously noted, the Act gives the state two roles; , initiating termination and providing services to families. The state is required to initiate the termination of parental rights if the child has been in foster care for fifteen of the last twenty-two months.[337] However, the state is also required to make "reasonable efforts" to re-unite the family before the termination occurs. These roles often conflict. The state has to initiate termination after a certain time, but it is also saddled with the task of opposing such a termination if they feel it is not in the child's best interest.[338] Before the Adoption and Safe Families Act, the law presumed that termination was not in the child's best interest, forcing the state to list the reasons why it believed otherwise. Now, the Act makes the opposite presumption and the

335. *See* http://www.nationalcasa.org/volunteer/index.htm (last visited Mar. 2, 2002).
336. *See Smith*, 431 U.S. at 841-42.
337. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, § 103, 111 Stat. 2115, 2118.
338. *See* H.R. REP. NO. 105-77, at 12 (1997), *reprinted in* 1997 U.S.C.C.A.N. 2739, 2744..

state has to move for the requisite termination hearing and then provide evidence why it believes termination is not in the child's best interest. This shifting presumption has due process implications because the party seeking the termination must also be the party to oppose it.

The Supreme Court has long recognized the interests of parents involved in the termination of their parental rights as being of primary constitutional importance.[339] The Court in *M.L.B.* went further to state that "parental status termination is irretrievably destructive of the most fundamental family relationship."[340]

Parents' fundamental rights therefore deserve procedural safeguards. "The Indiana Court of Appeals, discussing the parental rights' termination provisions at issue, has recognized that "the parent-child relationship is an important liberty interest in which the state cannot interfere without providing the parents fundamentally fair procedures."[341] The question then becomes, whether or not the procedures used in state termination cases are fair considering the dual role that state prosecutors have; to provide "reasonable efforts" while also seeking termination.

In *Phelps v. Sybinsky*, the Indiana Court of Appeals acknowledged the conflicting role played by the state.[342] In that case, an autistic child was removed from the parents' home because he needed more care then they could give him.[343] The permanency plan for the child was long-term medical care outside of the home with regular visits by the parents.[344] This plan continued for five years until the 1997 Adoption and Safe Families Act went into effect.[345] The state was then forced to ask for the termination of the parents' rights because the child had been out of their care for at least fifteen of the last twenty-two months.[346] The state prosecutor, however, told the family that the state would also file a motion to dismiss the termination because it was not in the child's best interest.[347] The Phelps family then brought a class action suit on several constitutional grounds.[348] The Indiana Court of Appeals dismissed the class action in a summary judgment motion for failure to

339. *See* Stanley v. Illinois, 405 U.S. 645, 651 (1972) (stating that the "essential" and "basic civil" constitutional rights of man are "far more precious ... than property rights" and "undeniably warrant[s] deference and, absent a powerful countervailing interest, protection").
340. M.L.B. v. S.L.J., 519. U.S. 102, 104 (1996).
341. In Re M.S., 551 N.E.2d 881, 883 (Ind. Ct. App. 1990).
342. Phelps v. Sybinsky, 736 N.E.2d 809 (Ind. Ct. App. 2000).
343. *Id.* at 812.
344. *Id.*
345. *Id.*
346. *Id.*
347. *Id.*
348. *Phelps*, 736 N.E.2d at 812.

state a claim upon which relief could be granted.[349] The court stated that the requirement that the state prosecutor file a termination after a child has spent more than fifteen months out of the home does not violate the parents' due process rights.[350] The court noted that the state had a legitimate interest in bringing the parents before the judge on the termination petition, even if the state intended to file a motion to dismiss.[351]

The court held that although the prosecutor must file a termination after fifteen months, but may also ask for its dismissal, he or she is not violating any ethical rules of conduct.[352] The court found that the state prosecutor must submit a termination petition even if they intended to dismiss that petition; the filing is not frivolous because it allows judicial determination of the best interests of the child.[353]

Although the process of bringing a petition only to dismiss it, may not in this case be unethical, it is definitely gives the prosecutor two roles to play. The court did not address this due process concern in *Phelps.* However, in *Jeanie B. v. McCallum*,[354] the federal court in the Eastern District of Wisconsin, recently acknowledged that children in termination proceedings have three distinct rights under the Adoption and Safe Families Act of 1997, which are enforceable under federal civil rights laws:

> (1) the right to have the defendants initiate a proceeding to terminate parental rights when a child has been in foster care custody for fifteen of the most recent twenty-two months; (2) the right to have the defendants, at the same time, begin to identify, recruit, process and approve a qualified family for adoption; and (3) the right to have the defendants document any exceptions that apply under 42 U.S.C. § 675(5)(E)(i)-(iii).[355]

This determination was part of a larger class action lawsuit brought against the foster care system in Milwaukee.[356] The case merely determined that the plaintiffs were allowed to amend their complaint to include the violation of their civil rights based on the three federal rights the court found to exist under Adoption and Safe Families Act of 1997.[357] However, this case acknowledges a child's fundamental right to have the state *both* initiate termi-

349. *Id.* at 813.
350. *Id.* at 818.
351. *Id.*
352. *Id.* at 817.
353. *Id.*
355. Jeanie B. v. McCallum, 2001 E.D. Wisc. LEXIS at *17.
355. *Id.*
356. *Id.* at *3.
357. *Id.*

nation proceedings *and* document any reasons not to proceed with termination. If a child is able to demand both of these rights simultaneously, then it must follow that the state is required to both initiate termination proceedings and dismiss them where appropriate.

However, I still do not believe that the state prosecutor should be playing both of these roles. I think this confuses the adversarial system, which relies on each party to have a stated goal. Before the Adoption and Safe Families Act, the prosecutor had the discretion to file for termination where he or she saw fit. The party opposing the termination provided the evidence that termination was not in the child's best interest. Now, the prosecutor is required to file the termination petition even when he or she does not feel that it is in the child's best interest to do so. According to *Jeanie B.*, the prosecutor must secure two fundamental rights to all children, namely that termination is filed after fifteen months and that it is opposed by the state when not appropriate. The Adoption and Safe Families Act essentially removes prosecutorial discretion. In so doing, it usurps the adversarial system by requiring the prosecutor to be on both sides of the issue.

THE NEED FOR EFFECTIVE SERVICES

In many of the cases I reviewed, there was no stated post-termination plan for the child. However, there is an increase in the number of cases where adoption is the post-termination goal. The pro-adoption policy advocated by the 1997 Adoption and Safe Families Act seems to be working. In 1996, adoption was the post-termination plan for the child in only seven cases.[358] By 1997, the number of stated adoption plans more than quadrupled.[359]

The emphasis of the current federal act is on post-termination placements and not pre-termination services. However, an equal emphasis should be placed on the services provided to natural parents before the termination proceedings. Yet, the Indiana appellate court has ruled that failure by the Office of Family and Children to provide the parents with a case plan did not deprive them of their procedural due process rights in the termination proceedings, because proof of a case plan is not an element enunciated in the termination proceedings under IC § 31-35-2-4.[360]

Indiana Code Section 35 of Title 31 deals exclusively with the termination of parental rights.[361] Specifically I.C. § 31-35-2-4.5 describes the

358. *See* Appendix, Graph H.
359. *Id.*
360. See Ferbert v. Marion County Office of Family Children, 743 N.E.2d 766 (Ind. Ct. App. 2001).
361. *See* IND. CODE APP. § 31-35 (Michie 2000).

elements of a petition to terminate parental rights.[362] According to this statute, the state must show that reasonable efforts at family reunification are not required or that the child has lived in a foster placement for fifteen of the last twenty-two months.[363] As noted earlier, the CASA or GAL can file this petition and the prosecutor can request to be joined as a party.[364] However, any party bringing the action is also required to file a petition to dismiss the termination if the case plan has a documented; compelling reason that termination is not in the child's best interest.[365] The statute specifically indicates that the state's failure to provide services according to the case plan is a compelling reason to dismiss the termination petition.[366] It is unfortunate that the Indiana Appellate court did not find a case plan to be a necessary element of each termination. Complying with the case plan is the best way that a parent can prove to the state that they want to reunite with their child, and provide him or her with a good home.

The lack of services to a family is often the result of a caseworker who feels that services would not be effective. Sometimes the state delays in providing services until it is virtually too late. Remember the mother who wrote to the judge from jail outraged that the state could take away her children without providing adequate services. The mother remarked that the caseworker "was supposed to have put me on a waiting list for a 'Homemaker' in the 'system' to come out to my house once a week. I waited for two years and I NEVER was visited by said person." Also, recall Fran, who never knew she was the subject of a case plan until she had failed to comply with it and termination proceedings began.

The lack of adequate state services has had a real impact on individual cases. The reason that the lack of state services affects termination cases is that these parents can not afford the services on their own. It is only with state support that most of the parents in termination cases are able to change their lives. The children hurt most by the Adoption and Safe Families Act's policies are those who are poor. Moreover, poor children come largely from black families whose parents are not pictured as having strong emotional bonds with their children.[367] Black mothers "are stereotyped as deviant and uncaring; they are blamed for transferring a degenerate lifestyle of welfare dependency and crime to their children. Black fathers are simply thought to

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362. *See* IND. CODE APP. § 31-35-2-4.5 (Michie 2000).
363. *Id.* at (1), (2).
364. *Id.* at (b)(2)(b).
365. *Id.* at (d)(1).
366. *Id.*
367. *See id.* at 131.

be absent."[368] Society turns the other way when an adoption-centered child welfare policy removes a disproportionate number of black children from their homes because it confirms the stereotype that black mothers are not fit anyway. However, society praises the system because it is less costly.

Iris' story helped me understand that poverty is at the root of almost all the termination cases. Even the early studies in the 1950s found that "abused children grew up in deprived, multi-problem families."[369] We need to spend money on the poor instead of on taking their children away. Parents like Iris who could get free counseling for their child without alerting the Department of Family and Social Services would not be forced to consent to the termination of the rights to their child. Furthermore, once the state was involved, if they had spent money on a new bedroom for Mary Jane instead of foster care, the termination would not have happened at all.

Early "social welfare advocates argued that only by attacking poverty, unemployment, inadequate housing and health care, and the lack of day care would solve the problem of child abuse and neglect."[370] The money we spend on foster families might be better spent on the biological family.[371] We have seen that foster families have enough resources to take a case to the Supreme Court.[372] Often the biggest difference between the foster family and the biological family is money. If a biological parent does not have the money to implement the goals of their case plan within fifteen months, they risk losing their child. As mentioned above, one of the elements of Iris's case plan was buying a bigger house. This was a goal higher than Iris could reach on her salary.

I think we need to acknowledge that a lot of what is wrong with the 1997 Adoption and Safe Families Act is that it disadvantages poor people. It does this through the CASAs, GALs, and caseworkers that bring societal conceptions about poverty into the decision in every case. Buying a bigger house for your children should not be a part of anyone's case plan because it has nothing to do with effective parenting.

I believe our first step in educating CASAs, GALs, caseworkers and judges must be instruction about what kinds of items should go into a case plan. All parents could be better in some way, because no one is perfect. In a situation where trauma, abuse, neglect, or severe poverty has brought a

368. *See* IND. CODE APP. § 31-35-2-4.5 at 131 (Michie 2000).

369. *See supra*, note 35.

370. *See supra*, note 83.

371. *See supra*, note 115 (The Federal Government matches state funds for children in foster care who would also receive welfare, making money paid to the foster families exceed that paid to similarly situated poor families.).

