

# Intentions and Results

*A Look Back at the Adoption and Safe Families Act*

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# Preface: The Adoption and Safe Families Act (ASFA)

## *About this Paper Series*

President Clinton signed the Adoption and Safe Families Act (ASFA) of 1997, Public Law 105-89 105th Cong., 1st sess. on November 19, 1997. The Act was the most significant piece of legislation dealing with child welfare in almost twenty years. It was passed in response to growing concerns that child welfare systems across the country were not providing for the safety, permanency, and well-being of affected children in an adequate and timely fashion. The ambitious new law aimed to reaffirm the focus on child safety in case decision making and to ensure that children did not languish and grow up in foster care but instead were connected with permanent families.

Twelve years after the law was enacted, the Center for the Study of Social Policy (CSSP) in partnership with the Urban Institute has led an effort to reflect on what has been learned about the intended and unintended consequences of ASFA and the degree to which its goals have been realized. Together we have co-sponsored a series of papers on the effects of the ASFA law and its implementation written from the distinctive perspectives of researchers, policymakers, advocates, and parents and youth with first-hand experience of the child welfare system. The papers in this series examine the consequences of ASFA for children and families and for the child welfare systems that intervene in their lives.

The work of analyzing legislation as far-ranging as ASFA inevitably will be partial. For every topic that we singled out for closer scrutiny, many more possibilities had to be passed over. If deciding on topics proved more challenging than anticipated, the process also produced more papers than originally planned because of the varied subjects and viewpoints deemed essential to any assessment of ASFA.

The series begins with a framework paper, co-authored by Olivia Golden and Jennifer Macomber. The framework provides an overview that summarizes the key features of the ASFA legislation, the major debates and controversies surrounding its interpretation and implementation, and the available data on its results. Five perspective papers follow, which capture the personal experiences and reflection of their authors: Parents—Lynne Miller, Jeanette Vega, Jackie Crisp, Lawrence Pratt, Deborah McCabe, Paulette Nelson, Bertha Marquez, Youshell Williams and Tracey Carter; Youth—Manny Sanchez, Natasha Santos, Pauline Gordon, Tamara,\* Akeema,\* Natalie Kozakiewicz, Jessica Wiggs, Wunika Hicks, Eric Green and Erica Harrigan. Each of these authors tells a unique and compelling story and provides a different perspective, such as the experience of a parent struggling to be reunified with her children while conquering substance abuse and of a teenager who spent most of her formative years in foster care. Reviews of the efficacy of the law and its subsequent policies frequently overlook the perspectives of the

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\* Name has been changed.

constituencies most directly affected. These parent and youth accounts poignantly demonstrate the complex impact of a federal law that influences decision making with respect to family composition and definition. Authors of the other perspective papers include one of the original drafters of the ASFA legislation (Cassie Statuto Bevan); a judge who has extensive experience in implementing and enforcing the law (Ernestine S. Gray); and the New York City Child Welfare Commissioner charged with carrying out the law's dictates (John B. Mattingly).

The next section of the series includes seven policy briefs by respected researchers and policy analysts. The briefs review crucial questions such as the impact of ASFA on special populations: parents with mental health (Barbara Friesen, Joanne Nicholson, Katharine Kaplan and Phyllis Solomon) and substance abuse (Sid Gardner and Nancy Young); families involved with the criminal justice system (Martha Raimon, Arlene Lee, and Philip Genty); those caught up in the immigration system (Yali Lincroft and Bill Bettencourt); and older youth (Jennifer Macomber). Other papers address the priority issues of adoption (Richard Barth) and preserving family connections (MaryLee Allen and Beth Davis-Pratt). The authors of these seven briefs draw heavily upon existing research in framing and supporting their analyses and recommendations.

This series is not intended to deliver a uniform message or arrive at a master list of findings. In fact, the authors often disagree with one another or draw different conclusions about both successes and continuing challenges within the child welfare system twelve years after the passage of ASFA. This lively give-and-take is to be expected when considering issues as important, sensitive, and difficult to analyze and regulate as state intervention into families' lives.

While many individual papers conclude with recommendations that reflect the author's perspective, the last part of the series presents recommendations that incorporate common themes that emerged from the entire project. While drawing on the insights of all authors, the summary represents the recommendations of the Center for the Study of Social Policy alone.

Legislating social policy that defines when the state has the power and the responsibility to intervene in family life for the sake of child safety is inherently difficult. There will perhaps always be a divide between those who believe the state is overstepping its authority and those who believe the state is not vigilant enough in executing its protective role. We need to know more about the short- and long-term impact of our decisions to fully assess whether our child welfare law and policy achieve the best outcomes for those most in need, while recognizing the often competing interests of individuals and groups affected by the law. We hope this series will promote and illuminate discussion and help to frame the next generation of policy reforms.

Framework Paper



# Framework Paper

## *The Adoption and Safe Families Act (ASFA)*

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### Introduction

In November 1997, President Clinton signed into law Public Law 105-89, the Adoption and Safe Families Act (ASFA). Members of both parties in Congress, working closely with the Executive Branch, played a part in developing the legislation, which nonetheless sparked considerable controversy. Now, more than a decade later, is a good time to assess the progress our society has made toward realizing ASFA's ambitious goals. These include making the child welfare system responsive to "a child's sense of time," ending children's experience of "drifting" in foster care so they may grow up in permanent families, and ensuring that children's safety is paramount in case decision making. This also seems an important moment to review outcomes in light of critics' concerns, especially that the new law might break up families and leave children disconnected from those they love.

This series of papers brings together distinguished experts writing on all aspects of child welfare. The common purpose is to review what we know about ASFA's accomplishments and shortcomings, to tease out the lessons learned from this history, and most importantly to suggest implications of these findings for the future. This framing paper initiates the series by setting out the following components:

- 1 **Introduction:** Begins with an overview of the legislation's goals.
- 2 **Provisions of ASFA:** Examines the provisions of the ASFA legislation and the administrative Final Rule (2000), organizing discussion around the four key goals of permanence, safety, well-being, and accountability.
- 3 **State Implementation:** Reviews the evidence on states' experience and progress in implementing ASFA.
- 4 **Effects on Service Delivery and Agency Culture:** Examines ASFA's effects on practice and culture in child welfare agencies.
- 5 **Child and Family Outcomes:** Explores trends in outcomes for children and families since ASFA's inception.
- 6 **Conclusion:** Summarizes the evidence and highlights selected insights on ASFA's impact to date.

Rather than taking a particular position on ASFA, this paper seeks to frame the major controversies and identify alternative points of view. The remaining papers in the series will offer individual perspectives and provide recommendations for the future.

Much of the debate surrounding ASFA has focused on striking the balance in child welfare between protecting children's safety and respecting the integrity of the family and the rights of parents. To proponents, ASFA restored a balance, which had tilted too far towards parents' autonomy and away from the needs of children, causing them to be left at home with adults who injured or even killed them. To opponents, ASFA opened the door to arbitrary government intervention in families, tearing children away from parents who were capable of caring for them and imposing the unnecessary trauma of removal and foster care on these children. In an effort to articulate this balance, ASFA itself included a provision entitled "Preservation of Reasonable Parenting," which clarified that nothing in the Act was intended to disrupt the family unnecessarily, intrude upon family life inappropriately, prohibit reasonable parental discipline, or prescribe a method of acceptable parenting.

This paper marshals the available evidence on ASFA's effects on these dimensions of child welfare and on other goals such as ensuring children's well-being and their prompt movement towards permanence. Both the legislative history and the body of evidence presented here suggest that a dichotomy between child safety and family integrity is an incomplete framework for capturing the complexity of ASFA's provisions and motivations. Neither does this simple opposition account for its range of effects, both positive and negative, on child welfare systems and, most crucially, on families and children themselves.

It is also noteworthy that the effects of changes in child welfare policy and systems can be very different for children of color than for white children. In particular, researchers have documented the disproportionate representation of African American children in the child welfare system and have begun to disentangle the ways that disparities in treatment based on race may be embedded in child welfare services (Hill 2006; Barth 2005). While the field has grappled with multiple perspectives on racial disproportionality for years, the issue has recently moved to the forefront of concerns in child welfare. Wherever possible, both in this and other papers in the series, the authors will break down the analysis of ASFA's effects to identify differences according to race. Available research offers

only limited hints as to the workings of both positive and negative effects, so the challenge of understanding racial imbalances is also a rich area for future study.

### *ASFA: History and Context*

Before ASFA was signed into law in 1997, there had been no comprehensive congressional attention to child welfare since Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980. As a result, the bill's authors and other contributing parties brought numerous concerns as well as hopes to its drafting. Several congressional authors were above all worried about children's safety, fearing that the federal "reasonable efforts" requirement—namely, that states must make reasonable efforts to keep families together—was interpreted in practice in ways that endangered children by keeping them with parents who harmed them. At the same time, others who worked on the bill wanted to make sure that the law would not go too far and reverse the federal government's historic role in protecting children and parents from arbitrary removals. And a broad group—members of Congress, the Clinton administration, and many outside observers—expressed concern about the growth in foster care caseloads, a pattern of children lingering in care too long, and the obstacles to adoption that prevented children who could never go home from ever achieving a place within a permanent family. Finally, many participants saw the bipartisan interest in child welfare as presenting a rare opportunity to comprehensively address problems facing the system; as a result, people with different views looked hard for common ground and accepted compromises that they believed would lead to better results overall.

Given this complex history, ASFA is a multifaceted piece of legislation with many moving parts and diverse goals. These diverse goals are well illustrated by the arguments of the bill's several sponsors in urging their fellow senators to pass the legislation in November 1997. On the one hand, Senator Mike DeWine (R-OH) argued that the bill's clarification of reasonable efforts was "especially important" because it "will save the lives of many children":

[O]ver the last 17 years, since...[reasonable efforts] became part of our Federal law, this law, tragically, has often been seriously misinterpreted by those responsible for administering our foster care system. Too often, reasonable efforts...have come to mean unreasonable efforts. It has come to mean efforts to reunite families which are families in name only. I

am speaking now of dangerous, abusive adults who represent a threat to the health and safety and even the lives of these children. Senator DeWine (OH), Congressional Record 143, p. S12669.

Senator Jay Rockefeller (D-WV), on the other hand, framed the key provisions of ASFA slightly differently:

While this legislation appropriately preserves current Federal requirements to reunify families when that is best for the child, it does not require the States to use reasonable efforts to reunify families that have been irreparably broken...Most significantly, the legislation takes the essential first step of ensuring ongoing health coverage for all special-needs children who are adopted...I am delighted to see that medical coverage, which has always been a vital part of any program that substantively helps children, is also a key component of this bipartisan package. Senator Rockefeller-(WV), Congressional Record 143, p. S12671.

The Department of Health and Human Services (DHHS) final regulation for the statute (Final Rule), published in January 2000, brought together these complex threads as well as the implementation aspects of other child welfare statutory changes into a single regulatory package. The regulations framed the overall purpose of ASFA as achieving safety, permanency, and well-being. They also integrated the accountability, monitoring, and information systems requirements necessary to implement ASFA's outcome provisions with like requirements necessary to implement a statutory change aimed at reforming federal reviews of state performance.<sup>2</sup> Other important statutory, regulatory, and practice changes that affected or built on ASFA include the Court Improvement Program, the implementation of state waiver provisions allowing subsidized guardianship, the continued development of state information systems using an enhanced federal match enacted before ASFA, and the very recent Fostering Connections to Success and Increasing Adoptions Act (FCSIAA) Public Law 110-351. 110th Cong., 2d sess., signed into law by President Bush on October 7, 2008. This paper and others in the series describe more fully the important intersections between ASFA and these related changes.

## The Provisions of ASFA: Four Key Goals

In the tables on the following pages, we summarize the provisions of the ASFA legislation, organizing them around its four primary goals: moving children promptly to permanent families, ensuring that safety is a paramount concern, elevating well-being as a major focus of child welfare system efforts, and improving innovation and accountability throughout that system.<sup>3</sup> For each goal, we highlight the provisions that have been most commented on and have most affected changes in practice. We also weave in the regulations of the Final Rule, which articulated in more detail the first three goals of permanency, safety, and well-being, and implemented provisions of ASFA and of other contemporary child welfare legislation. Specifically, the Final Rule established procedures for the Child and Family Services Reviews (CFSRs), specified implementing regulations for the MultiEthnic Placement Act, and updated the eligibility review process for Title IV-E foster care (DHHS 2000b). Finally, where relevant, we bridge descriptively from ASFA provisions and Final Rule regulations to recent significant legislative changes, specifically the 2008 Fostering Connections to Success and Increasing Adoptions Act (FCSIAA).

# Goal 1

## Move children promptly to permanent families (“a child’s sense of time”)

A major goal of ASFA was to speed a child’s time to permanency. Table 1 explains the key provisions designed to move children promptly to permanent families. The more notable features include the requirement to terminate parental rights if the child has been in foster care 15 out of the most recent 22 months, the authorization of adoption incentive payments, and the provision that required permanency hearings to be held within 12 months of the child’s entering care, while also intending to eliminate long-term foster care as a potential permanency goal.

**Table 1: ASFA Provisions to Move Children Promptly to Permanent Families**

### REQUIREMENT TO TERMINATE PARENTAL RIGHTS:

The state must file a petition to terminate parental rights (TPR) of the child’s parents and concurrently seek to find a qualified family to adopt the child in three circumstances:

- the child has been in foster care for 15 out of the most recent 22 months;
- the court determines the child to be an abandoned infant, as defined by state law;
- the parent has committed murder or voluntary manslaughter of another of his or her children; attempted, conspired, or solicited to commit or aided and abetted in the murder or voluntary manslaughter of another of his or her children; or committed felony assault that resulted in serious bodily injury to the child or to another of the parent’s children.

There are three exceptions when this requirement does not apply:

- the child is being cared for by a relative;
- the state documents a compelling reason that filing for TPR would not be in the best interests of the child;
- the state has not provided necessary services for the safe return of the child to the child’s home, if “reasonable efforts” were required.

The Final Rule provided guidance to states on how to calculate the stipulated 15 months of foster care and gave examples of compelling reasons for not filing a petition to terminate parental rights, including the following: adoption is not the appropriate permanency goal; no grounds exist for filing a TPR petition; the child is an unaccompanied refugee minor, and there are international legal obligations or compelling foreign policy reasons to preclude TPR. The Final Rule also clarifies that there are no automatic exceptions for groups of children but that exceptions must be made on a case-by-case basis.

### DOCUMENTATION OF ADOPTION/PERMANENCY EFFORTS:

For children whose permanency plan is adoption or placement in another permanent home, states must document in the case plan the steps being taken to secure this arrangement as part of their reasonable efforts toward permanency. The legislation specified that at a minimum, documentation should give evidence of child-specific recruitment efforts such as use of state, regional, and national adoption exchanges.

### ADOPTION INCENTIVE PAYMENTS:

The legislation authorized incentive payments to states that increased adoptions from foster care, relative to a baseline number of adoptions. The baseline for each state in 1998 was calculated as the average of a state’s finalized adoptions for 1995, 1996, and 1997. For subsequent years, the baseline is the greatest number of adoptions in any fiscal year from 1997 on. States were eligible to receive \$4,000 for each child adopted from foster care above the foster care adoptions baseline and \$6,000 for each special needs child adopted above the special needs adoptions baseline. To qualify for the latter disbursement, states must provide health insurance coverage of special needs children for which they have an adoption assistance agreement with the adoptive parents.