372. *See Smith*, 431 U.S. at 836 n. 40.

child's living conditions to the attention of the state, we can not ask his parent to change themselves in impossible ways. Case plan goals must be realistic and relevant. A case plan that calls for a poor, working family to buy a new home is unrealistic without state assistance. It appears that many CASAs, GALs and caseworkers think that a parent who has raised their child in poverty, or married an abusive husband, done drugs or drank excessively, or gotten into trouble with the law, to name a few, are simply unfit. Like the incarcerated woman wrote to the probate judge: "To not give us, the children and I a chance to be together goes against everything that the welfare system has stated to me. It goes against everything I have worked for myself and for my children." That mother acknowledges that she let her children down in the past. The state must acknowledge that it has let her children down, too. She writes that the services the state was to provide in her case plan were virtually non-existent. The caseworker she trusted, the one that visited her in jail and gave her pictures of her children, turned on her and terminated her rights. At least, that is how she felt. She felt the state let her down, and they did not admit it. We need to begin by admitting the ways in which this new federal law, the Adoption and Safe Families Act, has let down so many families. Then we need to repair this damage by providing all families, regardless of income level, services they need to complete their case plans.

THE NEED FOR SOLUTIONS BEYOND TERMINATION

Dorothy Roberts, Professor of Law at Northwestern University and a Faculty Fellow at its Institute for Policy Research, argues that the Adoption and Safe Families Act heightens the already "conflicting incentives for child welfare agencies that are likely to attenuate their efforts at family preservation."[373] Roberts is not alone in seeing a conflict between these two goals. "[T]he principle of permanence contains exactly the dilemma that it sets out to resolve, i.e., between family preservation and termination of parental rights,"[374] writes Libby Adler, Assistant Professor of Law at Northeastern University. Adler correctly notes that "[t]he goal of the permanency hearing is to hasten decision."[375] She suggests that lawmakers allow for a broader range of outcomes to minimize this dilemma.[376] Professor Roberts notes that permanency and reunification compete for caseworkers time, and the Adoption and Safe Families Act is meant to persuade the agency to focus on per-

373. Dorothy Roberts, *Is There Justice in Children's Rights?: The Critique of the Federal Family Preservation Policy*, 2 U. PA. J. CONST. L. 112, 114 (1999).
374. *See* Libby S. Adler, *The Meanings of Permanence: A Critical Analysis of the Adoption and Safe Families Act of 1997*, 38 HARV. J. ON LEGIS. 1, 12 (2001).
375. *Id.*

manent placements for the child.[377] Yet, Bruce Boyer, an attorney at Northwestern University Law School in the Children and Family Justice Center, feels that "furthering a family's interest will also benefit the children."[378] He recognizes that "[c]hildren have an interest in maintaining a bond with their parents and other family members and are terribly injured when this bond is disrupted."[379] Roberts suggest that these two conflicting views on the relationship between children's interest and family preservation suggest that there is no one correct way to understand children's rights.[380]

However you characterize children's needs, the Adoption and Safe Families Act does not seem to be meeting them. Although children from homes of severe abuse might be covered by the current provisions, "[m]ost children in foster care were removed from their homes because of parental neglect related to poverty."[381] The Act's emphasis on adoption attempts to speed children through foster care, which does little to help poor children.[382] Roberts notes four problems with the system created under the Adoption and Safe Families Act: there are insufficient adoptive homes, severing family bonds usually hurts children, there is no way to monitor state removal programs, and no way to force states to do much family preservation.[383] The Act's emphasis on adoption as the cure to the foster system problem is misplaced because the number of terminations "far outpaces" the number of adoptions, creating more foster children, especially those least likely to be adopted, namely black children.[384] Roberts acknowledges the Act's narrow focus on adoption "overlooks both the diversity of parent-child relationships as well as alternatives to adoption."[385] Some of the viable alternatives for abused children include long-term foster care with parental visitation and permanent placement with relatives who do not adopt them.

The Adoption and Safe Families Act fails most tragically in its underlying assumption that the problem with foster care is that not enough children are being adopted. The foster care problem occurs because too many children are being removed from their families and put in the sys-

376. *See id.* at 12-13.
377. Roberts, *supra* note 374 at 114 ("In a case of conflict between reunification and permanency efforts, permanency prevails.").
378. *Id.* at 117.115.
379. *Id.*
380. *See id.*
381. *Id.* at 118.
382. *See id.*
383. Roberts, *supra* note 374 at 118 ("In a case of conflict between reunification and permanency efforts, permanency prevails.").
384. *See id.* at 120.
385. *Id.* at 121.

tem.[386] Under the Adoption Assistance and Child Welfare Act's "reasonable efforts" standard too many children were being removed from their homes because caseworkers charged with both helping families and finding alternative placements often "sabotaged parents' quest to reunite with their children."[387] A 1997 report by the General Accounting Office stressed that not enough funds or staff existed to provide the services necessary to keep families together.[388] "How can agencies expect to solve problems arising from any combination of deplorable conditions—chronic poverty, dangerous neighborhoods, shoddy housing, poor health, drug addiction, profound depression, lack of childcare—with a three month parenting course or ephemeral crisis intervention?"[389]

To compound the problem, there is no mechanism to police the state's removal rates. A system like the one put in place by the Adoption and Safe Families Act takes on a life of its own, and removes children almost mechanically without regard to their particular circumstances or their best interest.[390] It appears that the Adoption and Safe Families Act's underlying goal is financial gain for states: "Preserving children's ties to non-custodial middle-class fathers helps to guarantee that these children will not need public assistance. In contrast, terminating the rights of poor parents so their children may be adopted by wealthier ones yields a financial windfall for the state."[391]

In the 1950s, the social awakening to the problem of child abuse was a stimulus to finding its ultimate solution. When the problem was novel, all answers generated some support. Over time, frustration with the problem and the cost of supporting those affected by it weighed on the collective mind. Congress demonstrated its desire to "fix" child abuse and went about searching for solutions. The Child Abuse Prevention and Treatment Act of 1973 addressed child abuse broadly.[392] It advocated a "broad range of services" to abused children and their families.[393] It favored helping parents, and only terminated parental rights if in-house services could not protect the child.[394] Most notably, the Child Abuse Prevention and Treatment Act created the National Center on Child Abuse and Neglect to conduct on-going

386. *See id.* at 125.

387. *Id.* at 124.

388. *See id.* at 124 (citing United States General Accounting Office Rep. No. HEHS-97-34, Child Welfare — States' Progress in Implementing Family Preservation and Support Services 3 (1997)).

389. *Id.*

390. *See id.* at 127.

391. *Id.* at 130.

392. *See* Child Abuse and Prevention Treatment Act, Pub. L. No. 93-247, 88 Stat. 4, 5 (1974).

393. *See id.* at 6.

394. *See* H. R. REP. NO. 93-685, (1973), *reprinted in* 1973 U.S.C.C.A.N. 2763, 2768; *see also* PLECK, *supra* note 14, at 178.

research into the causes of child mistreatment.[395] Both the Adoption Assistance and Child Welfare Act of 1980 and the Welfare Reform Act of 1996 expanded our understanding of the causes of child abuse by authorizing extensive studies on the subject.[396] The current Adoption and Safe Families Act has no similar research.[397]

Each of these acts also implemented a specific policy objective relating to the termination of parental rights. The Adoption Assistance and Child Welfare Act of 1980 recognized how many children were entering the foster care system.[398] This became the new problem. Instead of focusing on how children got into foster care, the act focused on how to find "permanent placement" for children because foster care was both temporary and expensive.[399] However, Congress did not abandon foster care prevention services completely because it created the "reasonable efforts" to reunite families requirement.[400] It also allowed the "future status" of children to include a wide range of placement options.[401]

Congress responded to political and financial frustration from unnecessary intervention by enacting the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or Welfare Reform Act.[402] Simply by its name, one can see its reactionary bias. With respect to termination of parental rights, the Welfare Reform Act advocated preserving some family bonds through relative placements even when the child could not be placed with parents.[403] Its biggest contribution to termination law was the study it authorized to track abused children for several years. The report sought to determine the causes of their abuse and subsequent removal from their home and the effect the subsequent placements had on these children.[404] While these studies all reacted to the current problems, they still left their solutions open-ended.

Sadly, Congress abandoned its policy of seeking the best possible solution when it enacted the Adoption and Safe Families Act of 1997. This is evidenced by the fact that Congress no longer wanted to study the causes of

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395. *See* 88 Stat. at 4.

396. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, 2128 (1997).

397. *See id.* at 2116 (the only research authorized by this act are "Demonstration projects" undertaken in the areas of drug abuse and kinship care).

398. *See* S. REP. NO. 96-336, *reprinted in* 1980 U.S.C.CA.N. 1448, 1461.

399. *See* Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500, 519 (1980).

400. *See id.*

401. *See id.* at 511.

402. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, 2105.

403. *See id.* at 2278.

404. *See id.*

child abuse or potential solutions. Although the Act authorized several new demonstration projects and a Kinship Care study,[405] it did not address the causes of child abuse or seek new solutions.[406] Instead, the Adoption and Safe Families Act decided that the best interest of the abused child was usually adoption. When history repeats itself, Congress will discover that adoption is not the "ultimate solution," either.[407] There is no one solution to the complex problem of child abuse. Adoption is attractive to Congress because of its permanence and subsequently its cost effectiveness. Although Congress assumes that children who are adopted are free of their problems, the anxiety associated with losing a parent does not always make this the case.

Professor Adler has suggested that "[t]he principal of permanence contains exactly the same dilemma that it sets out to resolve, i.e. between family preservation and termination of parental rights."[408] She also notes that child welfare policy is infused with three larger contradictions: "family privacy (or parental autonomy) versus child rescue; cultural relativism versus transcendent morality (or civic virtue); and social responsibility (for poverty) versus personal responsibility."[409] The Child Welfare Act required states to make "reasonable efforts" to keep families together, but the policy shifted in the Reagan Era when the "poor were blamed for their own circumstances."[410] This shift in attitude helped create the reversal of policy that culminates in the Adoption and Safe Families Act.[411] "Each development reacted against the last, moving the ball endlessly between irreconcilable poles."[412] The majority of people see the dichotomies as "a trap between two things we value deeply but cannot have simultaneously."[413] Therefore, people assume a decision must be made legislatively between these two dichotomies. However, this misses the point.

Adler argues that solutions cannot be obtained legislatively simply by trying to find the right way to strike the balance between conflicting views on the best interest of the child.[414] Rather, we have to commit ourselves, both politically and financially, to increasing the options available to

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405. *See* 111 Stat. 2129.

406. *See* 111 Stat. at 2128 ("'Demonstration projects' shall be undertaken specifically in the areas of drug abuse and kinship care").

407. *See* H. R. REP. NO. 93-685, at 2766 (quoting Secretary of Health, Education and Welfare, Caspar W. Weinberger on October 16, 1973 that "an ultimate solution" is needed to the child abuse and neglect problem in the United States).

408. *See* Adler, *supra* note 2, at 1.

409. *Id.* at 22.

410. *See id.* at 23.

411. *See id.*

412. *Id.*

413. *Id.*

414. *See* Adler, *supra* note 2, at 30.

children by embracing the many concepts of family.[415] This has to start foremost with increasing the services available to families in need while we still can. As the authors of *Beyond the Best Interests of the Child*, wrote, "only by attacking poverty, unemployment, inadequate housing and health care, and the lack of day care, would one solve the problem of child abuse and neglect."[416] We need to distance ourselves from the feeling that one solution will work for all children. As the legislative history indicates, Congress has searched for what is in the best interest of *the* child, assuming that there is one child, and one set of circumstances creating his problems. No wonder our legislation never fixes "the problem" of child abuse and neglect. This is like assuming one pill is going to cure all medical ailments. Child abuse is multi-faceted problem and demands openness, both judicially and fiscally, to a wide range of placements for children, as well as a wide range of services for their parents.

415. *See id.*
416. *See supra* note 83.