**Table 1: ASFA Provisions to Move Children Promptly to Permanent Families** (continued)

The recent FCSIAA legislation expanded this incentive system. First, it renewed the incentives program for five more years and set the baseline as 2007. Second, it doubled the incentive payments for older child adoptions and for adoptions of children with special needs. Third, it gives states 24 months to use the incentive payments. Finally, it creates an additional payment for states where the adoption rate exceeds its highest rate since 2002. Prior to FCSIAA, the Adoption Promotion Act of 2003 Public Law 108-145, 108th Cong., 1st sess. (2003), provided additional incentives for adoption of older children, defining older children as 9 years of age or older.

**ADOPTION TECHNICAL ASSISTANCE:**

The legislation also authorized the Secretary of DHHS to provide technical assistance to states or localities through grants or contracts that help them reach their targets for increased numbers of adoptions and alternative permanent placements.

**PERMANENCY HEARINGS:**

ASFA required that each child in foster care receive a “permanency” hearing (formerly called the dispositional hearing) no later than 12 months after the date at which the child entered foster care (shortened from 18 months under prior law). ASFA also required that the permanency hearing determine a permanency plan for the child, addressing the question of whether the child will be returned home, placed for adoption with a filing of termination of parental rights, or referred for legal guardianship. Further, the law covers cases in which the state agency documents to the state court a compelling reason that it is not in a child’s best interests to return home, to be referred for TPR, or to be placed either for adoption, with a fit and willing relative, or with a legal guardian. In such instances, the child would be placed in “another planned permanent living arrangement” or APPLA. This provision intended to eliminate long-term foster care as an acceptable permanency goal.

The Final Rule further established that the state must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan within twelve months of the date on which the child entered foster care and at least once during every 12-month period thereafter. This “reasonable efforts” determination must be made on a case-by-case basis, explicitly documented, and stated in a court order within the specified timeframes. Without this order, a child would not be eligible for Title IV-E foster care maintenance payments.

The Final Rule required that if the state concludes after considering all other permanency options that the most appropriate placement for the child is APPLA, then it must document to the court the compelling reason for this alternative plan. The Final Rule provides examples of such a compelling reason: an older teen specifically requests emancipation; an American Indian tribal authority identifies APPLA for the child; or the parent and the child have a significant bond but the parent is unable to provide care, and the foster parents are committed to raising the child while maintaining the child’s relationship with the birth parent.

**CROSS-JURISDICTIONAL RESOURCES:**

ASFA requires that state plans for child welfare services address ways to effectively use cross-jurisdictional resources to facilitate timely adoptions or permanent placements for children awaiting them. ASFA also required a study by the Comptroller General of the United States to consider improved procedures and policies for facilitating cross-jurisdiction adoptions. Results of the study, with recommendations on how to improve procedures, were to be provided in a report to Congress.

**Table 1: ASFA Provisions to Move Children Promptly to Permanent Families** (continued)**KINSHIP CARE:**

ASFA required that the Secretary of DHHS prepare a report on the extent to which children are placed in the care of a relative, consult with the Chairman of the House Committee on Way and Means and the Chairman of the Senate Committee on Finance to convene a Kinship Care Advisory Panel to review the report, and submit the final report to the respective Committees.

**HEARING NOTIFICATION FOR CAREGIVERS:**

ASFA required that foster parents, pre-adoptive parents, or any relative providing care for the child be notified of reviews and hearings with respect to the child and given the opportunity to be heard on such occasions. The recent FCSIAA legislation expands notification provisions to involve relatives early on in a child's case. Specifically, the new law requires states to exercise "due diligence" to identify and provide notice to grandparents and other adult relatives within 30 days after the child is removed from the home.

**ADOPTION ASSISTANCE PAYMENT FOR SPECIAL NEEDS CHILDREN WHOSE INITIAL ADOPTION DISSOLVED:**

ASFA extended eligibility for adoption assistance payments for special needs children who had been eligible when adopted (on or after October 1, 1997), but whose adoption later dissolved and the adoptive parents' rights were terminated or the adoptive parents died. The recent FCSIAA took another step in making adoption assistance payments available to more children with special needs by "de-linking" a child's eligibility for these federal payments from Aid to Families with Dependent Children (AFDC), Public Law 74-271, 49 stat. 620, income requirements. The provision will take effect on a phased-in basis from 2010 to 2018.

**LEGAL GUARDIANSHIP:**

The law also clarified the definition of "legal guardianship" to mean "a judicially created relationship between child and caretaker, which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making." FCSIAA provides further support for these care arrangements by giving states the option to use federal Title IV-E funds for kinship guardianship payments. The payments will go toward foster children being raised by relative caregivers who are committed to caring for them when they leave foster care. These children must be eligible for federal foster care maintenance payments while in the care of the relative and must have resided with that relative for at least six consecutive months.

**PARENT LOCATOR SERVICES:**

ASFA allows child welfare agencies to use the parent locator service to search for absent parents. FCSIAA further allows agencies to use this service in efforts to find other relatives of the child as well.

**STANDBY GUARDIANSHIP:**

ASFA indicated it was the sense of Congress [s/c] that states should have laws and procedures that allow a parent who is chronically ill or near death to designate a standby guardian for his or her minor children, without surrendering parental rights.

## Goal 2

### Ensure that safety is paramount

ASFA emphasizes the vital importance of safety in child welfare decisions. Table 2 explains the provisions designed to support this goal. One key provision was greater specification of “reasonable efforts.” The legislation clarified that reasonable efforts were important to preserve and reunify families but specified exceptions (and allowed states to identify further exceptions)—where the child’s safety could be at risk and reasonable efforts were not required. To balance its focus on safety, ASFA also included a provision entitled “Preservation of Reasonable Parenting,” which clarified that nothing in the Act was intended to disrupt the family unnecessarily, intrude into family life inappropriately, prohibit reasonable parental discipline, or prescribe a method of parenting. Another key change related to safety (included in the DHHS final regulations) was the requirement that kin and non-kin foster parents must be licensed and approved using the same process in order for a state to receive federal reimbursement under Title IV-E for foster care maintenance payments.

**Table 2: ASFA Provisions to Ensure Safety is Paramount**

#### REASONABLE EFFORTS:

States must continue to make reasonable efforts to preserve and reunify families prior to placement or to allow the child to return safely home, but in determining what is “reasonable,” ASFA required that the child’s health and safety should be the paramount concern. ASFA also specified that these efforts were not required when:

- Parent subjected child to aggravated circumstances, as defined by state law. (ASFA gives examples such as abandonment, torture, chronic abuse, and sexual abuse but leaves the determination to state law beyond the four federally defined circumstances immediately below.)
- Parent has:
  - ① committed murder of another child of the parent;
  - ② committed voluntary manslaughter of another child of the parent;
  - ③ aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent; or
  - ④ committed felony assault that resulted in serious bodily injury to the child or another child of the parent.
- Parental rights with respect to a sibling have been terminated involuntarily.

In these cases, states could bypass the reasonable efforts requirement. When a state chooses to bypass this requirement, a permanency hearing is to be held for the child within 30 days after the determination. Also, in these cases and in cases where reasonable efforts are held to be inconsistent with the permanency plan for the child, states are to place the child in a timely manner in accordance with the permanency plan and to complete the necessary steps to finalize the child’s permanent placement. The law also specified that reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with efforts to reunify the child with his or her family.

The Final Rule further regulated that to satisfy reasonable efforts requirements, states were to provide judicial determination that services had been provided to prevent removal or to reunify the child with his or her family, or that reasonable efforts were not required due to one of the exceptions.

**Table 2: ASFA Provisions to Ensure Safety is Paramount** (continued)**SAFETY IN CASE PLANNING:**

ASFA amended the Social Security Act as it pertains to case planning to ensure that safety is considered in developing case plans and subsequent decision making. The Final Rule underscored this requirement when providing guidance on the content of case plans.

**SAFETY IN THE “PROMOTING SAFE AND STABLE FAMILIES” PROGRAM:**

ASFA revised language covering this program in the Social Security Act to emphasize safety as a paramount concern.

**CRIMINAL RECORD CHECKS FOR PROSPECTIVE FOSTER PARENTS:**

The legislation requires states to have procedures for conducting criminal records checks on prospective foster or adoptive parents before they are approved for placement of children for whom foster care maintenance payments or adoption assistance payments will be made. Final approval cannot be granted if the prospective foster or adoptive parent has a felony conviction for child abuse or neglect, spousal abuse, a crime against children, or a crime involving violence other than physical assault or battery. Felony convictions for physical assault, battery, or a drug-related offense will result in non-approval if the act was committed within the preceding five years. A state can make this entire provision of ASFA inapplicable if the governor notifies the secretary of DHHS in writing that it elects to do so or if the state legislature passes a law declaring the provision inapplicable.

The Final Rule specified that for states that opt out of this requirement of routine criminal records checks, the licensing file for such families must contain documentation verifying that safety considerations regarding the caregiver have been addressed.

**SUBSTANCE ABUSE AND CHILD PROTECTION SERVICE COORDINATION:**

ASFA required that the secretary of DHHS submit a report describing the scope of the problem of substance abuse for child welfare families, the range of services provided to these families, the outcomes of these services, and any recommendations for legislation needed to improve coordination of services. In preparing the report, the Secretary was to draw on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families.

**FINAL RULE ON KIN LICENSING:**

In the Final Rule, DHHS required that states have the same licensing and approval process for relative foster homes as for non-relative foster homes in order to receive federal reimbursement under Title IV-E for foster care maintenance payments. DHHS did allow some exceptions, as long as they did not affect child safety. While this regulation was not part of ASFA's provisions, it was motivated by the law's focus on safety. Prior to the Final Rule, many states had developed separate licensing or approval tracks for relative caregivers (Leos-Urbel et al. 2002). With ASFA's emphasis on safety, DHHS no longer thought that difference could be justified.

FCSIAA clarified that states could waive non-safety-related licensing standards for relative homes on a case-by-case basis. The legislation also requires that DHHS submit a report to Congress that examines licensing standards, studies the use of waivers and their effect on children in foster care, and recommends administrative or legislative action needed to help more children be safely placed and eligible for federal foster care maintenance payments.



## Goal 3

### Elevate well-being as a third focus of the child welfare system

ASFA also strove to make children’s well-being a central focus, along with safety and permanency. Table 3 explains the provisions advancing the importance of child well-being. One key change in the Final Rule notes that ASFA reinvigorates a concentration on safety, permanency, and well-being that was first introduced in broad-based child welfare legislation in 1980. The Final Rule used the safety, permanency, and well-being framework to shape and guide the process for the Child and Family Services Reviews (CFSRs) and the regulations implementing ASFA.

**Table 3: ASFA Provisions to Elevate Well-Being as a Focus of the Child Welfare System**

#### FINAL RULE ON “SAFETY, PERMANENCY, AND WELL-BEING”:

These three goals had their origins in the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. While ASFA does not explicitly mention them, the Final Rule makes clear that the law renews a focus on their importance. The rule states that ASFA “seeks to provide states with the necessary tools and incentives to achieve the original goals of Public Law 96-272: safety; permanency; and child and family well-being. The impetus for ASFA was a general dissatisfaction with the performance of state child welfare systems in achieving these goals for children and families.” The Final Rule encapsulates the three goals into a frame for motivating the Child and Family Service Review (CFSR) process and crafting regulations for ASFA.

#### REAUTHORIZATION OF FAMILY PRESERVATION AND SUPPORT SERVICES:

ASFA reauthorized these services and expanded them to include time-limited family reunification services and adoption promotion and support services. The former services aim to facilitate reunification in a safe and timely manner, but only during the 15-month period after the child enters foster care. The latter encourage more adoptions out of foster care and include pre- and post-adoption services, activities to expedite the adoption process, and services to support adoptive families.

#### HEALTH INSURANCE COVERAGE FOR CHILDREN WITH SPECIAL NEEDS:

ASFA required states to provide health insurance coverage for children with special needs where the state has an adoption assistance agreement with the adoptive parent(s) and determines a child cannot be placed with an adoptive parent(s) without medical, mental health, or rehabilitative care to meet his or her special needs. States can make this insurance available through one or more of the state’s medical assistance programs, but benefits, including mental health benefits, must be of the same type and kind as those covered under Medicaid.

#### STATE STANDARDS FOR QUALITY SERVICES:

ASFA required that states develop and implement standards to ensure that children in foster care receive quality services to protect their safety and health. FCSIAA added two provisions to further guarantee the well-being of these children. First, the law requires that states develop health oversight and coordination plans for children in foster care. The plans are to be developed collaboratively with the state Medicaid agency and in consultation with pediatricians and other experts. Second, the law also requires that child welfare agencies coordinate with local education agencies to ensure children stay in the schools they are enrolled in at the time of placement in foster care, unless this continuity is deemed not to be in the child’s best interests, and requires the agency to ensure that all children receiving Title IV-E assistance are full-time students or have completed secondary school.

#### CLARIFICATION OF ELIGIBILITY FOR INDEPENDENT LIVING SERVICES:

ASFA allowed youth who are not eligible for federal foster care assistance because their assets and savings exceed \$1,000 to be eligible for independent living services, as long as their assets do not exceed \$5,000.

## Goal 4

### Improve innovation and accountability

ASFA also sought to stimulate creative change and to improve accountability for child welfare outcomes. Table 4 summarizes the provisions developed to support this goal. One key provision called for devising outcome measures under which state performance would be assessed; another, elaborated in the Final Rule, laid out the process and standards governing the Child and Family Services Review (CFSR). Funding for ten state-level demonstration projects annually further encouraged innovations in pursuit of better child welfare outcomes.

**Table 4: ASFA Provisions to Improve Innovation and Accountability**

#### STATE PERFORMANCE:

ASFA required the secretary of DHHS—working together with state legislators, state and local child welfare officials, and child welfare advocates—to develop a set of outcome measures to assess states’ performance in operating child protection and child welfare programs. The new system would rate states’ performance on the outcome measures, maximizing use of the Adoption and Foster Care Analysis and Reporting System (AFCARS). The new system would prescribe regulations, tying funding to compliance, to ensure that states provided data needed for assessment and rating. DHHS would prepare an annual report to Congress detailing each state’s performance in meeting different outcomes measures.

#### FINAL RULE ON THE CHILD AND FAMILY SERVICES REVIEW (CFSR) PROCESS:

The Final Rule set up a new process governing the CFSR process. These reviews were established under the 1994 Amendments to the Social Security Act and authorized DHHS to monitor state child welfare systems to ensure they were conforming with Titles IV-B and IV-E of the Social Security Act. Before the Final Rule, the reviews focused on assessing compliance with procedural requirements and focused heavily on case file documentation. The Final Rule shifted the focus to creating positive outcomes for children and families. The new CFSR process also integrates provisions of ASFA, gearing outcomes to the goals of permanency, safety, and well-being. The CFSRs also reinforce ASFA by encompassing systemic factors: assuring children have permanency hearings within ASFA timeframes, requiring states comply with safety requirements for foster care and adoptive placements, and guaranteeing caregivers notice of hearings and reviews and opportunities to be heard in these venues.

#### REPORTING REQUIREMENTS:

ASFA specified that all requisite information supplied to the secretary of DHHS meet the data-reporting requirements of the AFCARS, established in the Social Security Act. The legislation authorized the Secretary of DHHS to modify regulations dictated by AFCARS to accommodate the data collection required under this Act.