Appendix

Table I: Raw Data

Table II: Analysis of Data

Graph A: Total Number of Terminations

Graph B: Number of Involuntary Terminations

Graph C: Number of Voluntary Terminations

Graph D: Percentage of Involuntary Terminations out of Total Terminations

Graph E: Percentage of Voluntary Terminations out of Total Terminations

Graph F: Number of Terminations with a CASA or GAL

Graph G: Percentage of Involuntary Terminations with CASA or GAL out of Total Terminations

Graph H: Number of Termination Cases with Adoption Planned

Graph I: Percentage of Involuntary Terminations with Adoption Planned

Graph J: Number of Times Termination Cases Came before the Judge More than Once

Graph K: Mean Age of Child at Termination

Graph L: Mean Age of Child at Involuntary Termination

Graph M: Mean Age of Child at Voluntary Termination

Graph N: Mean Time a Child is out of Parents' Care before Termination

Graph O: Mean Time a Child is out of Parents' Care before Involuntary Termination

Graph P: Mean Time a Child is out of Parents' Care before Voluntary Termination

Graph Q: Mean Time Between Filing and Final Order in a Termination Case

Graph R: Mean Time Between Filing and Final Order in an Involuntary Termination Case

Graph S: Mean Time Between Filing and Final Order in a Voluntary Termination Case

Table I: Raw Data

ID #	V or I	B-Day	Y Term Filed	M/Y Type Removal	M/Y Term Decided	Number of Times Before Judge	Is Adoption the Plan?	CASA / GAL	Age at Term (in days)	Mean Time out of Parent's Care	Mean Time filing to final order	Termination Dismissed?
1	V	8/23/98	6/15/1999	?	02/2000	2	Yes	N	518	n/a	226	
2	I	3/7/1998	2/15/2000	6/15/1995	4/26/2000	1	Yes	Y	769	1751	71	
3	I	8/14/99	11/21/2000	10/15/1999	10/11/01	8	FC	Y	777	716	320	
4	I	3/24/98	10/20/2000	11/10/99	10/11/2001	6	FC	Y	1277	691	351	
5	I	4/3/85	2/7/2000	12/21/94	4/19/2000	1	No- rehab for mom	N	5416	1918	72	Y
6	I	3/4/89	1/15/2000	9/28/98	6/4/2001	8	FC	Y	4410	966	499	Y
7	I	11/12/86	2/7/2000	8/3/1994	2/23/2000	1	Return to Parent	Y	4781	2000	16	
8	I	7/13/95	2/14/2000	2/6/99	4/19/2000	1	FC	N	1716	433	65	
9	I	3/3/85	2/14/2000	4/8/92	3/1/2000	1	No	N	5398	2843	17	
10	I	11/4/90	3/8/2000	7/19/95	5/10/2000	1	No	N	3426	1731	62	
11	V	3/1/86	3/6/2000	2/6/1998	3/22/2000	1	N	N	5061	766	16	
12	I	1/19/96	3/8/2000	7/19/1995	5/10/2000	1	N	N	1551	1059	62	
13	I	10/31/83	4/21/2000	6/15/1997	5/24/2000	1	N	N	5964	1059	33	
15	I	9/20/84	4/7/2000	7/1/1999	4/19/2000	2	N	N	5609	288	12	
16	I	07/07/91	4/3/2000	7/15/1999	1/5/01	2	Yes	Y	3162	530	272	
17	I	10/06/98	3/29/2000	7/1/99	10/18/2000	2	Yes	Y	732	467	199	
18	I	2/15/86	4/5/2000	7/1/99	5/3/00	2	Yes	N	5118	302	28	
19	I	4/2/1998	5/3/00	7/1/99	6/7/00	1	Y	N	785	336	34	
20	V	3/30/00	4/18/2000	None- hospital	5/16/00	1	Yes	N	46	46	28	
21	I	3/3/87	4/25/00	2/26/95	6/28/00	1	Yes	Y	4795	4795	63	
22	V	3/2/00	5/1/00	None-hospital	5/31/00	1	Y	N	89	89	63	
23	I	2/20/87	6/1/00	10/8/97	7/26/00	2	Y	N	4836	1008	55	
24	I	5/27/88	6/1/00	10/8/97	7/26/00	1	Y		4379	1008	55	
25	I	4/4/85	6/1/00	10/8/97	7/26/00	1	Y		5512	1008	55	
26	I	6/6/89	6/1/00	10/8/97	7/26/00	1	Y		4010	1008	55	
27	I	6/13/1987	6/8/00	7/1/99	6/28/00	1			4695	357	20	
28	V	5/8/00	5/17/00	None-hospital	6/28/00	1	Y	N	50	50	41	
29	V	3/9/95	6/9/00	3/10/99	11/8/00	7	Y	Y	2039	598	149	
30	V	3/9/95	6/9/00	3/10/99	11/8/00	7	Y	Y	2039	598	149	
31	I	10/3/95	6/6/00	8/18/99	2/26/01	1	Y	Y	1943	548	260	
32	I	6/27/96	6/6/00	2/6/99	2/26/01	1	Y	Y	1679	740	260	
33	I	9/2/98	6/6/00	2/6/99	2/26/01	1	Y	Y	894	740	260	
34	I	12/27/99	6/6//00	2/6/99	2/26/2001	1	Y	Y	419	740	260	
35	I	9/17/97	6/19/00	11/12/97	8/30/00	2	Y	Y	1063	1008	71	
36	V	6/4/00	6/16/2000	None- hospital	7/26/2000	1	Y	N	52	52	40	
37	V	8/22/97	7/1/00	4/26/00	7/26/2000	1	Y	N	1054	90	25	
38	V	10/22/99	9/12/00	1/19/00	10/18/00	1	Y	N	356	269	36	
39	I	3/21/98	5/29/01	1/22/2000	8/8/2001	1	Y	N	1217	556	69	
40	I	1/11/98	7/11/2000	4/8/98	9/6/00	1	Y	N	955	868	55	

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41	I	12/7/83	7/31/00	7/1/1999	10/25/00	1	N	N	6078	474	85	
42	I	1/2/86	7/31/00	7/1/1999	10/25/2000	1	N	N	5333	474	85	
43	I	7/15/87	7/31/00	7/1/1999	10/25/00	1	N	N	4780	474	85	
44	I	1/14/95	7/31/00	7/1/1999	6/20/01	9	N	N	2316	709	320	
45	I	11/17/88	7/31/00	7/1/1999	6/20/01	9	N	N	4533	709	320	
46	I	11/02/93	7/31/00	7/1/1999	6/20/01	9	N	N	2748	709	320	
47	I	4/25/85	8/3/00	11/26/97	10/18/00	1	N- indep living	N	5573	1042	75	
48	I	12/10/93	10/27/00	2/16/00	4/20/01	2	Y	Y	2650	424	173	
49	I	1/25/98	10/27/00	2/16/00	4/20/01	2	Y	Y	1165	424	173	
50	I	12/03/94	10/27/00	2/16/00	4/20/01	2	Y	Y	2297	424	173	
51	V	7/29/92	9/12/00	6/7/00	6/27/01	2	Y	N	3208	380	285	
52	V	11/26/90	9/12/00	6/7/00	6/27/01	2	Y	N	3811	380	285	
53	I	4/14/88	11/6/00	5/21/97	1/31/2001	1	Y	N	4607	1330	85	
54	V	1/21/88	8/21/00	11/6/91	5/18/01	4	Y	Y	4797	3432	267	
55	I	6/15/1983	9/8/00	None- adult services needed	11/29/00	1	N	N	6284	0	81	
56	I	4/13/85	9/8/00	None- child ran away	11/29/00	1		N	5626	0	81	
57	I	12/07/97	12/19/00	5/31/00	2/07/01	1	Y	Y	1140	247	48	
58	I	3/19/96	12/19/00	5/31/00	2/07/01	1	Y	Y	1758	247	48	
59	I	5/12/99	12/19/00	5/13/00	2/07/01	1	Y	Y	625	264	48	
60	I	9/22/1985	11/30/00	5/6/98	2/21/01	1	Y	N	5549	1005	81	
61	I	10/21/89	12/19/00	5/6/98	2/21/01	1	Y	N	4080	1005	62	
62	I	5/12/92	12/19/00	5/6/98	2/21/01	1	Y	N	3159	1005	62	
63	V	11/14/00	12/29/00	Non- hospital adoption	1/05/01	1	Y	N	51	51	6	
64	I	12/16/91	12/19/00	3/11/98	1/3/2001	1	Y	N	3257	1012	14	
65	V	1/10/99	1/26/99	None- hospital adopt	3/4/99	1	Y	N	54	54	38	
66	I	8/7/94	3/3/99	3/8/95	3/17/99	2	Y	Y	1660	1449	14	
67	I	1/2/85	3/1/99	6/19/91	3/31/99	1	N- continued foster care	Y	5129	2802	30	
68	I	1/18/98	3/12/99	5/20/98	5/12/99	1	Y- familial	Y	474	352	60	
69	I	5/18/96	3/12/99	5/20/98	5/12/99	1	Y- familial	Y	1074	352	60	
70	I	1/9/93	5/5/99	10/11/95	5/5/99	1		N	2276	1284	0	
71	I	7/28/89	3/22/99	5/28/97	5/26/99	2	N	Y	3538	718	64	
72	I	3/9/96	3/22/99	5/28/97	5/26/99	2	N	Y	1157	718	64	
73	V	6/18/98	3/22/99	9/6/98	7/14/99	2	Y		386	308	112	
74	I	5/25/98	4/1/99	8/26/98	5/26/99	1	Y	Y	361	270	55	
75	I	2/12/84	4/23/99	8/11/93	6/23/99	1	Y- grandma	N	5531	2112	60	
76	V	4/22/95	5/14/99	7/18/96	5/19/99	1		Y	1467	1021	5	
77	V	12/1/89	5/14/99	7/19/96	5/19/99	1		Y	3408	1020	5	

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78	V	9/4/86	4/23/99	None?	5/19/99	1			4575	n/a	26	
79	V	10/1/84	4/23/99	None?	5/19/99	1			5268	n/a	26	
80	V	4/12/99	4/27/99	None- hospital	5/27/99	1	Y	N	45	45	30	
81	V	7/14/87	5/11/99		6/2/99	1			4278	4278	21	
82	V	7/21/99	9/7/99	None- hospital	10/12/99	1	Y	N	81	81	35	
83	V	8/15/99	9/9/99	None- hospital	10/12/99	1	Y	N	57	57	33	
84	V	8/30/99	9/29/99	None- hospital	10/28/99	1	Y	N	58	58	29	
85	V	8/10/99	10/7/99	None- hosptial	11/9/99	1	Y	N	89	89	32	
86	V	6/16/92	10/28/99	9/16/98	11/17/99	1			2671	421	19	
87	V	5/20/94	10/28/99	9/16/98	11/17/99	1			1977	421	19	
88	V	6/2/95	10/28/99	9/16/98	11/17/99	1			611	421	19	
89	V	3/6/98	10/28/99	9/16/98	11/17/99	1			1170	421	19	
90	V	8/17/96	10/28/99	9/16/98	11/17/99	1			5185	421	19	
91	I	9/28/85	10/25/99	6/3/98	2/23/00	1			5039	620	118	
92	V	10/27/86	1/19/00	12/9/98	10/26/00	3	Y	Y	4527	677	277	
93	V	3/29/88	1/19/00	12/9/98	10/26/00	3	Y	Y	3946	677	277	
94	V	11/10/89	1/19/00	12/9/98	10/26/00	3	Y	Y	131	677	277	
95	V	8/31/99	12/7/99	None- hospital	1/11/00	1	Y	N	1282	131	34	
96	I	10/28/94	3/30/98	2/15/95	5/20/98	1	Y	Y	2186	1175	50	
97	I	5/1/92	4/8/98	8/96	5/27/98	2	Y	Y	5185	656	49	
98	I	2/4/97	4/8/98	4/1/97	5/27/98	2	Y	Y	473	416	49	
99	V	4/18/98	4/28/98	None-hospital	5/26/98	1	Y	N	38	38	28	
100	I	1/9/87	5/8/98	5/21/97	10/14/98	2	Y	Y	4235	503	156	
101	I	2/2/88	5/8/98	5/21/97	10/14/98	2	Y	Y	3852	503	156	
102	I	4/17/89	5/8/98	5/21/97	10/14/98	2	Y	Y	3417	503	156	
103	I	5/18/89	4/28/98	9/29/93	7/1/99	6	Y	Y	3643	2072	423	
104	I	7/21/97	10/16/98	8/8/97	2/2/99	3	Y	Y	551	534	106	
105	V	3/30/98	6/1/98	None-hospital	6/30/98	1	Y	N	90	90	29	
106	I	2/22/86	6/8/98	10/27/93	7/29/98	1		N	4477	1712	51	
107	I	4/9/87	6/8/98	10/27/1993	7/29/98	1		N	4070	1712	51	
108	I	7/28/96	6/29/98	4/30/97	1/11/99	1	Y	Y	883	611	192	
109	V	6/13/98	7/14/98	None-hospital	8/18/98	1	Y	N	65	65	34	
110	I	4/23/97	8/11/98	2/28/98	9/2/98	1	Y	N	489	182	21	
111	V	8/2/88	9/9/98	10/14/94	10/14/98	1	Y	Y	3672	1440	35	
112	V	9/13/98	9/24/98	None- hospital	12/16/98	1	Y	N	93	93	82	
113	I	1/15/93	10/23/98	5/23/94	12/16/98	1	Y	Y	2131	1643	53	
114	I	11/1/95	10/23/98	1/1/96	12/16/98	1	Y	Y	1125	1065	53	
115	I	7/28/92	10/28/98	11/26/97	1/6/99	1			35646	400	68	
116	I	8/23/95	10/28/98	11/26/97	1/6/99	1			1213	400	68	

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117	I	3/27/97	10/28/98	11/26/97	1/6/99	1			639	400	68	
118	I	7/28/88	10/28/98	11/26/97	1/6/99	1			3758	400	68	
119	I	10/6/89	10/28/98	11/26/97	1/6/99	1			3330	400	68	
120	I	12/2/84	11/6/98	6/11/97	4/21/99	1			5179	670	165	
121	I	3/4/86	11/6/98	6/11/97	4/21/99	1			4727	670	165	
122	I	7/19/87	11/6/98	3/22/95	1/27/99	1	N	Y	4148	1385	81	
123	I	11/15/96	1/11/99	4/30/97	3/24/99	1			849	684	73	
124	I	11/30/94	11/23/98	7/20/94	12/16/98	1		Y	1456	1586	23	
125	I	11/14/87	11/23/98	12/30/96	2/10/99	1	Y	Y	4046	760	77	
126	I	9/8/97	11/30/98	9/24/97	1/20/99	3	Y	Y	492	476	50	
127	I	2/1/85	1/8/99	7/28/97	3/17/99	1	N	Y	5086	589	69	
128	I	9/14/94	4/6/98	2/97	10/13/98	1	Y	Y	1469	612	187	
129	I	5/15/96	4/6/98	since birth	10/13/98	1	Y	Y	868	868	187	
130	I	6/22/96	2/19/98	since birth	8/31/98	1	Y	Y	789	789	192	
131	I	12/20/92	6/6/97	8/4/94	6/2/98	5	Y	Y	1962	1378	356	
132	I	12/29/93	6/6/97	8/4/94	6/2/98	5	Y	Y	1593	1378	356	
133	I	07/01/95	6/6/97	8/4/94	6/2/98	5	Y	Y	1051	1378	356	
134	I	10/22/90	6/6/97	8/4/94	6/2/98	5	Y	Y	2740	1378	356	
135	I	12/20/93	2/25/97	2/23/1994	4/23/97	1	Y	Y	1203	1140	58	
136	I	1/22/95	2/25/97	since birth	4/23/97	1	Y	Y	811	811	58	
137	I	2/28/96	3/25/97	2/28/96	9/4/97	1	Y	Y	546	546	159	
138	I	2/9/87	3/25/97	2/28/96	9/4/97	1	Y	Y	3805	546	159	
139	I	9/6/88	3/25/97	2/28/96	9/4/97	1	Y	Y	3238	546	159	
140	I	5/22/88	2/26/97	9/16/94	12/23/97	1	Y	Y	3451	1177	297	
141	I	2/3/97	3/21/97	12/15/93	5/21/97	1		N	108	1236	60	
142	I	3/28/92	3/21/97	12/22/93	5/21/97	1		N	1853	1229	60	
143	I	4/11/93	3/21/97	12/22/93	5/21/97	1		N	1480	1229	60	
144	I	3/27/89	4/9/97	5/3/95	6/18/97	1		N	2961	765	69	
145	I	6/27/92	4/17/97	5/12/95	6/18/97	1	Y	Y	1791	756	61	
146	I	9/27/93	4/17/97	5/12/95	6/18/97	1	Y	Y	1341	756	61	
147	I	11/23/92	4/11/97	4/23/95	6/18/97	1	Y	Y	1645	775	67	
148	I	12/20/94	4/11/97	4/23/95	6/18/97	1	Y	Y	898	775	67	
149	I	3/27/91	4/17/97	6/21/95	7/2/97	1			2255	731	75	
150	I	3/31/92	4/17/97	6/21/95	7/2/97	1			1892	731	75	
151	I	5/7/95	4/17/97	6/21/95	7/2/97	1			775	731	75	
152	I	5/30/96	4/17/97	11/13/96	7/2/97	1			392	229	75	
153	V	3/23/97	4/10/97	since birth	5/20/97	1			57	57	40	
154	I	1/11/94	5/12/97	10/19/94	10/22/98	1		Y	1721	1443	520	
155	I	10/17/92	5/21/97	10/9/96	7/23/97	1			1716	284	62	
156	I	12/01/93	5/21/97	10/9/96	7/23/97	1			1312	284	62	
157	I	8/1/88	5/20/1997	10/9/91	6/18/1997	1	Y	Y	3197	2049	28	
158	I	8/15/89	5/20/1997	10/9/91	6/18/1997	1	Y	Y	2823	2049	28	
159	I	12/4/90	5/20/1997	10/9/91	6/18/1997	1	Y	Y	2354	2049	28	
160	I	11/06/93	5/20/1997	10/9/91	6/18/1997	1	Y	Y	1302	2049	28	
161	I	9/22/93	5/12/97	8/9/95	7/23/97	1		Y	1381	704	71	
162	I	3/15/96	5/12/79	4/17/96	7/9/97	1	Y	Y	474	442	6537	

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163	I	10/16/94	3/3/98	5/26/95	10/16/98	1	Y		1440	1220	223	
164	I	10/24/93	3/3/98	3/12/97	10/16/98	1	Y		1792	574	223	
165	I	8/4/96	3/3/98	9/17/96	10/16/98	1	Y		792	749	223	
166	I	7/22/92	7/17/97	1/4/95	10/1/97	1			1869	987	74	
167	I	4/11/93	7/17/97	1/4/95	10/1/97	1			1610	987	74	
168	I	7/23/94	7/17/97	1/4/95	10/1/97	1			1148	987	74	
169	I	7/14/96	7/15/97	9/25/96	9/17/97	1			423	352	62	
170	I	3/11/94	2/22/98	10/5/94	4/17/98	1	Y	Y	1476	1272	55	
171	I	5/4/90	1/7/98	at the hospital	2/21/98	1	Y	Y	2807	2807	55	
172	I	7/19/87	9/15/97	no info in file	10/8/97	1			3679	n/a	23	
173	I	11/5/89	9/15/97	no info in file	10/8/97	1			2853	n/a	23	
174	I	8/27/89	10/3/97	5/23/90	12/23/97	1			2996	2730	80	
175	V	7/21/97	8/12/97	at hospital	9/16/97	1			55	55	34	
176	I	7/18/93	9/2/97	1/2/96	6/1/98	1	Y	Y	1753	869	269	
177	I	11/1/95	9/2/97	1/1/96	6/1/98	1	Y	Y	930	870	269	
178	I	7/15/96	1/26/98	8/15/96	6/1/98	1	Y	Y	930	646	125	
179	I	12/15/92	12/12/97	7/19/95	1/21/98	1		N	676	902	39	
180	I	8/9/91	12/11/97	7/19/95	2/25/98	1		N	1836	936	74	
181	I	11/15/96	12/11/97	4/30/97	2/18/98	1			2356	288	67	
182	I	12/18/95	1/8/98	2/7/96	2/4/98	1			453	717	26	
183	V	11/14/93	1/12/96	not in file	not in file	1			n/a	n/a	n/a	
184	V	12/27/95	1/24/96	at hospital	2/27/96	1		N	60	60	33	
185	I	6/15/1992	3/28/96	none	5/13/96	1	N	Y	1408	n/a	45	
186	V	3/18/96	3/27/96	none- hospital	4/25/96	1			37	37	28	
187	V	12/22/92	4/3/96	none-hospital	5/14/96	1	Y	N	1222	1222	41	
188	V	3/28/96	4/17/96	none-hosp	5/30/96	1		N	62	62	43	
189	V	5/14/96	5/29/96	non-hosp	6/27/96	1			43	43	28	
190	I	6/1/96	6/25/96	none-hosp	None	3	Y	N	n/a	n/a	n/a	Yes
191	V	6/10/96	7/12/96	none-hosp	8/14/96	1			64	64	32	
192	V	8/13/96	9/5/96	none-hosp	9/5/96	1			22	22	0	
193	V	8/31/96	9/13/96	none-hosp	10/16/96	1			46	46	33	
194	I	4/7/84	2/21/97	8/30/95	4/23/97	1	Y	Y	4696	593	62	
195	I	11/28/94	11/1/96	11/29/95	1/15/97	1		N	767	406	74	
196	I	11/20/91	12/9/96	3/24/94	4/23/97	1	Y	Y	1953	1109	134	
197	I	7/15/93	12/9/96	3/24/94	4/23/97	1	Y	Y	1358	1109	134	
198	I	8/19/94	12/9/96	12/13/95	4/23/97	1	Y	Y	964	490	134	
199	I	11/30/95	12/9/96	12/13/95	4/23/97	1	Y	Y	503	490	134	
200	I	7/12/89	1/19/95	5/29/1991	5/22/95	1		N	2110	1433	123	
201	I	6/21/88	1/19/95	5/29/1991	5/22/95	1		N	2491	1433	123	
202	I	3/10/87	1/19/95	5/29/1991	5/22/95	1		N	2952	1433	123	
203	I	7/10/84	1/19/95	5/29/1991	5/22/95	1		N	3912	1433	123	
204	I	10/28/87	1/27/95	5/4/89	4/5/95	1		N	2677	2131	68	
205	I	1/25/89	1/27/95	5/4/89	4/5/95	1		N	2230	2131	68	
206	I	12/15/86	1/27/95	5/4/89	4/5/95	1		N	2990	2131	68	