#### CHILD WELFARE DEMONSTRATION PROJECTS:

ASFA expanded this program begun in 1994 by authorizing up to ten state-level demonstration projects a year between 1998 and 2002 that the Secretary of DHHS finds likely to promote the objectives of part B or part E of Title IV of the Social Security Act. ASFA required consideration of proposals addressing kinship care, delays to adoptive placements for foster children, and parental substance abuse problems that put children at risk and could result in placement in foster care. To be eligible, states would have to provide health insurance coverage for those special needs children for which the state has an adoption assistance agreement with the adoptive parents.

## How Have States Implemented ASFA? How Well Does State Implementation Support the Goals?

ASFA's key provisions were those requiring states to take action. Therefore, determining how states have reacted, including their choice of options or variations, is the first step in understanding the law's effects. According to several national reviews, most states have adopted ASFA's provisions in legislation with relatively modest changes and without much additional statutory language. However, some states have chosen to incorporate ASFA into administrative policy or regulations instead of statutes, while a few have put considerably more requirements into their statutes than required by federal law. States have also legislated changes independently—for example, to their adoption laws—in ways that draw on the underlying principles that inform ASFA.

Because the key statutory provisions allow states discretion in individual cases, it is difficult to assess how often states are applying these provisions in their strict form. With respect to the requirement for termination of parental rights (TPR) in cases of children in foster care 15 of 22 months, states generally report resorting to the three *exceptions* (see Table 1) more often than they do to the requirement itself. They also report using the fast-track provision—namely, the foregoing of “reasonable efforts” under certain aggravated circumstances (see Table 2)—far less often than it theoretically could apply. Whether states are relying on these provisions to the proper degree or frequency depends on the individual analyst's perspective. Some observers argue that allowing such broad discretion and variation in applying the law raises concerns about equitable handling of cases.

One additional caution is that except for an adoption study by Zielewski and colleagues (2006), national surveys of states' choices and courses of action in the wake of ASFA are by now several years out of date (Christian 1999; General Accounting Office 2002; Westat, Inc.; Chapin Hall Center for Children; and James Bell Associates 2001; and Jantz et al. 2002). Some states may have changed either statutes or practices or both with experience, so we lack an up-to-date picture of implementation on the national scale. However, individual states have been analyzed in depth more recently.

### 1. *What laws did states enact to implement ASFA?*

#### ■ “15 of 22” and “Fast Track”

A review of state legislation conducted by the National Conference of State Legislatures (NCSL) after ASFA (the 1998 legislative session) found that thirty-eight states had enacted ASFA-related legislation.<sup>4</sup> Of these, slightly more than half enacted each of the key ASFA provisions relating to permanence using largely the same language as in the federal law, with twenty-one states adopting the ASFA language regarding termination after 15 of 22 months and twenty-three states incorporating the three federal exceptions. Variations include four states that require termination proceedings after only twelve months in foster care, twenty-five states that include a requirement to initiate TPR for abandoned infants or children, and several states that require TPR under other conditions (for example, in cases where the court determines that reunification services are not required due to aggravated circumstances).

A few states added exceptions beyond those in federal law to the 15 of 22 months standard. For instance, California provides for an exception when the child objects to termination and Colorado when there are circumstances beyond the parent's control, such as incarceration for a reasonable period of time (Christian 1999). Separately from the ASFA exception provisions, Nebraska and New Mexico laws prohibit filing for TPR when the sole basis is a parent's incarceration.<sup>5</sup>

About half of the thirty-eight states enacted other ASFA provisions intended to promote permanence. Twenty states enacted the requirement for “reasonable efforts” to place children in permanent homes, most of them borrowing ASFA language without further specificity, and twenty passed legislation either requiring or permitting concurrent planning (see Table 2). Illinois' concurrent planning legislation, which dated from before ASFA, has more detailed requirements; Minnesota's 1998 legislation included both more detailed requirements and appropriated funds for concurrent planning. Thirty-four states passed laws to conform to the ASFA permanency hearing timeframes and six to codify ASFA's requirement not to delay adoptions across jurisdictions (Christian 1999; see Table 1).

Thirty-one states enacted legislation to implement the ASFA fast-track provision. In this area, three states went beyond ASFA, which simply

requires that states allow bypassing reasonable efforts, to legislate a presumption *against* reasonable efforts in certain cases: Arizona, Georgia, and Utah (California had similar provisions on the books before passage of ASFA). Thirty states addressed the four federally specified circumstances in which reasonable efforts are not required (e.g., murder of another child; see Table 2), twenty-eight states specifically enumerated one or more of the additional “aggravated circumstances” mentioned as examples in the federal law (e.g., abandonment, torture, etc.; Table 2), and a small number added other conditions that nullified the need for reasonable efforts (Christian 1999). D’Andrade and Berrick (2006) expressed concern about such additions to the four federally designated circumstances, concluding from the NCSL survey that on average states identified three further situations in which reasonable efforts might be bypassed, and that some states added as many as eight or nine further circumstances where reasonable efforts are not required. Their reservation was that “the legislation may be casting the net of reform too widely” and relieving child welfare systems of reunification efforts in too broad a range of contexts (D’Andrade and Berrick 2006, p. 37). On the other hand, six states “modified the condition regarding termination of parental rights to a sibling to allow for the possibility of parental rehabilitation,” thus narrowing the circumstances in which “reasonable efforts” may be dispensed with in such cases (Christian 1999, p. 2).

### ■ Kinship care provisions

Many states have also acted, through legislation or regulations, to implement ASFA’s provisions regarding the role of kin. With regard to the goal of permanence, almost all states allow children to remain in long-term foster care with kin under at least some circumstances. ASFA allows such a long-term placement with a “fit and willing” relative, a term defined by fewer than half of the states (19). By 2001, Jantz and colleagues found that thirty-five states offered subsidized guardianship to at least some kinship caregivers, up from twenty-five in 1999.<sup>6</sup> (Subsidized guardianship is not required by ASFA but is one strategy for achieving the long-term placements with relatives that ASFA envisions.)<sup>7</sup>

With respect to the goal of safety, many states tightened their licensing provisions in keeping with the ASFA regulations. As of 2001, fifteen states

required all kin foster parents to meet the same standards as non-kin, and another thirteen offered that possibility to at least some kin parents. All twenty-eight of these states offer all services and resources to kin foster parents that they do to non-kin, and some offer kin-specific services. Twenty-three states apply the same standards to kin and non-kin but will waive certain standards for kin foster parents that cannot be waived for non-kin parents. Whereas in 1999 many waived standards for kin as a class, by 2001—probably as a result of ASFA—all had switched to waivers made only on a case-by-case basis. The most commonly waived requirement is that concerning available space; others are those with respect to the age, training, or income of the kin foster parents, as well as miscellaneous standards such as possession of a car. Finally, as a related index to greater uniformity of licensing procedures, only twenty states still offered the option of a separate approval process for kin in 2001, down from thirty-two states in 1999 (Jantz et al. 2002).

In most but not all states, higher payment has followed higher standards. All states except California and Oregon provide the full foster care payment to kin who meet the full licensure standards. California and Oregon, however, “deny foster care payments to kin who do not care for Title IV-E eligible children, regardless of how they are licensed” (Jantz et al. 2002, p. 20). In all states, many kin do not in practice get full payments, for example, because they are in a pre-approval status or because they are not fully licensed (possibly because they have had standards waived in their cases).

### ■ Adoption

A 2006 study found that states were continuing to enact adoption legislation. Some new laws sought to remove barriers to adoption and to support post-adoptive services. Other legislation pending at the time would potentially have created barriers—for example, by placing new restrictions on becoming an adoptive parent. The study’s authors see this widespread activity as reflecting the extent to which states are independent actors, with authority over family law including adoption, and are doing far more than simply reacting to federal legislation such as ASFA (Zielewski et al. 2006).

## 2. Use of the Legislative Provisions

Information about states' actual implementation of the legislative provisions described previously is somewhat out-of-date and incomplete. DHHS does not collect data on how states apply the ASFA provisions, including the TPR and fast-track provisions. The only 50-state survey available is that conducted by the General Accounting Office (GAO [2002]), which also conducted six in-depth site visits. In addition, as part of the National Survey of Child and Adolescent Well-Being (NSCAW), researchers collected information from a national sample of local agencies in 1999 and 2000 (Mitchell et al. 2005).

The GAO studied both TPR provisions (TPR after 15 out of prior 22 months spent in foster care) and fast-track provisions (reasonable efforts not required) and found that states make a variety of exceptions to both precepts and do not implement either under a narrow construction. For TPR, the states surveyed and visited said that they exempt many children from the ASFA standard. For almost all states responding, "the number of children exempted from the provision greatly exceeded the number of children to whom it was applied..." (GAO 2002, p. 27). (Based on the GAO data table, Mississippi appears to be the one exception.) States offered the GAO a range of reasons to explain this exemption ratio: children's needs make finding adoptive families unrealistic; adolescents have strong ties to family or don't want to be adopted; parents need more time to get their lives together; substance abuse services are not available in a timely enough manner; delays in court scheduling make the timeframes unrealistic; and it is difficult to find adoptive parents in general.

At the same time, the GAO survey suggests striking and hard-to-explain differences among the states. For example, Minnesota estimated that, among children in care for 15 of the previous 22 months who were exempted from TPR, forty-five percent were exempted because the child would not consent to adoption and another forty-five percent because the child was placed with relatives. By contrast, Oklahoma's numbers broke down as follows: no cases were exempted because the child would not consent to adoption, thirty-three percent were exempted because the child was placed with relatives, and twenty-four percent because the state did not provide needed services. In a further variation, Mississippi reported that three percent of its exemptions came about because the child would not consent, twenty-five percent because the child was placed with

relatives, fifty-seven percent because the parents may voluntarily relinquish the child, and nine percent because the state did not provide needed services (GAO 2002, p. 31). These differences between states could reflect different statutes, the implementation of different policies and practices, different approaches to filling out the GAO survey, or some combination of these factors.

As for the fast-track provisions, the four states that provided data on these provisions "indicated that they do not use this provision frequently" (GAO 2002, p. 23). For FY 2000, Maryland reported fast-tracking only 36 of 3928 children who entered care; Massachusetts 25 of 7381; Vermont 0 of 788; and West Virginia 41 of 2392. In GAO's site-visit states, officials also cited only a small number of children involved. States said that instances are rare for many reasons: the reluctance of judges to use the provision, court scheduling delays, the length of time before a felony conviction is secured and triggers the fast-track option, or a state's assessment that fast-tracking may not be in a child's best interest (for example, where a mother's circumstances and parenting capacity have improved since she lost custody of a previous child). Court delays have an effect because TPR may take so long to schedule that a child will not reach permanence any earlier through a fast-track approach than through the alternative approach, providing services first and then determining the need for TPR; states noted that appeals are more likely if the case is fast-tracked. States also pointed out that a child's birth father might not be the same as in the case of a previous child (i.e., a half-sibling) who had experienced the serious abuse that triggered the fast-track criterion. In such an instance, states would provide services to the father in lieu of fast-tracking.

Other sources also suggest that fast-track provisions are infrequently used, although substantial differences in use between jurisdictions may raise worries about equity. The NSCAW study of local agencies asked about families that received no reunification services and found that twenty-eight percent of the agencies reported an increase in such families. Researchers viewed this increase as a relatively small effect, smaller than critics of the law might have feared, since the other three quarters of the agencies apparently did not note an increase (Mitchell et al. 2005).

Another way to estimate state reliance on the fast-tracking provision is to work from data about families rather than systems. While not ideal for understanding caseload dynamics, NSCAW data from a sample of children in foster care show that one year after children

entered foster care, only eight percent had neither been reunified nor had a reunification plan (DHHS 2003).<sup>8</sup> Of course, children may lack reunification plans for reasons besides fast-tracking (e.g., agency ineffectiveness) and this statistic does not have a “before ASFA” counterpart for comparison purposes; yet it does offer a ballpark estimate of the proportion of affected children. Mitchell et al. (2005) believe this estimate should reassure those who worried that many families would go without services; they also find it consistent with local agency reports (described above) that do not reflect a large increase in fast-tracking under ASFA.

And at the state level, a study of California’s use of fast-tracking illustrates the great variation from county to county in how such complicated provisions are interpreted and applied. D’Andrade and Berrick (2006) summarize a study of California’s exceptions to reunification, which pre-date ASFA. California now has fifteen exceptions, including more “conditions neither mandated nor suggested by ASFA” than any other state (p. 38), and a presumption against services in the case of all but two of these exceptions. They elaborate:

[While] recommendations to bypass services were relatively infrequent overall (about 5% of all parents in the study), significant differences were found between counties: In one county, it was almost impossible for a family not to receive services (only 1.5% of eligible parents were recommended for a bypass), whereas in another, well over a third of parents eligible for bypassed services (36.9%) were recommended to the courts. (p. 41)

The authors conclude from this survey that inequity of decision making within California is worrying, and that inequity is almost certainly a problem from state to state as well.

### How Has ASFA Affected Service Delivery and Agency Culture?

The path to improving or damaging outcomes for children runs not only through state legislation or administrative codes but also through changes in the day-to-day practice and culture of child welfare agencies and their many partner organizations. Changing culture and practice was certainly a goal of ASFA. One study’s reflection on its implications for New York State suggests that such influence was more important than any specific provisions: “ASFA has been marginal in the larger scheme of forces that shape the lives of

New York’s children and families... Nonetheless, ASFA’s grandest idea—that permanent and secure homes matter for children—remains intact” (White 2008, p. 2).

This section reviews the evidence, limited as it is, on practice and culture change. Sources include the national surveys described earlier; studies of particular states and localities before and after ASFA; and the analyses that will be offered in greater detail by other papers in this series. The eight findings below start with the goal of permanence, where the evidence base is strongest, and end with the goals of safety and well-being, where the evidence of meaningful changes in culture or practice is much weaker.

#### ■ As intended, ASFA has prodded child welfare agency culture towards a focus on permanence and towards the timely decision making required to accomplish it.

The evidence suggests that ASFA’s clearly expressed goal that children should move promptly to a permanent family has influenced agency culture and practice. State and local agency leaders perceive a major change in this respect, as do other key participants such as the courts. Although self-reporting has limitations, one study asked agencies to compare the impact of ASFA with that of other laws affecting them and learned that it was much larger. Considerable evidence of concrete changes in practice and policy bears out these perceptions. Of course, the fact that practice and culture have changed does not mean either that they have changed sufficiently or that they have changed in the best ways; nor does it mean that the results are yet where they might have been anticipated to be.

In 2002, state leaders told the GAO during its six site visits that “establishing specific timeframes for making permanency decisions about children in foster care has helped their child welfare agencies focus their priorities on finding permanent homes for children more quickly” (GAO 2002, p. 28). Examples ranged from developing procedures to review children’s situations more promptly to better up-front work by child welfare staff in giving parents information about deadlines. Shortly before the GAO study, Westat, Inc. surveyed administrators from twenty-five states and found that they were “focused on ways to abide by the timelines for permanency... Instituting and adapting to shortened timelines was a dominant topic of our discussions with administrators” (Westat, Inc. et. al 2001, Executive Summary p. 2).

Likewise, local agencies sampled in the NSCAW study reported ASFA's large effect on local service delivery, citing a much greater impact than that stemming from welfare reform or from the MultiEthnic Placement Act (MEPA), Public Law 103-382 [42 USC 622]. Most agencies reported effects on permanency-related activities, specifically: shortened timeframes for decision making (ninety-three percent of agencies surveyed), "increased emphasis on adoption for children living in kinship care" (seventy-four percent of agencies), more prevalent concurrent planning (eighty-seven percent), and greater emphasis on adoption for older children (more than fifty percent). Not surprisingly, sixty percent of these agencies also said that ASFA had increased the number of hours spent on individual child welfare cases and almost all reported more paperwork (Mitchell et al. 2005, p. 13).

■ **Child welfare agencies have developed new practices and strategies in response to the goal of timely movement toward permanence.**

Reports of policy and practice innovations yield more specific evidence of changes in pursuit of the permanency goal. According to the 25-state study (Westat 2001), state administrators focused primarily on "concurrent planning, guardianship, and adoption" (Westat, Inc. et al. 2001, Chapter 2, p. 3), a list comparable to the adaptations and innovations highlighted in the GAO and state-specific studies.

*Concurrent Planning.* Administrators in the 25-state survey said that some states had used concurrent planning before ASFA, but "that there has been a greater acceptance of the practice since ASFA implementation" (Westat, Inc. et al. 2001, Chapter 2, p. 5). However, other studies found obstacles to carrying out concurrent planning, including worker frustration with the additional workload involved (Chinball et al. 2003; D'Andrade and Berrick 2006; Olen 2008). For example, researchers studying its implementation in California counties found that "over half reported that they are having difficulty recruiting foster-adopt caregivers" (D'Andrade and Berrick 2006, p. 47).

*Kin and Guardianship.* States have also dramatically increased their attention to the role of relatives. In the 25-state study, administrators reported renewed attention to guardianship policy and broader support for relatives, including efforts to

involve them earlier in the process: "it is clear that states are focused on encouraging and supporting relatives as caregivers" (Westat, Inc. et al. 2001, Chapter 2, p. 4). The striking increase in subsidized guardianship programs, noted earlier in the context of state legislation, will be discussed more fully in MaryLee Allen and Beth Davis-Pratt's paper, "The Impact of the Adoption and Safe Families Act on Family Connections for Children." As mentioned, the 2008 FCSIAA incorporated subsidized guardianship into federal policy as well.

*Adoption.* Most pervasive is the heightened attention to adoption:

- ▷ In the GAO survey, states reported employing new strategies to promote adoption of special needs children (GAO 2002).
- ▷ Local agencies in the NSCAW survey pointed to an increased emphasis on adoption for older children.
- ▷ State administrators in the 25-state survey cited a variety of initiatives such as recruiting more adoptive parents, expanding public awareness, and broadening the geographic area for adoptions. As for larger-scale practice implications, they also noted "the need for adoption expertise, increasing adoption services and the size of adoption units, and budget changes to address adoption needs" (Westat, Inc. et al. 2001, Chapter 2, p. 5).

■ **To some degree, ASFA has prompted innovation across systems to promote timely movement toward permanence, particularly in relationships between child welfare and substance abuse agencies and between child welfare agencies and the courts.**

For ASFA to work as planned, state agencies found out quickly, the child welfare system could not be the only party charged with responding to "a child's sense of time." The most complaints about barriers to speedy movement center on the child welfare system's partnerships with substance abuse services and the courts, yet these partnerships are also the locus of the greatest optimism about change. The enclosed paper "ASFA Twelve Years Later: The Issue of Substance Abuse," by Nancy Young and Sid Gardner, provides a more detailed look at the first of these relationships, so here we concentrate on the second.

*The Courts.* In the national surveys, child welfare agencies identified many complications in working with courts, but both they and the judges interviewed also saw much progress toward resolutions stemming from ASFA. State agencies told the GAO that court barriers to achieving ASFA goals included scheduling delays, a lack of resources and training, and some judges' lack of support for ASFA. Solutions to these problems came from increased use of mediation as an alternative to the courts, ongoing court-agency joint committees, and the devising of strategies for restructuring court processes (GAO 2002). A 2005 American Bar Association (ABA) report, based on five state case-studies and surveys of more than 350 judges and community professionals, looked for court reforms for responding better to substance-abusing parents under ASFA, but in the end identified a broader range of improvements: "Many judges have developed strategies to meet ASFA requirements for *all* cases, not just for those with substance abusing parents" (Smith, Elstein, and Klain 2005, p. 3). These innovations occurred in the area of case handling and review, multi-disciplinary teams, mediation, and family conferencing. The ABA report also highlighted family drug courts as a promising new way of addressing the needs of families involved with child welfare and struggling with substance abuse: "Family drug courts can provide an extensive foundation for implementing ASFA. They set in motion an expedited process for identifying eligible parents for treatment, and have mechanisms for expedited screening, assessment and service delivery" (Smith, Elstein, and Klain 2005, p.12).

■ **ASFA's financial resources and incentives related to adoption appear to be working largely as planned.**

ASFA provided a new financial incentive for states to increase adoption, through bonuses for states that increased special needs adoption over a base year. (The Fostering Connections to Success Act of 2008, Public Law 110-351. 110th Cong., 2d sess. (2008) expanded this incentive system, renewing it for five more years and doubling incentive payments for older children and children with special needs.) States also had a financial incentive that pre-dates ASFA: the federal government shares in the cost of subsidies to families who adopt special needs children. Thus as adoptions have increased greatly, so have federal adoption subsidies and total state-federal spending on adoption.

Analyzing state action that led to these results, Hansen (2007) concludes that states responded as predicted to federal incentives, identifying more children with special needs and using the promise of federal dollars to increase adoptions, even though this strategy increased state costs as well. Hansen worries that states could react to fiscal stress by cutting back support for adoption and suggests that a careful analysis of adoption's costs and benefits will project a strong return on continuing investment. Richard Barth's paper, "A Chronicle of the Years After ASFA," explores and makes recommendations on this topic.

■ **States report far less innovation in regard to reunification, compared to changes in adoption and guardianship.**

From the limited evidence available, states are less likely to focus on reunification than other aspects of permanence. When asked a broad question about new initiatives related to permanence, child welfare administrators interviewed for the 25-state survey were most likely to mention initiatives targeting adoption, concurrent planning, and guardianship (Westat, Inc. et al. 2001, Chapter 2, pp. 5-6). Similarly, when asked about the effect of ASFA on their agency, most put forward an increased emphasis on adoption, quicker timelines for decision making, more emphasis on relatives as caregivers, or an upswing of concurrent planning. Only "a few brief comments" addressed changes in services offered to birth families (Westat, Inc. et al. 2001, Chapter 2, p. 5).

That said, when interviewers probed with a question *specifically* aimed at innovative reunification strategies, many states identified either statewide or specialized programs working toward this end. The researchers narrowed down this list to the most innovative and presented case studies of four such initiatives: Mothers Making a Change, a program for mothers with substance abuse problems in Cobb and Douglas Counties, Georgia; the Natural Parent Support Program in New Jersey, an "intermediate intensive family reunification program"; the Community Development Department within the children's services agency in Lucas County, Ohio, which provides services through parent educators, community liaisons, and community advocates; and the Wraparound Service Program in Santa Clara County, California. Based on the researchers' historical account, ASFA might



have influenced the New Jersey and Lucas County projects (in combination with state-specific forces), but the Santa Clara County and Cobb/Douglas County programs started well before ASFA (Westat, Inc. et. al 2001, Appendix D).

■ **ASFA-driven changes in state philosophies and practices regarding permanency may pose specific challenges for particular groups of families, including those in which parents suffer from mental illness or have been incarcerated.**

Three papers in this series explore how the ASFA provisions interact with other service and enforcement systems—criminal justice, mental health treatment, immigration enforcement—and with the particular circumstances of parents involved with these respective systems. Barbara J. Friesen, Joanne Nicholson, Katharine Kaplan, and Phyllis Solomon address “Parents with a Mental Illness and Implementation of the Adoption and Safe Families Act”; Martha L. Raimon, Arlene F. Lee, and Philip Genty offer “Sometimes Good Intentions Yield Bad Results: ASFA’s Effects on Incarcerated Parents and Their Children”; and Yali Lincroft and Bill Bettencourt discuss “The Impact of ASFA on Immigrant Children in the Child Welfare System.” Each paper tackles distinct issues—and recommends possible solutions—at the intersection of ASFA, other policy systems, and special family circumstances.

■ **ASFA has the potential for both positive and negative effects on minority children and on child welfare practice as it affects them, but the evidence is still very limited.**

Two studies have explored the perceptions of child welfare workers, supervisors, and administrators as to ASFA’s effect on disproportionate representation of minority, particularly African American, children in the child welfare system. While an incomplete form of evidence if considered alone, studies of perceptions are a good place to start (outcomes section is below). In one study, researchers surveyed workers in family preservation and intensive family support programs (Curtis and Denby 2004); in the other, researchers conducted case studies and interviews in nine child welfare agency sites engaged in initiatives to meet the needs of families of color (Chinball et al. 2003). According to both, child welfare staff worried that ASFA’s tight timeline could disadvantage families with substantial needs, particularly those with substance abuse problems,

and thereby increase the disproportionate representation of children of color within the system. Workers also expressed concerns about concurrent planning and, in one of the studies, wondered whether pressing kin for a commitment to permanence might actually undercut their willingness to provide a home for children. On the other hand, child welfare workers involved in both studies identified positive effects of ASFA for children of color: services were getting to families more quickly, workers were using the ASFA timelines for TPR more effectively to motivate parents, better service plans resulted from a focus on safety rather than on more subjective aspects of family life, and greater use of permanent relative placements and (according to some interviewees) quicker adoptions were expediting permanency for children of color.

In addition, as noted earlier, researchers who studied the inconsistency with which fast track provisions were applied in California worried about the implications of such a high degree of local discretion. They feared that this environment of extreme variation could open the door to unsupported assumptions about families that might then influence decision-making in ways adverse to families of color (D’Andrade and Berrick 2006).

■ **The evidence on whether ASFA has changed agency culture and practice in regard to safety is mixed.**

Even though children’s safety is a central goal of ASFA, and making safety paramount is a core provision, the evidence that this signal has actually changed agency culture and practice is mixed. About sixty percent of local officials in the NSCAW sample reported that they placed a greater emphasis on child safety after passage of ASFA. This is a substantial figure, but far less than the ninety-three percent who said they had increased their focus on meeting permanency timelines. In addition, our review found little evidence of active innovation toward the goal of ensuring safety. This could in fact register a lack of innovation, yet it could also indicate that researchers have not looked for such evidence, studying children’s movement to permanence rather than strategies to reduce re-abuse or re-entry into care that may have grown out of ASFA. One exception to this deficit is in the area of substance abuse, and Young and Gardner’s paper treats the innovative example of co-locating substance abuse experts with child welfare workers for purposes of safety and risk assessments.

## How Have Child and Family Outcomes Changed in the Decade Since ASFA?

As a result of recent improvements in state data collection, many prompted by ASFA, national administrative data are available to look at trends in outcomes over time. We draw heavily on data provided in the annual reports of the DHHS Adoption and Foster Care Analysis and Reporting System (AFCARS), which offer essential information on the numbers and characteristics of children in foster care and adopted children. We also incorporate data from the annual DHHS Child Welfare Outcomes Reports, which track state achievement with respect to ASFA's goals of permanency, safety, and child well-being. We also incorporate other relevant national survey data and state-level analyses of administrative data.

Positive trends emerge in all three outcome areas. For safety, there appear to have been declines in the recurrence of abuse (a newly substantiated case within six months of a prior substantiation) and possibly declines in abuse of children by a provider while in care. Looking at permanency, the number of children adopted or exiting to guardianship increased substantially, both in absolute numbers and as a portion of children exiting care (reunification is discussed below). Research also suggests an increased likelihood that children will be adopted since ASFA (Wulczyn, Chen, and Hislop 2006). Additionally, there is some evidence that the time in care for children who exit to adoption may be lessening, although as movement toward adoption accelerates, the likelihood of reunification may decrease. Finally, while data on well-being are limited, and the DHHS reports do not cover this domain, other studies using national survey data suggest improvements since ASFA for children living with kin.

Although cumulatively these data help to illustrate plausible trends, there are important data limitations or qualifications to keep in mind (see Box for a detailed description).

## Notable Data Limitations

**Cohort Bias:** Several indicators drawn from the AFCARS and Child Welfare Outcomes reports rely on “exit” or “point-in-time” cohorts that researchers have noted as introducing bias (Courtney, Needell, and Wulczyn, 2004). Specifically, exit cohorts are biased toward persons with shorter stays in a system. So, for example, the percentage of children who exit care as a result of reunification is likely to be overstated with an exit cohort, as children who leave quickly are more likely to have reunified. Cross-sectional (point-in-time) cohorts are biased toward children with particularly long stays. For example, the proportion of children abused while in care could be overstated because the point-in-time sample includes more children who have been in care longer, increasing the chances of their experiencing abuse. An entry cohort is the preferred sample because every child has an equal chance of being included in the sample. For example, there are critical policy questions pertinent to ASFA that only entry cohort data can answer, such as: what is the likelihood that a child will be adopted from foster care? All types of cohorts, though, are subject to changes in caseload dynamics and shifts in which children are entering or exiting a system in a particular year. Because the data presented in this section use the same indicator over time, it is likely that any trend observed is real, but the trend line overall may be high or low depending on the cohort used and the bias it introduces.

**Data Improvements:** DHHS and the states have made significant advances in improving the quality of child welfare data. A decade ago, as ASFA was being implemented and states were developing their State Automated Child Welfare Information System (SACWIS), many states could not provide accurate information on several indicators. So it is important to note that data from these earlier years are not typically based on the full sample of states, and should be interpreted with caution. And given the many changes in the child welfare landscape since the late 1990's, interpretation becomes more complicated. Yet most trends go in directions expected as a result of ASFA, are confirmed by more detailed and methodologically precise studies of individual states, and tend to be fairly gradual, so we think these trends are worth presenting.

**State Variation:** Mapping national trends can mask significant state-to-state variations. Where one state might have dramatic increases in adoptions, another might make strong advances in increasing guardianships. The DHHS Child Welfare Outcomes reports carefully document variations across states; we encourage readers interested in state differences to refer to these.

**Attribution to ASFA:** The data we provide suggest potential changes in outcomes for children and families over time. These changes, however, cannot necessarily be attributed to ASFA. Many other changes in child welfare in the decade very likely contributed, such as the CFSR process, to improvements in court systems, and enhanced data systems. It is also impossible to know which trends would have occurred even in the absence of particular policy changes.

## Goal 1: Permanency

Consistent with the goals of ASFA, the numbers of children who exited foster care to adoption or guardianship increased dramatically in the last decade. In 1998 there were about 38,000 adoptions from foster care (see Figure 1). By 2002, that number had grown to over 50,000 adoptions, a level that states have maintained to date. This pattern also holds when looking at adoptions as a proportion of exits from care, increasing from fifteen percent in 1998 to a level of eighteen percent in 2002, and seventeen percent in 2006. Adoptions for children with special needs also grew substantially right after implementation of ASFA, from about 25,000 in 1998 to almost 37,000 in 2000 (U.S. GAO, 2002).

Research suggests that since ASFA the likelihood that children entering foster care will be adopted has also improved. Using entry cohort data from six states for the period 1990-2002, Wulczyn, Hislop, and Chen (2006) found that cohorts entering post-ASFA had a higher probability of adoption than pre-ASFA cohorts. They noted that despite positive changes seen in all six states, caseload dynamics differed markedly by state, warranting further study to tease out the role of state context in ASFA implementation. A smaller-scale study of mothers struggling with substance abuse in Oregon also found that children were more likely to be adopted than remain in long-term foster care after ASFA (Rockhill, Green, and Furrer 2007).