ID #	V or I	B-Day	Y Term Filed	M/Y Type Removal	M/Y Term Decided	Number of Times Before Judge	Is Adoption the Plan?	CASA / GAL	Age at Term (in days)	Mean Time out of Parent's Care	Mean Time filing to final order	Termination Dismissed?
207	I	1/23/92	1/27/95	1/24/92	4/5/95	1		N	1152	1151	68	
208	V	1/7/95	1/17/95	none- hosp.	2/22/95	1	Y	N	45	45	35	
209	V	1/3/95	1/24/95	none-hosp.	3/2/95	1	Y	N	59	59	38	
210	I	9/11/90	1/24/95	1/2/91	3/29/95	1	Y	N	1638	1527	65	
211	I	2/18/92	1/27/95	11/16/92	4/5/95	1		N	1127	859	68	
212	V	3/28/94	3/8/95	none	5/12/95	1	Y	N	404	404	64	
213	V	1/12/93	3/8/95	none	5/12/95	1	Y	N	840	840	64	
214	I	5/28/83	4/7/1995	3/4/92	5/31/95	1	Y	N	4323	1167	54	
215	V	11/2/89	5/8/95	?	5/24/95	1	Y	N	2002	n/a	16	
216	V	5/9/92	5/8/95	?	5/24/95	1	Y	N	1095	n/a	16	
217	V	4/11/95	5/8/95	none- hsop	6/6/95	1	Y	N	55	55	28	
218	V	5/2/95	5/24/95	none-hosp	6/28/95	1	Y	N	56	56	34	
219	V	7/18/95	8/8/95	none-hosp	9/14/95	1	Y	N	56	56	230	
220	I	4/27/87	9/20/95	5/18/1994	9/27/95	1			3030	489	7	
221	I	1/6/85	9/20/95	4/5/1995	9/27/95	1			3861	172	7	
222	I	11/02/89	9/20/95	8/18/93	?	1			n/a	n/a	n/a	
223	I	5/9/92	9/20/95	8/18/93	?	1			n/a	n/a	n/a	
224	V	11/12/95	11/21/95	none-hosp	12/22/95	1	Y	N	40	3115	31	
225	I	2/12/88	12/11/95	6/14/95	2/19/97	1	Y	Y	3247	489	428	
226	I	4/10/90	12/11/95	6/14/95	2/19/97	1	Y	Y	2469	605	428	
227	I	1/22/92	12/11/95	6/14/95	2/19/97	1	Y	Y	1827	991	428	
228	I	8/8/92	1/4/96	5/18/94	2/7/96	1		N	1259	619	33	
229	I	8/23/88	1/4/96	?	10/23/1996	1		N	2940	n/a	289	
230	V	12/1/95	12/14/95	none-hosp	1/17/96	1			46	46	33	
231	I	9/10/91	4/27/94	6/24/92	6/29/94	1		Y	1009	725	62	
232	I	10/13/84	6/29/04	4/22/1992	10/27/94	1		Y	3614	905	####	
233	I	4/17/86	6/29/04	4/22/1992	10/27/94	1		Y	571	905	####	
234	I	3/26/93	6/29/94	9/29/93	10/27/94	1	N	Y	58	388	118	
235	V	6/13/94	7/7/94	none-hosp	8/11/94	1			2095	58	34	
236	V	10/15/88	7/18/94	4/14/93	8/10/94	1	Y	Y	1519	476	22	
237	V	5/21/90	7/18/94	4/14/93	8/10/94	1	Y	Y	2241	476	22	
238	I	3/31/89	6/14/95	1/23/91	6/21/95	1			278	1588	7	
239	I	3/26/94	6/26/91	6/26/91	1/4/95	1	Y	Y	278	1268	1268	
240	V	1/6/85	10/3/94	?	10/5/94	1			3509	n/a	2	
241	I	4/10/90	2/20/96	6/10/90	4/3/96	1		N	2153	2093	43	
242	I	10/29/91	11/24/94	2/6/92	1/18/95	1		N	1159	1062	54	
243	I	9/19/1992	11/24/94	3/3/93	1/18/1995	1		N	839	675	54	
244	V	7/1/91	12/30/94	9/9/92	2/8/95	1			1297	869	38	
245	V	6/13/92	12/30/94	9/9/92	2/8/95	1			955	869	38	
246	V	11/14/93	2/14/96	3/30/94	4/10/96	1	Y	Y	866	730	56	
247	V	2/2/94	1/19/95	?	2/1/95	1		N	359	n/a	118	
248	I	4/20/86	12/23/94	1/8/92	3/25/95	1		N	3215	1157	92	
249	I	7/13/85	12/23/94	12/11/91	?	1			n/a	n/a	n/a	
250	I	8/23/83	12/23/94	12/11/91	?	1			n/a	n/a	n/a	
251	V	1/15/93	1/22/93	none- hosp.	2/18/93	1	Y	N	33	33	26	
252	I	10/3/85	5/26/93	6/7/1993	7/27/1993	2		Y	2814	50	61	

ID #	V or I	B-Day	V Term Filed	M/Y Type Removal	M/Y Term Decided	Number of Times Before Judge	Is Adoption the Plan?	CASA / GAL	Age at Term (in days)	Mean Time out of Parent's Care	Mean Time filing to final order	Termination Dismissed?
253	V	1/31/93	2/18/93	none- hosp.	5/24/93	1	Y	N	114	114	96	
254	I	8/14/90	8/18/93	6/3/92	9/22/93	1		N	1118	469	34	
255	I	3/9/91	5/4/93	7/17/91	6/11/93	1		Y	812	684	37	
256	V	5/1/93	5/14/93	non- hosp.	6/15/93	1	Y	N	44	44	31	
257	V	4/14/93	4/27/93	none- hosp.	5/27/93	1	Y	N	43	43	30	
258	V	5/12/93	6/10/93	none hosp.	6/13/93	1	Y	N	31	31	3	
259	V	5/28/93	6/21/93	none hosp.	7/29/93	1	Y	N	61	61	38	
260	V	6/25/93	7/9/93	none hosp.	8/10/93	1	Y	N	45	45	31	
261	V	7/20/93	8/3/93	none-hosp.	9/13/93	1	Y	N	53	53	40	
262	V	8/20/93	9/20/93	none hosp.	10/12/93	1	Y	N	52	52	22	
263	I	4/10/85	10/27/93	6/17/92	10/29/93	1		Y	3079	492	2	
264	V	1/31/92	2/14/92	none hosp.	2/14/92	1	Y	N	14	14	0	
265	V	12/14/91	3/4/92	none-hosp.	4/2/92	1	Y	N	108	108	28	
266	V	2/4/92	3/4/92	none-hosp.	4/2/92	1	Y	N	58	58	28	
267	I	4/9/83	3/18/92	1/3/90	4/29/92	1			3260	836	41	
268	I	1/11/90	4/1/92	1/31/90	2/22/93	4	Y	Y	1121	1102	321	
269	I	9/13/77	4/1/92	11/5/86	5/6/92	1			5273	1981	35	
270	I	12/23/83	4/1/92	3/21/90	9/16/92	1			3143	895	165	
271	I	5/29/85	4/1/92	3/21/90	9/16/92	1			2627	895	165	
272	V	9/4/91	5/6/92	none hosp.	6/9/92	1	Y	N	275	275	33	
273	V	5/1/92	5/12/92	none hosp.	6/16/92	1	Y	N	45	45	34	
274	I	10/10/85	12/11/92	10/5/88	10/27/93	1			2897	1822	316	
275	I	1/23/90	12/11/92	5/7/90	10/27/93	1			1354	1250	316	
276	I	8/10/83	12/11/92	10/5/88	10/27/93	1			3677	1822	316	
277	I	8/28/87	12/11/92	11/30/88	10/27/93	1			2219	1767	316	
278	V	6/12/92	6/19/92	none hosp.	7/29/92	1	Y	N	47	47	40	
279	V	6/1/92	6/16/92	none hosp.	7/22/92	1	Y	N	51	51	36	
280	I	?	8/12/92	5/16/90	10/7/92	1			n/a	0	55	
281	I	?	8/12/92	5/16/90	10/7/92	1			n/a	0	55	
282	I	?	8/12/92	5/16/90	10/7/92	1			n/a	0	55	
283	I	?	8/12/92	5/16/90	10/7/92	1			n/a	0	55	
284	I	6/26/81	8/12/92	6/19/91	8/9/95	1	Y	Y	5083	1490	1077	
285	I	12/2/87	8/26/92	9/20/89	4/29/93	1		Y	1947	1299	243	
286	I	1/12/89	8/26/92	9/20/89	4/29/93	1		Y	1547	1299	243	
287	I	10/19/88	8/92	?	9/16/92	1			1407	0	45	
288	I	3/6/85	10/21/92		12/2/92	1			2786	0	41	
289	I	7/19/83	10/21/92		12/2/92	1			3373	0	41	
290	I	3/11/86	10/21/92		12/2/92	1			2421	0	41	
291	I	9/30/90	10/29/92		12/2/92	1			782	0	33	
292	I	9/16/81	12/2/92		12/16/92	1			4050	0	14	
293	I	11/30/89	9/25/91		1/27/93	1			1137	0	482	
294	I	7/19/83	10/23/92	8/21/91	3/3/93	1		Y	3464	552	130	
295	I	3/6/85	10/23/92	8/21/91	3/3/93	1		Y	2877	552	130	
296	I	3/11/86	10/23/92	8/21/91	3/3/93	1		Y	2512	552	130	
297	V	2/12/91	3/5/91	none hosp.	4/2/91	1	Y	N	50	50	27	
298	V	11/12/90	3/19/91	none hosp.	4/16/91	1	Y	N	154	154	27	

ID #	V or I	B-Day	V Term Filed	M/Y Type Removal	M/Y Term Decided	Number of Times Before Judge	Is Adoption the Plan?	CASA / GAL	Age at Term (in days)	Mean Time out of Parent's Care	Mean Time filing to final order	Termination Dismissed?
299	V	3/4/91	3/14/91	none hosp.	4/11/91	1	Y	N	37	37	27	
300	V	4/22/91	6/17/91	none hosp.	7/17/91	1	Y	N	85	85	30	
301	V	7/19/91	8/1/91	none hosp.	8/28/91	1	Y	N	39	39	27	
302	V	8/2/91	8/14/91	none hosp.	9/12/91	1	Y	N	40	40	28	
303	V	8/15/91	9/6/91	None hosp.	10/2/91	1	Y	N	47	47	26	
304	V	2/2/91	2/14/91	None hosp.	3/14/91	1	Y	N	42	42	30	

Table II: Analysis of Data

Totals

	Record #s	# of Total	# Voluntary	% Voluntary	# Involuntary	% Involuntary
Total	1 to 304	303	94	0.31	209	0.69
2000	1 to 64	63	14	0.22	49	0.78
1999	5 to 95	31	21	0.68	10	0.32
1998	96 to 127	32	5	0.16	27	0.84
1997	128 to 181	54	2	0.04	52	0.96
1996	182 to 199	18	9	0.50	9	0.50
1995	200 to 230	31	11	0.35	20	0.65
1994	231 to 250	20	8	0.40	12	0.60
1993	251 to 263	13	9	0.69	4	0.31
1992	264 to 296	33	7	0.21	26	0.79
1991	297 to 304	8	8	1.00	0	0

Note: There is no record #14. It was entered as a non-termination case and so was deleted from these statistics. Percent of Voluntary and Involuntary are out of the Total Voluntary and Involuntary, respectively.

Mean Age at Termination

	Voluntary	Missing Information Voluntary	Involuntary	Missing Information Involuntary	Total
Total	14	1	37.2	9	39.75
2000	522 (1.43 years)	0	783 (2.15 years)	0	2920.9 (8 years)
1999	54 (0.15 years)	0	1660 (4.55 years)	0	2177.6 (5.96 years)
1998	2186 (5.99 years)	0	38 (0.1 years)	0	3476.4 (9.52 years)
1997	57 (0.16 years)	0	1469 (4.02 years)	0	1642.1 (4.49 years)
1996	60 (0.16 years)	1	453 (1.24 years)	1	453 (1.24 years)
1995	45 (0.12 years)	0	2110 (5.78 years)	2	2110 (5.78 years)
1994	2095 (5.74 years)	0	1009 (2.76 years)	2	1009 (2.76 years)
1993	33 (0.09 years)	0	2814 (7.71 years)	0	638.38 (1.74 years)
1992	14 (0.04 years)	0	3260 (8.93 years)	4	14 (0.03 years)
1991	61.8 (0.17 years)	0	0	0	61.75 (0.16 years)

Note: The records are in days. If a date in a record was uncertain, the day was calculated as the 15th and the month as June. Missing Info = number of records reviewed where insufficient information existed to calculate the mean age at termination.

Mean Time out of Parent's Care

	Voluntary	Missing Information Voluntary	Involuntary	Missing Information Involuntary	Total
Total	9.75	8	54.51	9	14.79
2000	1418 (3.89 years)	1	14039.1 (38.46 years)	0	810.5 (2.22 years)
1999	54 (0.15 years)	2	1449 (3.96 years)	0	54 (0.14 years)
1998	1175 (3.22 years)	0	38 (0.10 years)	0	744.8 (2.04 years)
1997	57 (0.16 years)	0	612 (1.67 years)	2	669 (1.83 years)
1996	60 (0.16 years)	1	717 (1.96 years)	2	777 (2.12 years)
1995	45 (0.12 years)	2	1433 (3.92 years)	3	1478 (4.04 years)
1994	58 (0.16 years)	2	725 (1.98 years)	2	725 (1.98 years)
1993	33 (0.09 years)	0	50 (0.13 years)	0	167 (0.46 years)
1992	598 (1.64 years)	0	836 (2.29 years)	0	567 (1.55 years)
1991	61.8 (0.17 years)	0	0	0	61.75 (0.17 years)

Note: The records are in days. If a date in a record was uncertain, the day was calculated as the 15th and the month as June.

Missing Info = number of records reviewed where insufficient information existed to calculate the mean age at termination.

This is the time between the removal date and the date the termination is final or between birth and termination if child taken away at hospital.

Mean Time Between Filing and Final Order

	Voluntary	Missing Information Voluntary	Involuntary	Missing Information Involuntary	Total
Total	2.55	1	9.6	5	2.77
2000	647 (1.77 years)	0	2968 (8.12 years)	0	122 (0.33 years)
1999	38 (0.1 years)	0	14 (0.04 years)	0	60.5 (0.17 years)
1998	50 (0.14 years)	0	28 (0.08 years)	0	88 (0.24 years)
1997	40 (0.11 years)	0	187 (0.51 years)	0	244 (0.67 years)
1996	33 (0.09 years)	1	26 (0.07 years)	1	61.3 (0.17 years)
1995	35 (0.1 years)	0	123 (0.34 years)	2	158 (0.43 years)
1994	34 (0.09 years)	0	62 (0.17 years)	2	62 (0.17 years)
1993	26 (0.07 years)	0	61 (0.17 years)	0	34.7 (0.1 years)
1992	0	0	41 (0.11 years)	0	153 (0.42 years)
1991	27.8 (0.08 years)	0	0	0	27.8 (0.08 years)

Note: The records are in days. If a date in a record was uncertain, the day was calculated as the 15th and the month as June.

Missing Info = number of records reviewed where insufficient information existed to calculate the mean age at termination.

Number of Cases with a CASA or GAL

	Voluntary	% of Voluntary	Missing Information Voluntary	Involuntary	% of Involuntary	Missing Information Involuntary	Total
Total	11	0.10	19	96	0.9	59	107
2000	2	0.09	0	20	0.91	4	22
1999	5	0.417	8	7	0.98	1	12
1998	1	0.059	0	16	0.94	8	17
1997	0	0	0	29	1	19	29
1996	0	0	6	6	1	1	6
1995	0	0	1	3	1	4	3
1994	3	0.37	4	5	0.63	3	8
1993	0	0	0	3	1	0	3
1992	0	0	0	7	1	19	7
1991	0	0	0	0	0	0	0

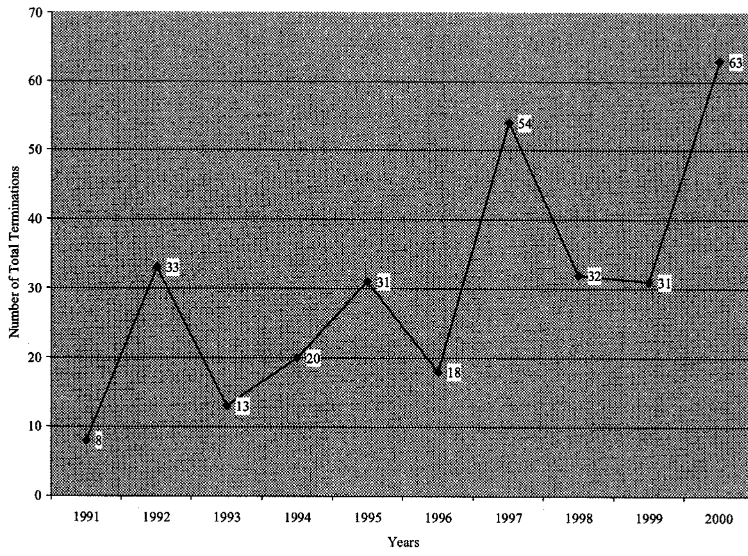
Number of Cases Where the Plan is Adoption

	Voluntary	% of Voluntary	Missing Information Voluntary	Involuntary	% of Involuntary	Missing Information Involuntary	Total
Total	66	0.45	26	91	0.26	104	146
2000	11	0	0	28	0.28	2	34
1999	12	0.92	10	5	0.38	2	13
1998	5	0	0	14	0.74	11	19
1997	0	0	2	30	1	22	30
1996	1	0.14	8	6	0.86	2	7
1995	10	0.67	1	5	0.33	15	15
1994	3	0.75	5	1	0.25	11	4
1993	9	1	0	0	0	4	9
1992	7	1	0	2	0.29	35	7
1991	8	1	0	0	0	0	8

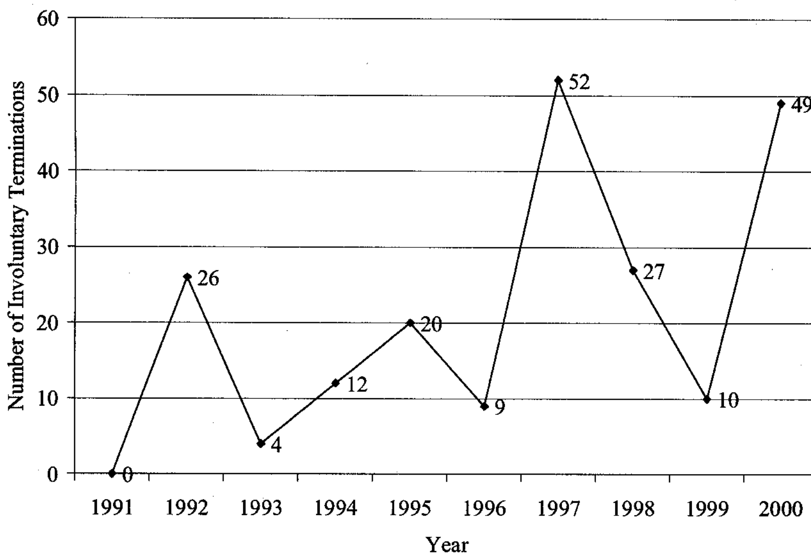
Number of Times Case Comes Before the Judge More Than Once

	Voluntary	Involuntary	Total
Total	10	33	43
2000	6	15	21
1999	4	3	7
1998	0	8	8
1997	0	4	4
1996	0	1	1
1995	0	0	0
1994	0	0	0
1993	0	1	1
1992	0	1	1
1991	0	0	0

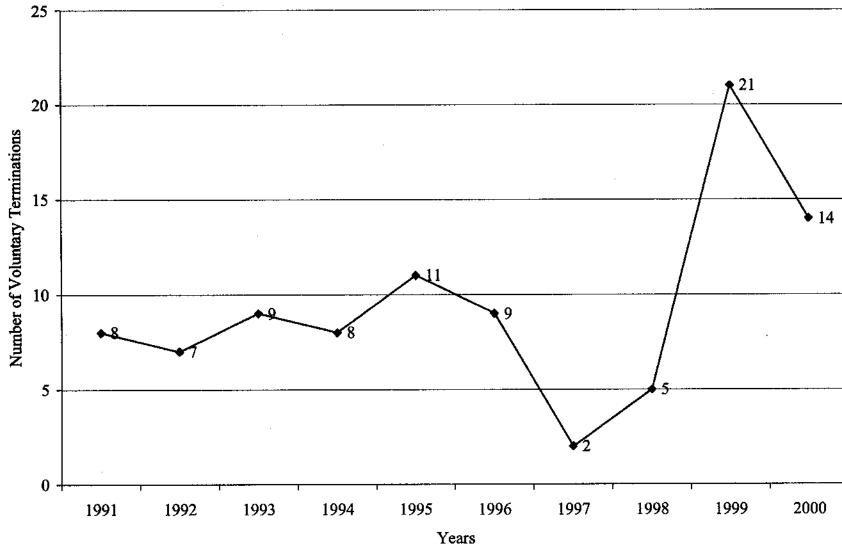
Graph A: Total Number of Terminations



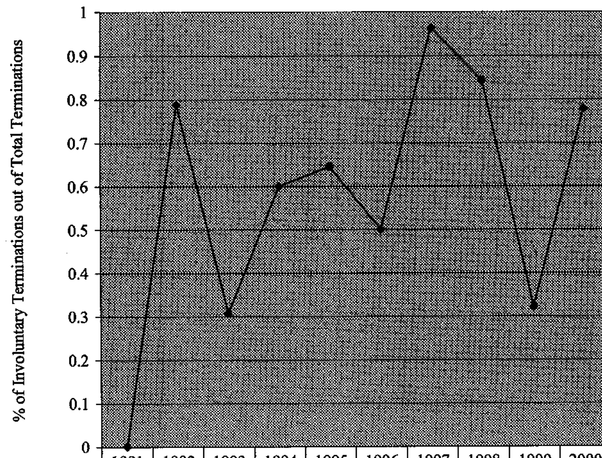
Graph B: Number of Involuntary Terminations



Graph C: Number of Voluntary Terminations



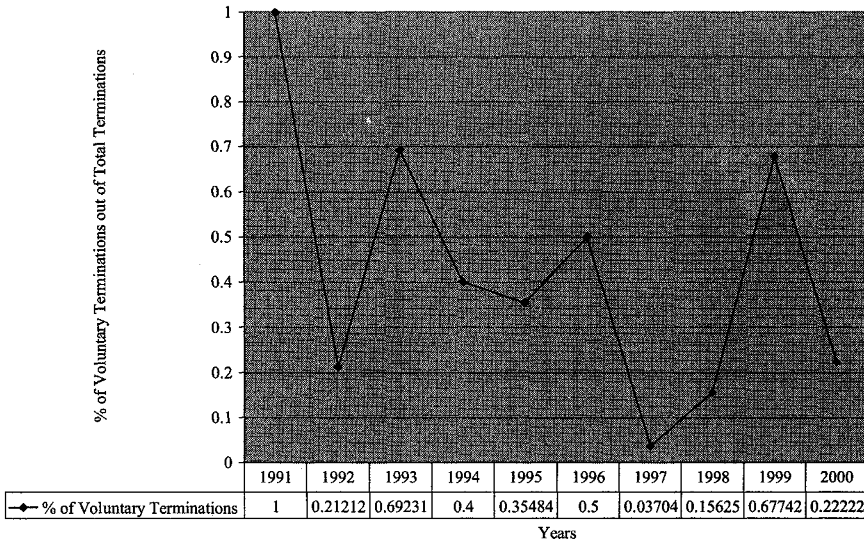
Graph D: Percentage of Involuntary Terminations out of Total Terminations