Guardianships also increased substantially in the decade since ASFA—more than doubling from about 5,900 in 1998 to over 15,000 in 2006 (see Figure 2). As with adoptions, guardianships as a proportion of exits from foster care grew from two percent in 1998 to five percent by 2006.

AFCARS data also depict trends in adoption by race (see Figure 3). For black non-Hispanic children, the number adopted grew from approximately 16,000 in 1998 to about 20,000 in 2000 and then declined to a total of 14,000 for 2006. Expressed as a portion of all adoptions, the percentage of black non-Hispanic children fell steadily between 1998 and 2006. Adoptions of Hispanic children doubled during this period, from about 5,000 in 1998 to 10,000 in 2006, and also grew as a portion of all adoptions. Adoptions also rose in both overall number and proportion for white non-Hispanic children, from 14,000 in 1998 to 23,000 by 2006. Numbers of adoptions from foster care can be driven, however, by changes in the racial/ethnic composition of groups of children entering

foster care, but AFCARS reports suggest the racial/ethnic composition of children entering care did not change substantially between 1998 and 2006.<sup>9</sup> However, the number and portion of Hispanic children entering care increased steadily after 2000, which could be related to the increase in adoptions of Hispanic children. The number and portion of African American and white children entering foster care dipped slightly between 1998 and 1999, but thereafter was relatively steady.

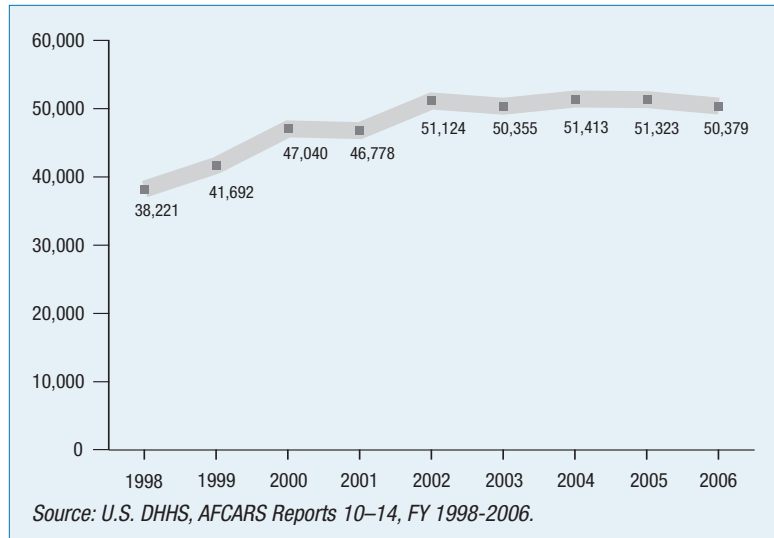
Some studies (though not designed to compare pre- to post-ASFA) have found that African American children are less likely to be adopted from foster care than white children (Barth 1997; Westat, Inc. et al. 2001). However, Wulczyn et al. (2006) used data from six states on children who entered foster care for the first time between 1990 and 2002 to discover that twenty-four percent of African American children in this sample were adopted, and that African American children were the most likely to leave foster care to be adopted. By contrast, sixteen percent of white and Hispanic children who entered foster care during this period were adopted by 2002. At the same time, the researchers find that adoptions of black children tend to occur after a longer time in care than for white children.

Further study of how adoption trends vary according to race or ethnicity is needed, given the widening gap in the number of adoptions between African American and white children since 2002 (AFCARS). In addition, past research suggests Hispanic children are most likely to reunify with their families (Westat, Inc. et al. 2001), yet according to AFCARS adoptions of Hispanic children appear to be on the rise (Figure 3).

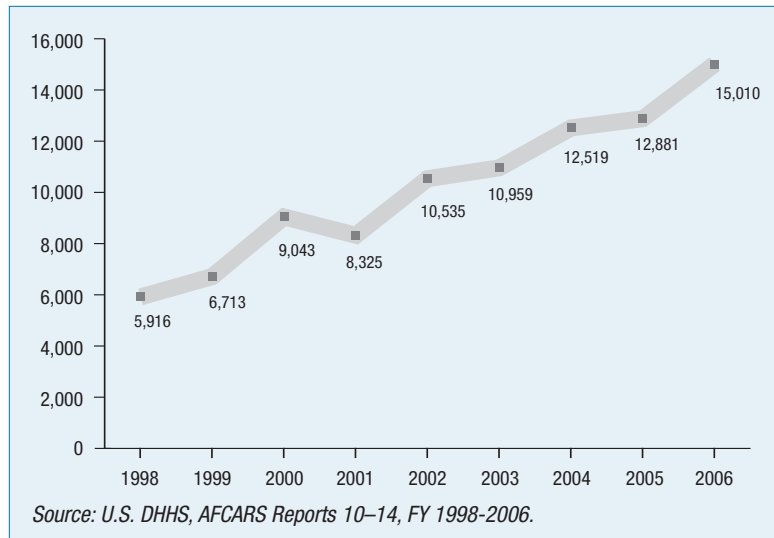
Also of note are trends in transracial and trans-ethnic adoptions. Hansen and Simon (2004) used AFCARS data to conclude that transracial adoptions did not increase nationally after ASFA, although they did increase in six states. The authors also found that children of Hispanic origin are most likely to be adopted by parents who are not of their race/ethnicity. In 2001, for instance, thirty-eight percent were placed with white, non-Hispanic parents. Of African American children adopted in 2001, seventeen percent were placed with white, non-Hispanic parents.

While some feared that many adoptions, being done so quickly, would be at risk of dissolving, it appears this is the case for very few children adopted since ASFA. In a GAO survey of forty-six states,<sup>10</sup> only about one percent of adoptions finalized in 1999 and 2000 were later legally dissolved. States also reported that about 1 percent of children who were adopted in these years

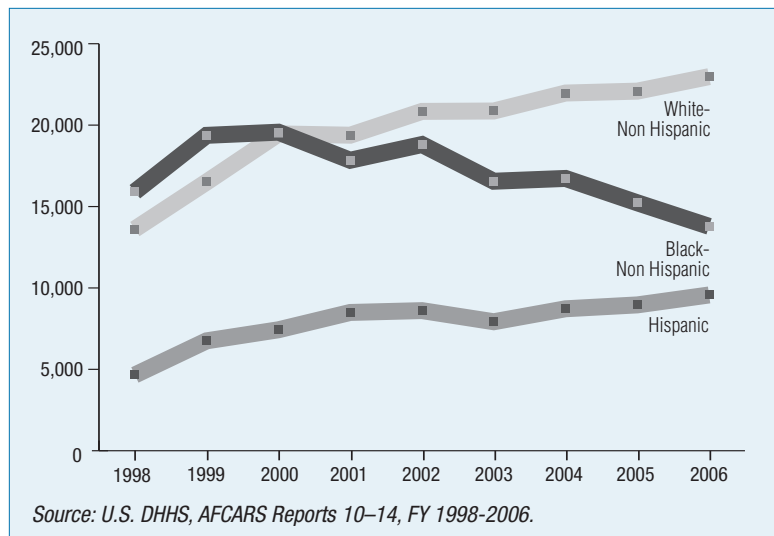
**Figure 1**  
Number of Children Adopted from Foster Care by Year



**Figure 2**  
Number of Children Exiting to Guardianship by Year



**Figure 3**  
Number of Children Adopted by Race by Year



subsequently returned to foster care. The GAO also cites DHHS findings that about 1 percent of children entering foster care each year have been previously adopted (GAO 2002). Causes included abuse/neglect by adoptive families, behavior problems too difficult for adoptive families, or the child's need for residential care. Another study in Illinois suggests progress toward limiting disruptions since ASFA; Smith et al. (2006) found that the risk of adoption disruption was eleven percent less for placements occurring in the three years after ASFA versus the three years prior.

Since ASFA reunifications have fluctuated somewhat in number, generally totaling between 150-160,000 per year. Measured on the basis of proportion of exits, reunifications have declined somewhat, dropping steadily from sixty percent in 1998 to fifty-three percent in 2006. This decline is not surprising given the increased focus on adoptions and guardianships during this period. Wulczyn (2004), however, noted a drop in rates of reunifications even prior to ASFA using entry cohort data from twelve states between 1990 to 1997.

Race appears to be a factor in reunification rates prior to ASFA. Researchers using data from the 1994 National Study of Preventive, Protective, and Reunification Services Delivered to Children and Their Families found race to be a strong predictor in reunifications, with African American children less likely to reunify than white children, holding other factors constant. In fact, controlling for placement with kin, the study found that higher kinship placements of African American children do not explain their lower rates of reunification relative to white children (Westat, Inc. et al. 2001). Further research is needed on the relation between race/ethnicity and reunification rates in the wake of ASFA.

Some evidence indicates that children who exit to adoption are spending less time in care. One indicator looking at the median number of months between TPR and adoption, suggests a reduction of this phase of the adoption process (see Figure 4). In 1998, the national median time between TPR and adoption was just over a year. After 2003, this figure was 10-11 months. Even this small decrease could represent a real change, given ASFA's push to shorten timeframes, change casework practice, and advance recruitment of adoptive families. At the same time, as states have addressed backlogs of cases awaiting adoption, the types of cases exiting to adoption may include more children for which finding adoptive homes has become easier.

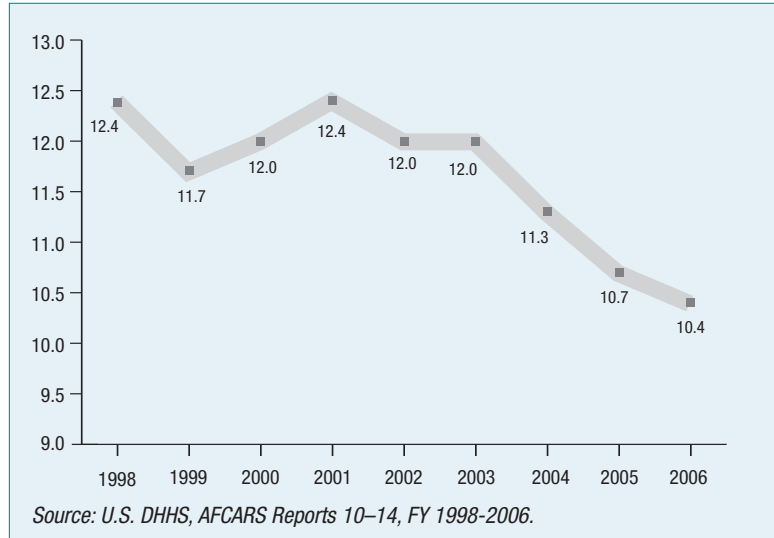
Another indicator of timeliness to adoption suggests more children exiting to adoption are doing so within two years (see Figure 5). The indicator looked at "[for] all children who were discharged from foster care to a finalized adoption during the fiscal year, what percentage were discharged in less than twenty-four months from the date of the latest removal from home?" This percentage increased from sixteen percent in 1998 to twenty-nine percent in 2005. The Child Welfare Outcomes 2002-2005 report affirms that the majority of states surveyed (sixty-three percent) showed improved performance on this measure, while only a quarter (twenty-five percent) of the states experienced a decline. Similarly, a study using entry cohort data from Oklahoma found a significant decrease in the length of time between a child's removal and adoption finalization since ASFA, especially in the latter segment from adoption placement to finalization (McDonald et al. 2007).

What happens to children who do not go on to adoption or guardianship, but remain in foster care and perhaps never achieve permanence? Jennifer Macomber's paper, "The Impact of ASFA on the Permanency and Independence for Youth in Foster Care" notes that while adoptions of youth in foster care have increased dramatically since 1998, more and more youth also emancipated from care between 1998 and 2006. She further observes that in 2006, 37,000 youth ages 12-20 were waiting to be adopted (i.e., their goal was adoption and/or parental rights had been terminated in their cases). It is unknown how many have gone on or will go on to emancipate, but many probably will, given that only 7,500 older youth were adopted from foster care in that year. These youth who enter their adult lives as legal orphans, having had their parents' rights terminated but never having reached permanency, should be of particular concern. More research is needed to understand the experiences and special service requirements of this population.

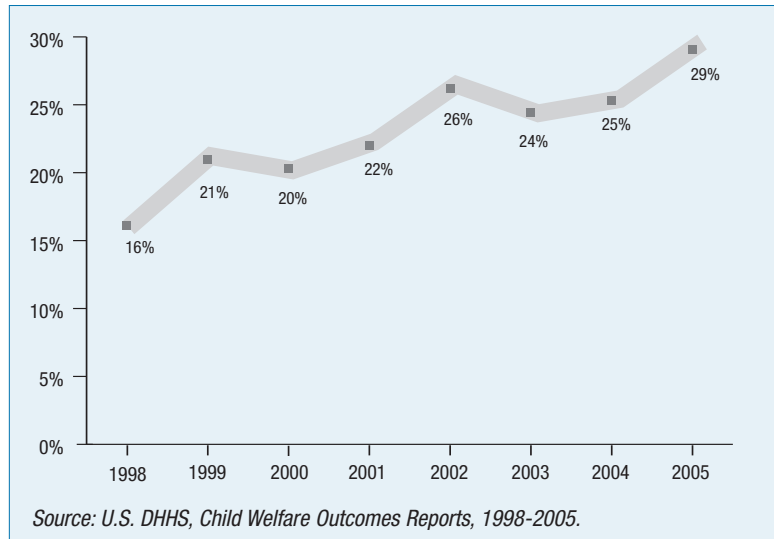
## Goal 2: Safety

The research shows potential improvements in the area of safety, but also trends that are less clearly understood. With respect to one crucial indicator for ASFA's authors and supporters, incidence of child death, the trendlines suggest an increase (see Figure 6). From 1998 to 2007, it appears that the rate of child death by maltreatment rose from 1.6 per 100,000 children to 2.4 per 100,000 children. However, these counts remain uncertain inasmuch as they rely on medical

**Figure 4**  
 Median Months between Termination  
 of Parental Rights and Adoption



**Figure 5**  
 Percentage of Adopted Children  
 Who Were Adopted within Two Years  
 of Entering Foster Care



examiners' determinations that death was due to abuse/neglect. As a result, DHHS attributes this rise in recent years to better reporting and identification of these cases (DHHS, 2008b).

Another goal of ASFA is to prevent repeat occurrences of maltreatment after children have come to the attention of child welfare agencies. The Child Welfare Outcomes reports framed the indicator as: "of all children who were victims of substantiated or indicated child abuse and/or neglect during the first 6 months of the reporting period, what percentage had another substantiated or indicated report within a 6-month period?" Trends show a drop in this measure from 8.5 percent in 1999 to 6.6 percent in 2005 (see Figure 7). In addition, the number of states under the 6.1 percent federally designated threshold for this indicator has increased since 2000. At the same time, there is significant state variation, with percentages ranging from 1.9 to 13.4. DHHS attributes the variation to several possible reasons: from state variation in victim rates since victim rates are correlated with recurrence; to differences in state statutes, policies, and practices in defining maltreatment and evidentiary requirements for substantiation; to varied modes of decision making with respect to allegations and screening; to the use of alternative response approaches; and to the practice of not formally investigating open cases but rather referring them to the existing caseworker (U.S. DHHS 2002-2005). Given how sensitive this measure is to states' practices and policies, the perceived drop in recurrence on a national scale between 1999 and 2005 should be interpreted with caution.

Abuse by a care provider while the child is in foster care is also of major concern. The Child Welfare Outcome reports approach this indicator by asking: "of all children who were in foster care during the reporting period, what percentage were the subject of substantiated or indicated maltreatment by a foster parent or facility staff member?" Trends suggest potential improvements on this front (see Figure 7). Rates of abuse while in care dropped from 0.8 percent of children in foster care in 1998 to 0.5 percent in 2001, and have been steady at 0.4 percent since 2003.<sup>11</sup> There are significant variations among states, however. Between 2003 and 2005, 46 percent of states improved on this measure, while an equal percentage lost ground. Again, this measure is likely sensitive to state policies and practices and should be interpreted with caution.

A final standard of safety is whether cases come back into care after exiting. The concern is that if children move to permanency too quickly, it might

increase their risk of returning to care. The indicator used in the Child Welfare Outcomes reports was modified recently, making it difficult to interpret trends over time. The indicator had assessed the portion of all *discharged children* who came back into care in the last twelve months, but was changed to look at the portion of those *children who reunified* who re-entered care in twelve months. Looking at the minimal data available on the two different measures suggests that rates of recidivism remained fairly flat during the two periods for which data are available.<sup>12</sup> However, a study in Florida supports the concern about moving children to permanency too quickly; Yampolskaya, Armstrong, and Vargo (2007) found that Florida's Community- Based Care services were not good at ensuring safety in reunification and that faster reunification led to a greater rate of re-entry.

### Goal 3: Well-Being

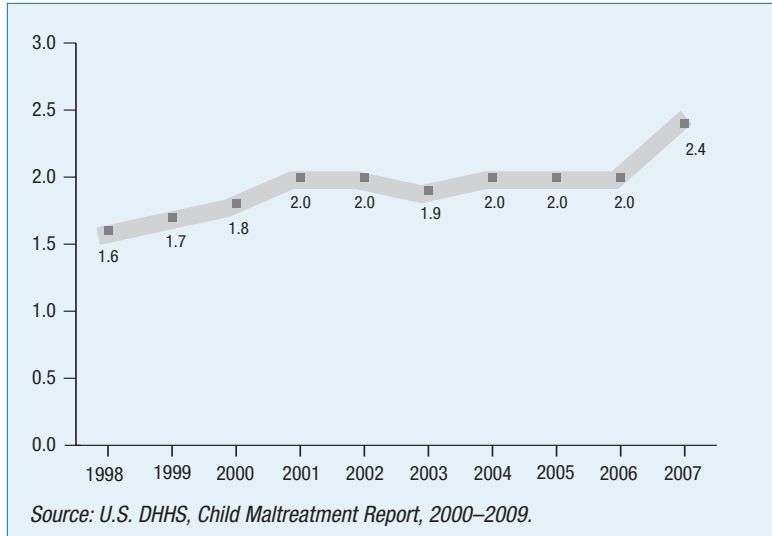
Child well-being is difficult to measure. Typically, administrative data do not offer useful outcome information on how children are faring, though they can illuminate changes in services that might contribute to child well-being. To date, quality data on children's and parents' receipt of services are generally not available on a national basis. We can learn from survey data, however, and one survey hints at improved well-being for children living with kin since ASFA.

Analysis of the National Survey of America's Families revealed that rates of poverty and lack of insurance declined steadily for children in kinship care between 1997 and 2002, and that these advances were even more dramatic than for children living with their parents (Main, Macomber, and Geen 2006). Specifically, the study found that by 2002, fewer than one in five children being cared for by a relative due to social services involvement was living in poverty (eighteen percent), down from thirty-five percent in 1997. Similarly, by 2002, just 6 percent of children in these arrangements were uninsured, down from twenty-three percent in 1997. The researchers noted that changes in state licensing and outreach to kin caregivers could have contributed to these gains.

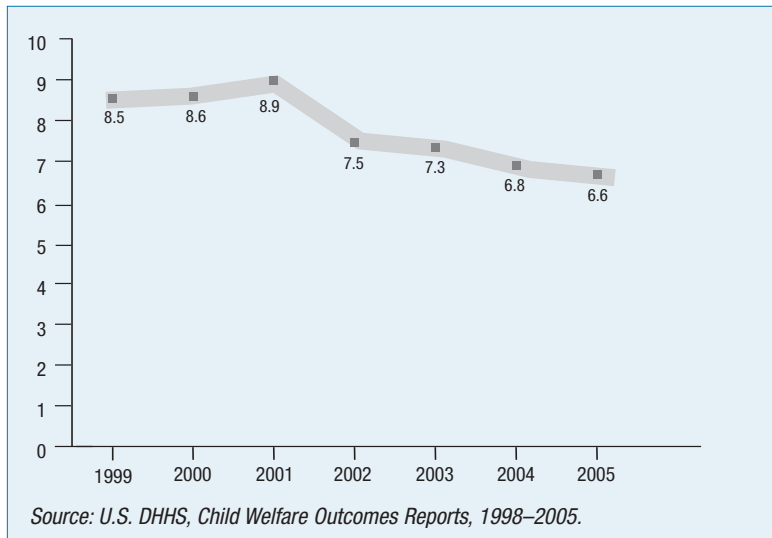
### Conclusion

Overall, ASFA's effects are complex and reflect the many different perspectives and compromises that went into its construction and enactment. The most substantial evidence indicates ASFA's effect on permanence,

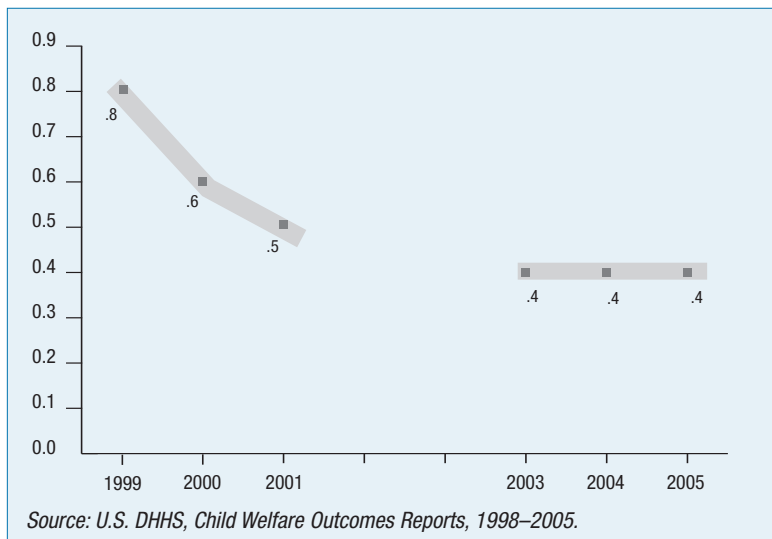
**Figure 6**  
Child Fatalities Due to Maltreatment  
per 100,000 Children



**Figure 7**  
Percentage of Victimized Children  
with Another Victimization within  
Six Months



**Figure 8**  
Percentage of Children Maltreated  
in Foster Care





through adoption and guardianship, for children who cannot go home. Evidence from every angle—state enactment and implementation of laws, changes in child welfare agency culture and practice, and findings on outcomes—supports the idea that children’s prospects for adoption and guardianship improved to some degree following ASFA. However, many specifics remain unclear: for example, neither state-by-state differences nor the differential effects for children of color as compared to white children are well understood.

ASFA’s effects seem far less certain in terms of meeting its other goals and affecting the lives of other groups of children. For children who do not leave foster care for adoption or permanent guardianship, the evidence suggests limited if any improvement. States report few innovations in regard to reunification, although some workers report that services are getting to families more quickly, and some studies—particularly in relation to substance abuse—find advances in timeliness. But the outcome data indicate no improvements in the likelihood, rapidity, or safety of reunifications, although children’s safety while in care may be somewhat enhanced. The evidence is mixed in the areas of safety and well-being more broadly, but does not suggest large effects. Children living with kin caregivers seem likely to be better off in several ways.

An important insight to be addressed more fully in the papers to follow is that to achieve positive results, not only the child welfare system but other important stakeholders and service systems must reform their practices. These include the court system, substance abuse services, mental health services, and prison systems. Various provisions of international law that affect the circumstances of immigrant families also need to be fully explored for their interrelationships with ASFA.

Finally, developing this paper has underscored for us how many gaps remain in basic knowledge about the implementation and outcomes of ASFA. For one example, while the AFCARS data would enable such an analysis, no one to our knowledge has tracked the number of young people emancipating from foster care where parental rights have been terminated, leaving them “legal orphans.” For another, we have found no study of children reaching the 15 of 22 months threshold that analyzes the number whose parental rights were terminated or who are covered by each of the three exceptions. Such an analysis could be done using many state administrative data systems. Filling in these knowledge gaps would provide helpful, basic information to illuminate successes, failures, and—most important of all—desirable next steps.

## Footnotes

- 1 The views expressed in this paper are solely those of the Authors, they do not represent the views of the Urban Institute, its staff, or trustees.
- 2 One of this paper’s authors, Olivia Golden, was Assistant Secretary of DHHS with the responsibility for the regulations.
- 3 There are two provisions we do not include: 1) “Contingency Fund for State Welfare Programs” made temporary adjustments to this fund and required that the secretary make recommendations to Congress for improving operations of the Contingency Fund for State Welfare Programs. We do not discuss this provision as it is not directly relevant to child welfare. 2) “Purchase of American-Made Equipment and Products” U.S. Code Title 7.7012, said it was the sense of Congress [*sic*] that to the extent possible, equipment and products purchased with funds made available under the Act should be made in America. The legislation also required that the heads of federal agencies provide this notice to entities receiving funds made available under this Act.
- 4 Of the other twelve states, six did not have regular legislative sessions that year and six had sessions but did not enact legislation related to ASFA (Christian 1999).
- 5 New Mexico’s law can be found in Chapter 32A, Children’s Code; Article 4—Abuse and Neglect, § 32A-4-28, Termination of parental rights; adoption decree, D. that states “The department shall not file a motion, and shall not join a motion filed by another party, to terminate parental rights when the sole factual basis for the motion is that a child’s parent is incarcerated.” Nebraska’s law can be found in Chapter 43, Infants and Juveniles; Article 2—Juvenile Code (G) Dispositions, § 43-292.02. Termination of parental rights; state; duty to file petition; when “(2) A petition shall not be filed on behalf of the state to terminate the parental rights of the juvenile’s parents or, if such a petition has been filed by another party, the state shall not join as a party to the petition if the sole factual basis for the petition is that (a) the parent or parents of the juvenile are financially unable to provide health care for the juvenile or (b) the parent or parents of the juvenile are incarcerated. The fact that a qualified family for an adoption of the juvenile has been identified, recruited, processed, and approved shall have no bearing on whether parental rights shall be terminated.”
- 6 This number of states is slightly higher than that given by Allen and Bissell (2004). Differences in definition likely lead to this inconsistency.
- 7 As noted, FCSIAA (2008) changes the playing field on subsidized guardianship by providing for federal reimbursement. FCSIAA also addresses kin licensing, clarifying that states can make case-by-case exceptions for kin where standards in question do not pertain to child safety.
- 8 Richard Barth noted in personal correspondence in November 2008 that the NSCAW interviewers did not have access to administrative data and obtained dates from the child welfare workers. As a result, he noted that the NSCAW was not the best source for understanding caseload dynamics and this finding should be interpreted with some caution.
- 9 U.S. DHHS, AFCARS Reports 10–14, FY 1998–2006.

- 10 Eighteen states provided data on dissolutions in 1999 and 20 provided this data in 2000. Twenty one states provided data on adopted children who returned to foster care in 1999 and 23 provided this data in 2000.
- 11 Data are not available for 2002 due to a change in the NCANDS reporting period from a calendar year to a fiscal year in 2003 that resulted in a change in the specification of this measure.
- 12 For example, the 2000 and 2001 Child Welfare Outcomes Report measured “the percentage of re-entries into foster care within 12 months of discharge from a prior foster care episode” and noted national medians of 10.3 percent and 10.0, respectively. In 2004 and 2005, the Child Welfare Outcomes Report (2002-2005) documented “of all children who were discharged from foster care to *reunification* in the 12-month period prior to the target fiscal year, what percentage re-entered foster care in less than 12 months from the date of discharge.” They noted a rate of 15.2 percent in 2004 and 14.8 percent in 2005.

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Perspectives on the Adoption  
and Safe Families Act (ASFA)

# “You Have to Get It Together”

## *ASFA’s Impact on Parents and Families*

By the writers of *Rise*, a magazine by and for parents, and compiled by Nora McCarthy and Lynne Miller

This paper collects the stories of parents who have written about their experiences with the child welfare system for *Rise*, a national magazine by and for system-involved parents. More than sixty parents have written for *Rise* over six years. The perspectives collected here reflect the lived experiences of families affected by the Adoption and Safe Families Act of 1997, Public Law 105-89. 105th Cong. 1st sess.

### Good Intentions, Mixed Outcomes

**To give families a fair chance, ASFA must clarify the supports that child welfare systems, courts and lawyers must provide.**

By Lynne Miller.

As a parent advocate at a foster care agency, I work with parents to help them reunify with their children. In ten years of working with families, I’ve seen the positive and negative impact of ASFA.

For children whose parents cannot or will not change their behaviors, and who are lucky enough to find caring adoptive parents, ASFA can provide permanency, stability and a loving family. But for parents who want to reunify with their children, ASFA can either be a godsend or a nightmare. Its short timeframe for reunification can give child welfare professionals, lawyers, judges, and parents the push to move quickly toward reunification, helping families heal. Or it can be too quick a deadline for troubled parents working with a dysfunctional system, destroying a family.

I’ve seen how ASFA’s timeline can motivate parents. In one case, I met a parent after almost nine months had passed since her children entered care. This mother hadn’t completed any part of her service plan. She had either left or been dismissed from treatment programs and had never finished a parenting skills class.

I asked her, “Do you know what ASFA is and what it means for you?” “Yes,” she said, but with such hesitation that I had doubts. After I explained that she had 15 months to get her children out of care, she told me,

“No one ever explained the law so that I really understood what it meant and I was afraid to ask.”

Once mom realized how little time was left for her to get her act together, she buckled down and did the right thing. I am happy to say that her son is visiting over the weekends and they’ll soon get to trial discharge.

On the other hand, I am sorry to say I know too many families that have been destroyed by *misuse* of the ASFA law—parents who didn’t understand ASFA or weren’t properly advised about their rights; parents who were assigned caseworkers or lawyers that were either overworked or who just didn’t care; parents who faced judges that overlooked the agency’s failures but not the parents’.

I don’t know if all of these parents would have been able to reunify with their children in a reasonable amount of time if they’d been better informed and better treated by the professionals charged with helping them rebuild their families. But I do know that they faced not only the obstacles of poverty, addiction, or emotional distress but also the obstacles created by ASFA and the child welfare system itself.

I believe fundamental changes must be made to ASFA so that it is fair and functional in the real world. The most important change is that the federal government must define what it means when it says that agencies must make “diligent efforts” to help parents reconnect with their children. Some agencies connect parents to high-quality parenting classes, family therapy, and treatment programs, and give parents frequent visits with their children, visit coaches, and

visits in positive locations like libraries and parks. Others do little to connect parents to services. I’ve seen caseworkers tell parents with a drug problem that they need to seek help but do nothing more than give the parents a list of programs.

Agencies need clear standards, and they must be required to document their efforts. Judges must be required to suspend the 15-month timeline if agencies do not provide appropriate services to parents. Parent advocates help ensure that parents know their rights and responsibilities, and they inspire hope.