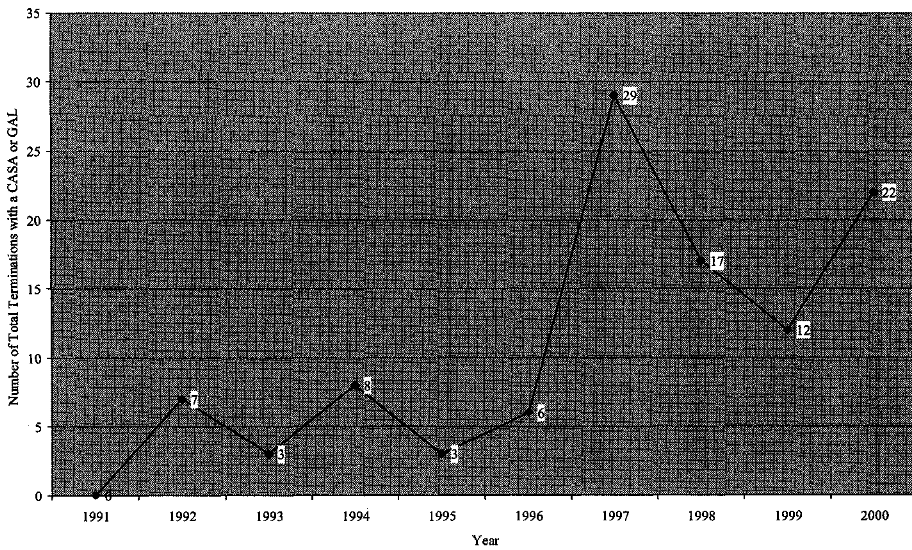
	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
% of Involuntary Terminations out of Total Terminations over 10 Years	0	0.7879	0.3077	0.6	0.6452	0.5	0.963	0.8438	0.3226	0.7778

Years

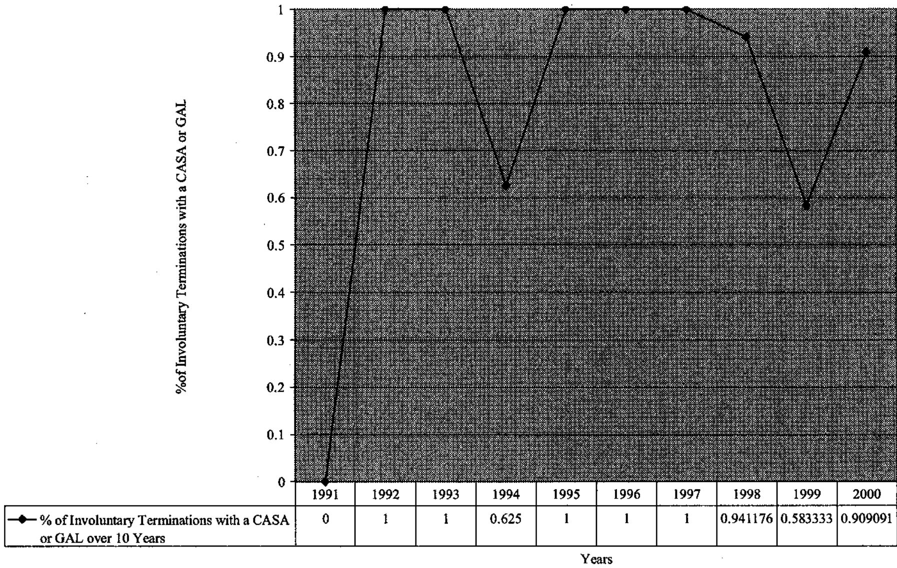
Graph E: Percentage of Voluntary Terminations out of Total Terminations



Graph F: Number of Terminations with a CASA or GAL

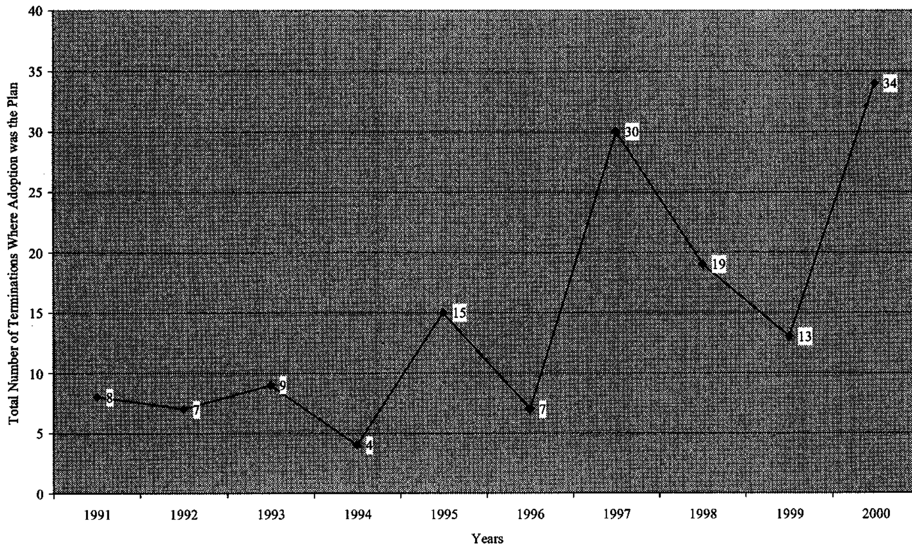


Graph G: Percentage of Involuntary Terminations with CASA or GAL out of Total Terminations

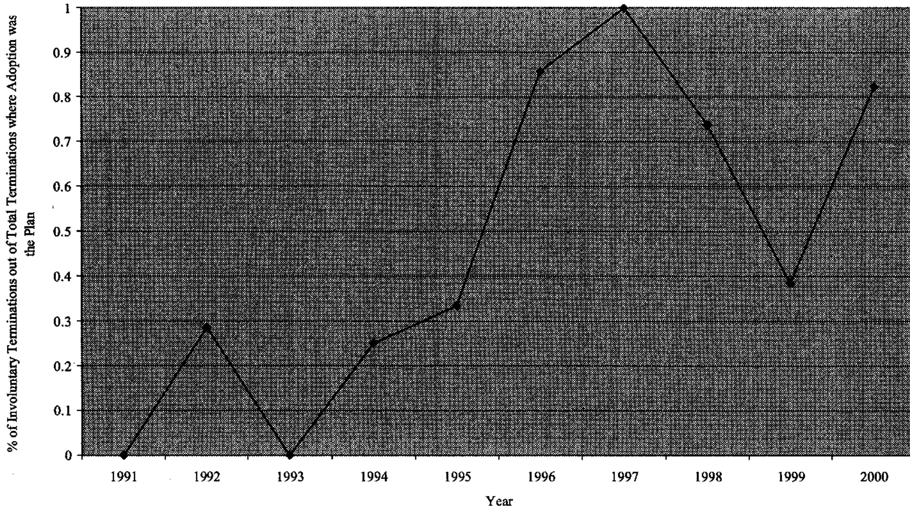


	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
% of Involuntary Terminations with a CASA or GAL over 10 Years	0	1	1	0.625	1	1	1	0.941176	0.583333	0.909091

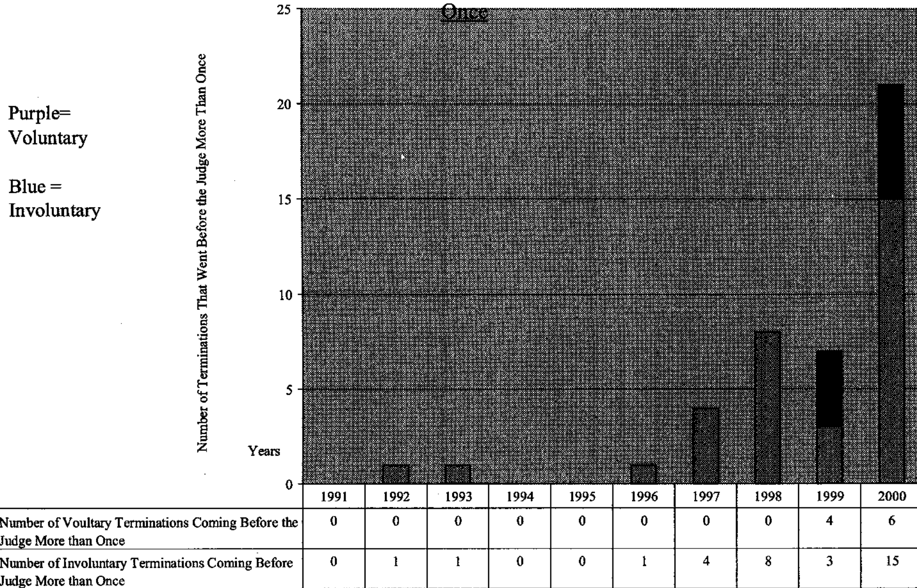
Graph H: Number of Termination Cases with Adoption Planned



Graph I: Percentage of Involuntary Terminations with Adoption Planned

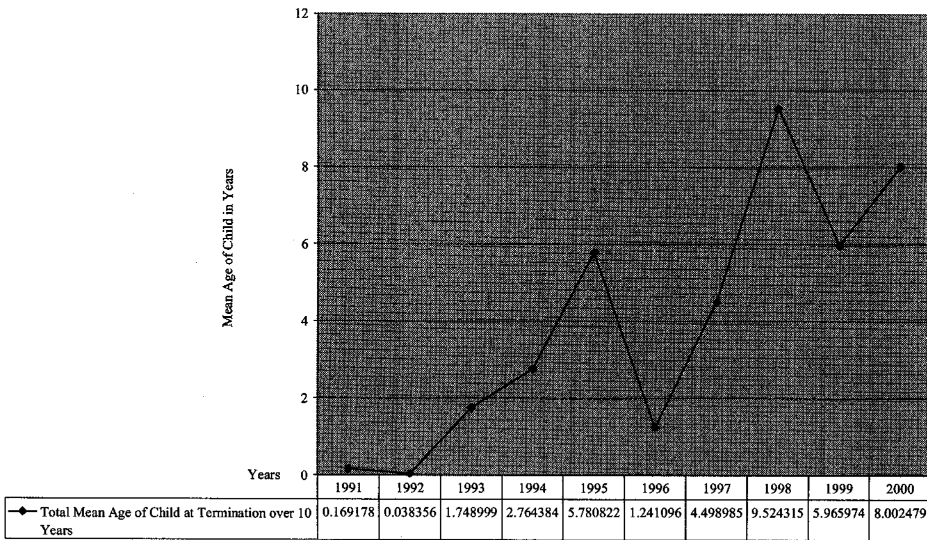


Graph J: Number of Times Termination Cases Came before the Judge More than Once



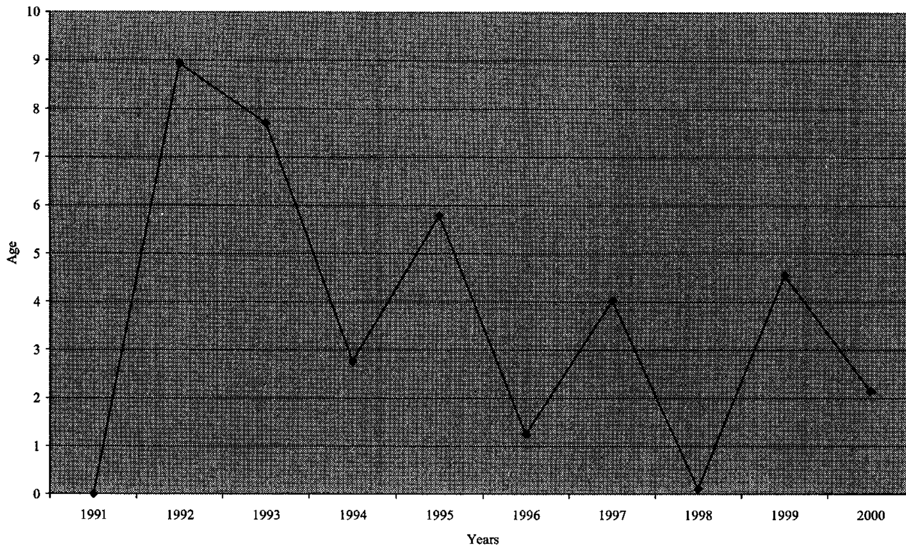
	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Number of Voultary Terminations Coming Before the Judge More than Once	0	0	0	0	0	0	0	0	4	6
Number of Involuntary Terminations Coming Before Judge More than Once	0	1	1	0	0	1	4	8	3	15