ASFA could also require agencies to use parent advocates (parents who have successfully reunified with their children) to assist workers in making these “diligent efforts” and to support parents in getting the help they need.

My biggest complaint is about the lousy legal representation most birth parents are provided. Many lawyers don’t return phone calls or even speak to their clients until five minutes before court. In court, I see lawyers sit there and never open their mouths. Then they shush parents who try to speak on their own behalf. I understand that lawyers are overworked, underpaid and overwhelmed, but parents can’t be held to higher standards than their lawyers!

For parents to reunify with their children quickly, they need lawyers that protect their rights, push for services and insist on regular visits. In New York City, we now have organizations that provide each parent with a team—a social worker, parent advocate and lawyer—and that seems to help parents reunify more quickly. ASFA needs to set standards for parents’ legal representation. Again, judges should suspend the ticking clock if court-appointed lawyers don’t do their jobs.

I believe ASFA is most unfair to parents who are unable to reunify with their children because of factors beyond their control—prison sentences or drug treatment programs longer than 15 months, court delays, or mental illnesses that may prevent parents from ever having sole custody.

For parents in these common situations, ASFA must provide clear guidance to judges and agencies, allowing them to create flexible custody situations instead of permanently terminating parental rights. Some parents are able to voluntarily relinquish their rights, signing agreements about the contact they will continue to have after they lose custody. All parents facing a termination of rights should have this option, and these agreements must be legally binding.

Finally, I believe that the way ASFA is financed sets systems against parents. Agencies that are paid per day

that children are in care already have a powerful incentive not to return foster youth home quickly. Adoption bonuses also reward child welfare systems for not reunifying children with their biological parents. As parent Lorie Cox has written, “It seemed like the social workers lined up foster/adoptive parents quickly, but took their time in getting me referrals for any services that were court ordered, such as drug treatment, therapy, and parenting classes I needed.” I would like ASFA to reward agencies financially for achieving timely reunifications.

In the stories that follow, you’ll see why these changes are so important. Lawrence loses a year with his son because of court delays. Jackie nearly loses her rights until a Child Protection Service worker fights for her. Jeanette’s child is in care for two years after she completes her service plan. Deb permanently loses contact with her son because she’s in prison and the adoptive family ignores the contact agreement they signed. Bertha needs more time to strengthen herself as a parent before her daughter comes home.

You’ll also see how deep the bond is between children and their parents. Despite long separations, Youshell and Tracey rebuilt their relationships with their children after reunification.

ASFA is right to try to shorten separations. No parents want to be separated from their child for more than 15 months, and children should return home as quickly as is safe. But ASFA must be a tool for ensuring that agencies, lawyers, judges, and parents act in good faith to get children home, not for punishing misinformed and unsupported parents and their children.

### Three Long Years

#### **Incompetent social workers kept my son in care.**

By Jeanette Vega. © *Rise* 2009, excerpted with permission from *Rise* magazine.

When my son Remi went into care, I was crushed. Remi was my life, my love, my all. I needed help with my parenting, but we did not need to be separated.

I started working and doing all the services requested of me, trying to stay occupied, but that sadness always followed me around. I would go home by night and fall to sleep crying in my fiancé’s arms.

Within a year I finished all the services, found an apartment, was working, and began weekly unsupervised visits. The two hours just flew by. Remi missed me, so most of our visits were hugs and kisses. Things were looking brighter and I was getting ready to get my ’lil man back.

Come to find out that since my fiancé now lived

with me, he had to do parenting classes, counseling and anger management, even though he was no part of the incident that led Remi to be placed in care.

I just crumbled. I couldn't believe my ears. Why wasn't I told this in the beginning? The caseworker just suggested I kick my fiancé out the house.

On top of that, the caseworkers were coming and going like flies. We got a new caseworker every 5-6 months. More time went passing and there was nothing I could do. I began to get hate toward the system, and that's a strong word, a word I barely use. But they were dragging our case along as if my son's life could be put on hold. Finally we got weekend visits. Man, was I excited to see my little man sleeping in his bed in his house. Nothing could be better. For five months before he came home we had our weekends, and when he came home for good, he knew his room was waiting for him with his things.

Remi and I still had a bond, despite those three lost years. But he also came home a little aggravated, with strong emotions, as could be expected from making that transition. Maybe it was just in my head but Remi felt too empty to me. He would put on sad faces for no reason, or cry at night while he was asleep.

I caught myself falling to sleep near his bed on the floor, as if I never wanted him to leave my sight. We wanted nothing more than for Remi to feel at home and safe with us.

### Too Much Pressure

**I didn't think I could recover from my addiction in 15 months.** By Jackie Crisp. © *Rise* 2009, excerpted with permission from *Rise* magazine.

When my children were taken out of my home, I immediately felt the pressure of the ASFA timeline. I knew I had a lot of work to do in a very short amount of time. Instead of motivating me, that fact kept me stagnant. I didn't even know where to start, and I had been addicted to drugs for a very long time. My addiction felt ingrained deep into the core of my being.

Despite the ASFA timeline, I didn't get clean for more than two years after my children were taken. I believe in my heart that the only reason I have my children back home today is because my CPS worker fought for me. She told me she saw something in me. She put her job on the line. At about the time I should have been getting my rights terminated, I was finally getting better. I give thanks to my CPS worker, because I could easily have lost my children forever.

### Held Hostage

**Family court delays have devastated my family.**

By Lawrence Pratt. © *Rise*, web story, Feb. 2008, excerpted with permission from *Rise* magazine.

I was falsely accused of abusing my son Jacob and giving him Shaken Baby Syndrome. Even though I am falsely accused, the shame and stigma is a heavy load.

Because of horrible court delays, my infant remained in foster care for an entire year before the foster care system even gave me a chance to try to prove my innocence. It sickens me that babies and children are kept from their families because there is no due process. The system felt it could say to me, "Well, Mr. Pratt, it's so early in the case..." when after nine months the system's lawyers still had not proven that my son was at risk if he returned home. I hope that if more people understand how much my family has suffered, they will require the family court to move more quickly to spare other families.

Jacob's mother and I took him to the hospital on Christmas Day of 2005, when Jacob's legs and arms started twitching. We later learned that Jacob was having seizures. The doctor in the ER said that although Jacob had no fractures, no bruises, no retinal hemorrhages, she suspected Shaken Baby Syndrome. In other words, she suspected that we had done this to our child. On January 11, 2006, while still in the hospital, Jacob was remanded to foster care.

After that, a date was set for a Fact Finding Hearing (to determine whether Jacob should remain in care). It was set for July 22, 2006, six months after his removal.

We were anxious to get our day in court to prove our innocence and get Jacob back. During the six months that we waited, we complied with our service plan. We received CPR Certification, Parenting Children with Special Needs Certification, individual counseling, and, upon our urging, additional medical training. We were able to visit only two times per week for two hours per visit.

Then our hearing date got pushed back from July 2006 to January 2007—a full year from when Jacob went into care! We were to be separated from our son for an entire year simply because of court delays. Because we didn't feel we should have to—or could—wait a year for Jacob to come home, we asked for a special hearing to return Jacob home until the Fact Finding Hearing. After reviewing our medical evidence and hearing all we had done for Jacob since he went into care, the judge ruled on August 8, 2006, that Jacob could come home on August 15.

But our joy was very short lived. On August 10, 2006, the Administration for Children and Family Services (ACS) filed for and received a stay of the judge’s ruling (meaning they asked that it not be enforced) and filed an appeal. That meant that Jacob would have to stay in foster care at least until the appeal was heard. We were heartbroken.

Now we have a new trial scheduled: one day in January and two days in February, and then the dates jump to May and June. Who knows how long it will be until Jacob comes home. Was it really in his best interest for ACS to appeal the judge’s ruling that he could come home? Is it really in Jacob’s best interest to be in foster care?

Since Jacob’s mother and I had no previous knowledge of family court, we assumed that we would be given the benefit of the doubt, or at least that we would have our day in court. We felt assured because we are both college educated, registered voters, active in our community, and have never had any problems with domestic violence, drugs, or alcohol. However, our case never started until after Jacob was in custody for more than a year.

Jacob is talking, walking, playing—basically being a 2-year old. I am furious that my son has been in foster care all this time because of court delays. In two years, he has also lived in six different homes. We are extremely worried about his multiple moves and his current foster mother. I have been very disappointed with the consistently poor behavior of the agency. I continue to visit him, to love him, and to fight for him.

## Signing Away My Son

### I had to give up my rights because I’m incarcerated.

By Deborah McCabe. © *Rise*, Summer 2008, excerpted with permission from *Rise* magazine.

For the first three years of his life, my son Justin slept in my bed, curled up beside me. When I got locked up, my devastation at having to leave him was palpable to anyone I came in contact with. I could not speak his name without feeling a gut-wrenching pain.

When I was first incarcerated, Justin’s foster parents had reminded me of the unbreakable bond my son and I shared. I told them to keep my son away from me. After all, he was only 3. I thought his memory of me would fade and his life might even turn out normal. Despite my protests, they allowed me to talk on the phone with Justin weekly and brought him to visit often.

Our visits during those initial years were painful

but wondrous. When he saw me walk through the visiting room door, Justin would fly across the room and leap into my arms. His face would light up and he would shower my face with kisses and wipe away my tears with his little hands. Each time it seemed as if he had grown a little bit, or changed in some small, almost imperceptible way. I still remember the sound of his voice when “mommy” changed to “mom.”

Justin and I participated in the Family Reunion Program (FRP) at Bedford Hills Correctional Facility. With FRP, we were able to spend two days and nights in a trailer within the bounds of the facility. We were a real family again. One day a basketball bounced and knocked out his naturally loosened two front teeth. Another time I held his scrawny 6-year-old body in my arms and sang to him. He watched me sing so intently, staring up at me as if I was the sun, moon and stars all rolled in one.

It was at the end of one of those trailer visits that I finally got a glimpse of all the pain my baby felt. I asked him if he was ready to go and he actually stopped being strong for me and cried. I had not seen him cry until then, almost three years after my incarceration.

But as Justin grew older, things between his foster family and me began to change. What once seemed an ideal relationship between a mother and surrogate mother slowly turned sour. Justin began missing every other visit. Justin’s foster mother told me that Justin got depressed after visits and acted out by being disrespectful or breaking his possessions. Those were little signs, she told me, that “maybe the visits aren’t such a good idea.” I felt that if he were allowed to see me more often, then it would not be so devastating to say goodbye. They told me they knew what was best for him.

In 2001, I got an order from the court telling me to attend a hearing that would determine whether I would retain my rights to my son. By then, ASFA had passed. Children couldn’t stay in care for years and years. I had no family that could take Justin out of the system. My choices were: fight and have my rights terminated, or surrender my rights, sign a post-adoption contact agreement and pray they’d keep bringing him to visit. I chose to sign. I felt it would have been selfish to fight. He was with a family that loved him. I grew up in foster care and know how rare that can be. We agreed that he would visit me seven times a year. Three visits were supposed to be trailer visits, plus I’d get phone calls, pictures, and letters.

What I didn’t know was that his family would soon disregard the promises they made in court, and that, at that time, post-adoption contact agreements were



not legally binding in New York. Justin's family stood me up for the next two visits that we had arranged. They also stopped calling.

I was devastated. Visits with my son were what I looked forward to, what I lived for. How could I give up being his mommy? I became so depressed that I had to go on anti-depressants just to get out of bed in the morning.

I have had only two visits since I signed the adoption papers five years ago. I have spoken to my son only five times on the phone. I used to write him but he said he never got one letter. I used to send him things for his birthday but the store would refund my money after they sent it back.

The last time I saw Justin was in 2003. He was 9 years old. Two weeks ago he turned 14.

I call my son once a month. My advocate is able to place the call for me. It is rare for the woman who answers not to hang up when she hears my voice on the other end. If I am blessed to reach my son by phone, my advocate allows me extra time because she knows I only get to parent him for an about an hour each year.

My son's adoptive parents don't seem to realize how much they have hurt us both by keeping us apart. Still, I am very grateful to his adoptive parents for loving him, taking him when there was no one else, giving him the life I couldn't give, instilling good values in him, allowing him to have a childhood and protecting him.

I can hear how much he misses me when I talk to him. He always asks me when I am coming for him. Justin told me that he calls the toys he received from me his "special toys." He said he doesn't play with them but saves them so they won't break. My little brother did the same thing with toys from my mom when we were in foster care.

I hope to have the chance to be a mom to Justin again when I am released. I believe that no matter how old you are, you always need a mother's love.

### **Raising My Voice for Parents Inside Advocating to change a law's impact on families.**

By Paulette Nelson, as told to Lynne Miller.  
© *Rise*, Summer 2008, excerpted with permission from *Rise* magazine.

When I was locked up, I left my son with family, but he was removed from their home because of neglect. It was two months before I found out where my son was. It was four months until I heard his voice again. In

prison, most of the time there's no one to help you with a child welfare case. If you don't know your rights, you're screwed.

Finally I met with a social worker who told me, "Listen, you have to get it together or they can take your son in 15 months." She explained the ASFA law to me.

I was scared. I went back to my dorm and shared my feelings with my bunkie. She said, "Oh, God, I have children in care, too." She started crying and crying, and we were crying together. Word travels fast in jail. We were in a big dorm with 50 women on one side. I'll tell you, the sound of 50 women crying is horrendous.

But since I've been released, I've learned a lot more about ASFA and about incarcerated mothers. 75 percent of women in prison have children. 11,000 children in New York state have mothers in prison. Can you imagine the sound of 11,000 children crying for their mothers?

While I was in prison, I got parenting and anger management classes and voluntarily entered treatment once I got out. I stayed on top of my lawyer and I made sure I was heard in court.

You know how it is. The judge, the lawyers—they all have their heads down, talking gibberish you don't understand, but you can stand up and be polite. I said, "Excuse me, your Honor, can I speak?" Of course, the judge told me to sit down, but I was able to ask, "Why am I here? What's going on? What can I do?" To them, it was an easy case because my sentence was short and I was eager to get services and get my son back. Still, my son was 12 when I got locked up and he's 14 now. He's coming home in a few months.

Since my release, I've also gotten involved in advocacy. I joined the Coalition for Women Prisoners, a New York state group with 1,000 members. We're trying to amend the ASFA law in New York so it doesn't hit incarcerated parents or parents in drug treatment so hard. Every state can make adjustments to ASFA. Some states are harsh toward parents in prison—they treat a sentence as a reason to file for termination of rights. Some say that incarceration alone is not a reason to terminate. Others go further—under certain conditions, they allow incarcerated parents and parents in drug treatment more time to reunify because of the barriers they face. That's what we'd like to see in New York and nationwide.

The advocacy work I'm doing has made me aware that there are people outside of prison who are fighting for our rights. I don't feel so helpless anymore. It's

so stressful to lose your child and go through these mental issues as a result. I felt good knowing: “There is help. I’m not alone.” And I know that nothing is going to change if you don’t speak out.

### **Taking It Slow**

#### **I have farther to go before Barbie comes home.**

By Bertha Marquez. © *Rise*, Summer 2008, excerpted with permission from *Rise* magazine.

Many times when children go into foster care, the relationship between parents and children grows worse instead of better. Parents are usually stressed and angry that the system has invaded their lives. Often kids are too. They take that anger out on each other. But I’ve made efforts to prove to my daughter that although I was using drugs and she’s now in the system, no one and nothing is going to get in between our love.