Graph K: Mean Age of Child at Termination

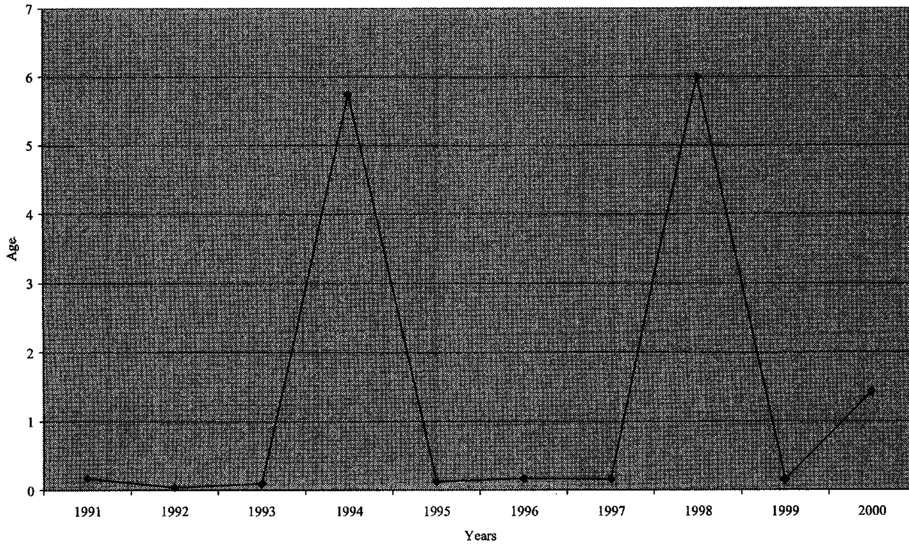


	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Total Mean Age of Child at Termination over 10 Years	0.169178	0.038356	1.748999	2.764384	5.780822	1.241096	4.498985	9.524315	5.965974	8.002479

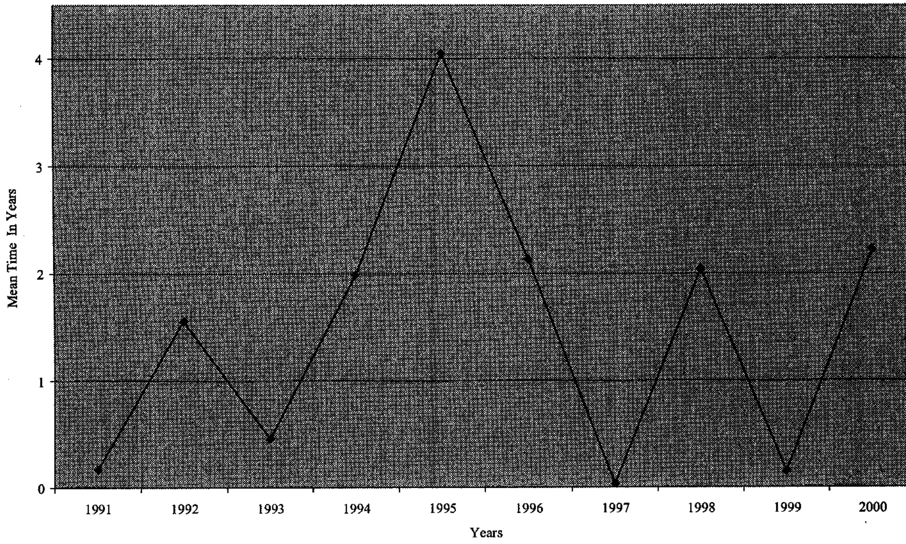
Graph L: Mean Age of Child at Involuntary Termination



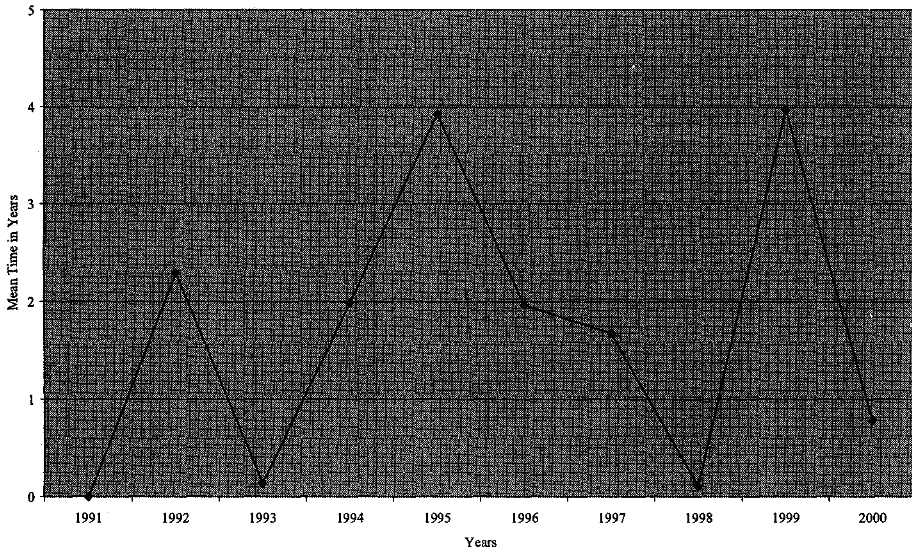
Graph M: Mean Age of Child at Voluntary Termination



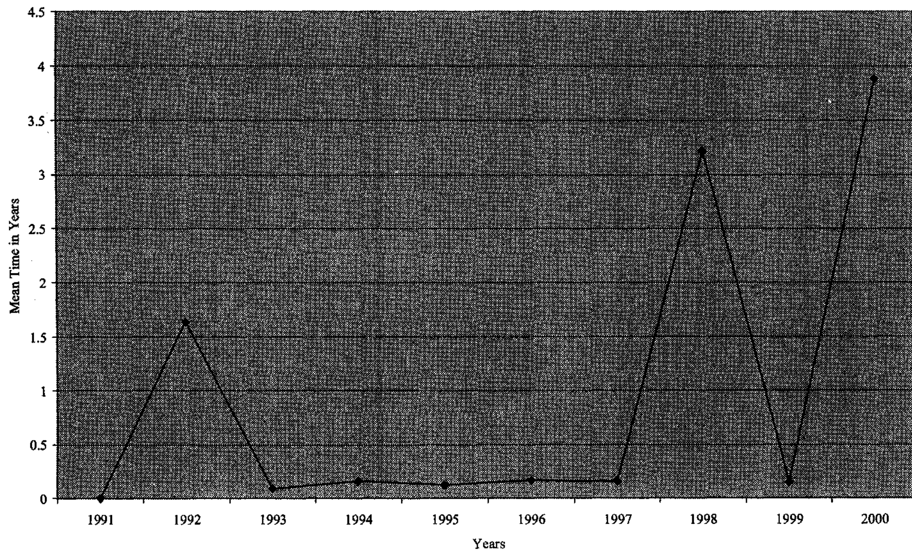
Graph N: Mean Time a Child is out of Parents' Care before Termination



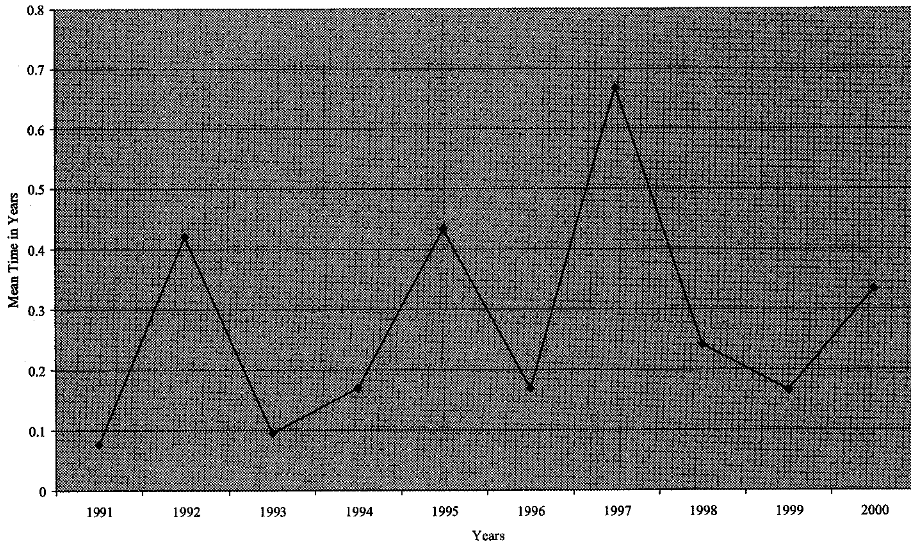
Graph O: Mean Time a Child is out of Parents' Care before Involuntary Termination



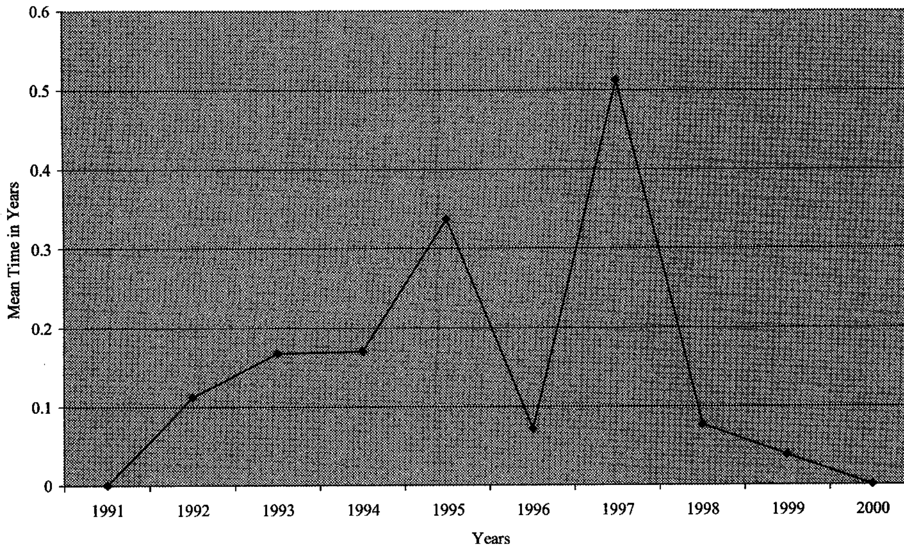
Graph P: Mean Time a Child is out of Parents' Care before Voluntary Terminations



Graph Q: Mean Time Between Filing and Final Order in a Termination Case



Graph R: Mean Time Between Filing and Final Order in an Involuntary Termination Case



S: Mean Time Between Filing and Final Order in a Voluntary Termination Case