When I visit Barbie at the agency, I am always on time, and Barbie and I play and color together. We talk about the things that are important to her and her growing up to be a responsible young lady. I hug her a lot and I look at her with love and grace.

Until recently, I had visits with Barbie just once a week, but now I have her for entire weekends. That means she could come home soon, but I am not rushing to have my daughter come home with me.

All of the services I have received already have helped me, but I still have farther to go. I still struggle with depression and anxiety, so I would like to go to therapy. I want to be more confident that I am ready to care for Barbie. After all, I have never dealt with the stress of having her home while I was clean, and I fear that I could overwhelm myself and relapse. I don’t want to do that to myself or to Barbie. Even though she seems strong, I know that Barbie is affected by all that she’s gone through. I think if she had to live with the fear of being removed again, that would be a tragedy.

When Barbie was home with me last weekend, we had a wonderful time. We cleaned her room and painted it two shades of light pink so she could feel comfortable sleeping there. I also bought her the Power Puff sleeping accessories and I put up a poster of Mickey Mouse, because that’s what I like, and she put up a poster of her favorite rap group.

But when Barbie and I went outside to jump rope and I told her to put her jacket on because it was chilly, Barbie refused. She gave me a little challenge. It was just a small thing, but I became nervous and distracted. I remembered when I was getting high and I would tell her to do something and she wouldn’t.

At those times, it felt like more than I could deal with, but now I know that it shouldn’t be. Still, I have those old feelings with me so I know I need help to learn how to deal with situations like those.

### **‘It Won’t Happen Again’**

#### **My children and I rebuilt our trust after three years**

**apart.** By Youshell Williams. © *Rise*, web story, Nov. 2007, excerpted with permission from *Rise* magazine.

When my son was 6 years old and my daughter was 7, they went into foster care because I was very depressed and stopped sending them to school. My children were with my sister for three years. My sister was wonderful. She loved my children. When I visited my sister’s house, I was able to witness the attention she lavished on them. I am truly lucky and blessed.

But the separation took its toll. As time passed I became afraid to get my children back, afraid to fail again. Seeing what my sister could provide made me fear that I would mess up my children’s lives if I took them back. My sister and her husband did not live in the ghetto. They lived in a nice neighborhood with better schools, better everything.

I had high hopes for my children, and still do. I wanted my children to experience the good side of life. I knew my children needed my love and my parenting, and I knew they had more in my house than I ever had growing up. But I believed my children were happy and might think, “Then Mommy came and messed everything up once again.”

My sister woke me up. One day she said to me, “It doesn’t seem like you want them back.” My new worker helped, too. She explained what steps to take to get my children home. Without her, I believe my case could’ve dragged on forever. Soon enough, my children came home.

After such a long absence, though, it took a long time for my children and me to get back in the groove. There was tension in our house. My children definitely resented me and the slum they had come home to, and showed it: lots of arguments, disrespect and shouting that “You should have left us at Aunt Gina’s!” Plus a whole lot of pretending that they did not hear me or my rules.

Luckily, I was required to go to a preventive agency when my kids returned home. I loved my second worker. Every week we went to her office to talk with her as a family. My favorite part was a game where we all had to say words that expressed how we were feeling at that moment, and how we felt about each other.

I found out a lot. My children were disappointed in me. It had been shocking to them to watch me fall so hard. They were scared that I might fall once again. They wanted to stay with Aunt Gina because she showed strength consistently and they could trust her.

At home all I heard was their anger. When we played the games, I was able to understand their fears and frustration. They feared that our family would not recover. They were asking, “Where do we go from here?”

I was determined to put their fears to rest by telling them and showing them that Mommy would never give up on herself again. I also realized that we would never get those three years back, but we could move forward and make new memories, happier memories.

Our worker encouraged us to keep building our trust in each other. She’d say, “Change can be a good thing. It helps you grow as a family.”

As my children saw my persistence in listening to them and in rebuilding our family, it was easier for them to begin to trust me. I don’t know how completely my children trust me now, but we are more comfortable with each other. For a long time, I didn’t think that I deserved my children, but now I know that no one else can be a better mother to them.

### ‘Love Is Not Written in a Court Order’

#### Helping the system remember the strength of family bonds.

By Tracey Carter. © *Rise*, Fall 2006, excerpted with permission from *Rise* magazine.

In September I traveled with my 23-year-old son to speak at “Families for Life: Addressing the Needs of Older Children and Youth in Foster Care,” a conference convened by the Annie E. Casey Foundation. James and I were doing a workshop together about the strength of family bonds. Even though James and I were separated by my drug addiction and his adoption, our relationship is growing now.

I hoped that seeing the way my son and I connect in spite of our long separation would show foster care system staff and policymakers that reconnection can happen. My rights were terminated but our love did not end.

At the conference, I explained some of the history that led to James’ placement in foster care. When James was born in 1983, I was 21 and already had one child. We lived in Queens and I worked at the grocery store owned by my children’s father. I was comfortable. But around 1986, my life started going downhill. First I found out that my kids’ father sold

drugs out of the store. Then the feds came and shut down the store and destroyed our house. My kids’ father ran and left us.

I didn’t know what to do. I had no income. I was pregnant with my fourth child. I was depending on public assistance. I wound up going to my sister’s in Brooklyn. She helped me out a lot, but I was stressed out. Being abandoned by my kids’ father also reminded me of my parents’ deaths when I was very young, and I was depressed. That’s when I started hanging out and was introduced to what we now call crack.

I started by using drugs on the weekends. Eventually I stopped coming home. Finally my sister gave me an ultimatum: Either come home and be a mother or stay in the streets. I chose to stay out.

One day I got a paper from court and I gave up my rights to my children. I found out years later that my sister adopted them. My sister didn’t want to do that, but the system threatened her. If she didn’t adopt, they were going to put the kids in other foster homes.

By 2004 I was drug free, raising my two youngest children with my husband, and working as a parent leader at the Child Welfare Organizing Project, an advocacy group for birth parents. I’d reconnected with my family and found out James was in the Army—in Iraq. James was looking to reconnect with me as well.

When he came home, we finally got a chance to talk. He said he had thought about me often. We hugged and cried, then we laughed. I was proud of his strength and courage.

My family had only told James that I was sick. They hoped that one day I would tell James the whole truth. When I told him my story, he said he felt better hearing it from me. He asked me a lot of questions. I was straight and honest with him. I apologized for not being there for him and told him, “I can’t change the past. I’m just grateful that you still accept me.”

At the conference, James had tears in his eyes, but it felt good to be able to talk openly. I think our workshop helped the system professionals remember the strength of children’s bonds with their parents, and their parents’ bonds with their kids. Love is permanent, not what is written in a court order. You can separate a mother and child but the love will still be there. I hope policymakers will find ways to help birth parents and kids stay connected, even if there’s a long time when the parent cannot take care of her kids.

# “I Want to Hold on to Them”

## *ASFA’s Impact on Teens*

By the writers of *Represent*, a magazine by and for youth in foster care; compiled by Nora McCarthy with editors Rachel Blustain, Al Desetta, Kendra Hurley, Laura Longhine, and Autumn Spanne

Stories in this paper reflect the experiences of youth in foster care who have written for *Represent*, a national magazine written by and for teens in care. Teen writers for *Represent* have explored adoption, aging out, relationships with siblings and birth parents, and other topics related to permanency in dozens of stories.

### Listen to Teens

**Youth in care need permanency options that honor all of their connections.** By Laura Longhine and Nora McCarthy.

Since the Adoption and Safe Families Act was passed over a decade ago, child welfare agencies have operated from the belief that kids should leave foster care as soon as possible for permanent, stable homes. Until ASFA, many kids were stuck in limbo in foster care, moving from home to home, never sure whether they’d return home after years separated from parents, or whether they’d live in foster care until 18 or 21, when they often left care with nowhere to go.

ASFA included a stricter deadline for terminating parental rights and financial support for adoption. Now, most kids nationwide are indeed leaving the system to permanent homes. In 2005, more than fifty percent of children who left the system reunified with their parents or primary caregivers, and another twenty-two percent were adopted or discharged to legal guardians. But most of these were younger children, not teens.

For teens, permanency is a much more elusive goal. In 2005 only 5,750 teens were adopted (11 percent of total adoptions), while almost 25,000 teens aged out of the system. That’s a lot of teenagers who are leaving the system without permanent connections to adults. As a result, former foster youth are very likely to end up homeless or incarcerated,

and without the education to find a decent job.

One barrier to permanency is the adoption process. Some teens do not want to be adopted because adoption can permanently sever connections to birth family, including siblings. Many teens in care don’t live with siblings but have legally mandated visits, and many also maintain informal contact with their birth parents, even if parental rights have been terminated.

Adoption laws, which were designed to protect the relationship between adoptive parents and infants, don’t reflect the importance of maintaining these ties. Adopted children, including teens, are issued new birth certificates bearing only the new parents’ names. Adoptive parents have the right to end contact with birth family, including siblings. Few states have court-enforceable post-adoption contact agreements, which would guarantee ongoing contact with birth parents or siblings. These laws must be changed. Teens need their relationships with biological family, especially siblings, to be protected while they attach to another family that can provide long-term stability.

Custody arrangements and subsidized guardianship must also be expanded so that more teens can leave care for families that will help them succeed. These changes will make it more likely that teens in care will find permanent homes and that child welfare agencies can uphold ASFA while respecting the wishes of youth in care.

In the following stories, teens describe the steps that helped them find permanent connections, and

the barriers they faced. Manny and Natasha found adoptive families and went through the difficult process of learning to trust again. Tamara chose to live with her sister, who became her legal guardian when her mother relapsed, rather than enter foster care. Akeema and Natalie chose not to be adopted. Jessica and Wunika struggled with their siblings' adoptions. Eric and Erica maintained connections to their birth parents despite years of separation.

Above all, these stories show that no federal policy can anticipate the needs and dreams of every child in care. Caseworkers and child welfare policymakers must remember that the intent of ASFA is to protect children and keep them connected to caring families. Child welfare workers must listen to teens in care and help them find family situations that feel right to them.

### Brick by Brick

**My foster mother and I building a relationship before she adopted me.** By Manny Sanchez. © *Represent*, Nov./Dec. 2006. Reprinted with permission from Youth Communication.

By the time I got sent to my third foster home when I was 8 years old, I'd started to believe that all my experiences in foster care would be negative. I was trapped in a circle of revolving doors, and I didn't think I'd ever be able to stay in one place.

On my way to my next foster home I thought I'd better be ready to leave in three or four months, and I was already worried about where I'd get sent next. I was also scared of my new foster mom. I pictured her as a witch with razor-sharp teeth and claws.

But when I met Melba, she had a happy face, anxious but full of excitement. She showed my brother and me our room and told us to make ourselves at home, but I didn't unpack my things. I felt like there was no point since we would be leaving soon anyway. I started to imagine the horrible things she would do or make us do when my social worker left.

My heart started to pound after my social worker left and I heard footsteps closing in toward the room. Melba's mouth opened and just when I thought she was going to breathe fire, she asked, "Are you guys hungry?" Daniel said yes, but I said no. I was, but I wasn't comfortable asking her for anything. When she went to use the bathroom, I ran to the kitchen and grabbed something to eat.

The first few months were all the same. I would get home from school, go to my room, close the door and

do my homework. When Melba would come by and ask if I was hungry I'd usually say no. She didn't annoy me or force me to eat. She gave me my space, which was what I wanted. At dinnertime, I would just stay in my room. Most of the time, Melba would come in and ask if I'd finished doing my homework. I have to admit, it felt good to know she cared. We'd sometimes have little awkward encounters. Maybe a "Hey" or "Hi" but nothing more than that.

After the five or six months, I started thinking I might stay. I noticed Melba's consistency when it came to feeding me and checking my homework. Sometimes I'd take some change off her dresser to see how she'd react, but she never seemed frustrated. I started to feel a little warmer inside. I began to answer, "Yes," when she asked if I was hungry, and I started leaving the door to my bedroom open. We even started to have conversations.

I found out that Melba had had other foster children living with her, but they were given back to their families. I thought that maybe the same thing would happen to me. I thought that Melba could stick with me until I was reunited with my family. This let me feel comfortable trusting Melba. Pretty soon I started to hug her when I came home from school, and I started showing her more affection than any of my previous foster moms.

On my 9th birthday, Melba took Daniel and me to the World Trade Center. I thought that we were going to do something boring, but I was shocked when we got to a huge building that towered over me. I'd never seen anything like it in my entire life. I was so happy that she remembered my birthday, took me somewhere and had gotten me a present.

After that, I opened up a lot more. I believed that Melba had paid her dues and earned her stripes. I started talking to Melba a lot, and I often found myself the one starting the conversations. We'd talk about the news, school, TV.

For years, my birth mother had filled my head with the dream that I'd be going home. But every time she made a promise that I could go home and then didn't keep it, I felt knocked down to the ground. That's when my mother would come again and lift me up, only to knock me down again. But eventually, I got used to her routine.

Around the time I turned 14, I realized that I might never be going home, and that it was possible Melba might adopt me. One day Melba sat me on the couch and said, "If you want to be adopted, I am here for you." I had grown to love Melba, but the idea that

I couldn't live with my parents again seemed weird to me, and made me sad. I had to think about my situation before I could make a decision.

Finally I recognized that I wasn't going back home, and I knew that adoption was what I wanted. Now we're in the process of making that happen. Melba has already been my parent for so long; the only thing that the adoption will change is that my brother and I will legally belong to her. Melba has given me advice and taught me those life lessons that you need to succeed, like saving money, helping people and taking school seriously.

Melba and I have developed a bond over the past several years and I am happy that soon it will be permanent. Melba has been my salvation from a dramatic and awful life. We started from one brick and built a skyscraper of trust, understanding and love.

## Clean Slate

**Even a perfect adoption couldn't erase my past.** By Natasha Santos. © *Represent*, May/June 2004. Reprinted with permission from Youth Communication.

On April 16, 2003 my foster mother and I went to court so she could adopt me. I felt weird and uncomfortable, almost like I was to be heading for the courtroom to trade in my identity. My mother sensed my doubt and became frustrated. She said, "Come on or I'll call the entire thing off." So we went.

I wanted to be adopted. My adoptive family felt like a real family. They stuck together and seemed bonded by their deep affection for one another. It seemed like they wanted me and wanted to help me. I thought I could fit in, that I had found a pretty good home.

At times like Christmas and other holidays, or the rare occasions that we were all in the same room at the same time, talking and laughing together, I felt safe and wanted, like this is what families are about. Warm feelings, a Christmas tree and happy smiling faces. Normal family. I always wanted that.

I thought that once I got adopted, everything would feel right inside me, like Christmas every day. I believed all my past troubles and trauma would be erased and that I would start new. I thought I'd feel secure in my family. I'm still waiting for that to happen.

For a long time after I got adopted, I felt angry and hurt. I had hoped that I could tell my family everything about my feelings and my past, and that they would want to listen to me. But it didn't always go well. I always felt like they were rejecting me. When I

talked with my mother about a foster mother I had before, my mother always seemed to defend the foster mother. That hurt me. I thought she secretly agreed with how the foster mother had treated me. That made it harder for me to confide in this new family. I tried to trust them anyway, but years of rejection and ridicule had left me emotionally withdrawn. My insecurities began to appear.

The worst was that, when I did something wrong or hurtful to my new family, and they would bring up painful things I had told them about my past. I felt like they were trying to prove to me that I had always been a bad child, and what I endured wasn't abuse.

I gradually began to realize over the weeks, months, years, that my family can't handle certain things, like talking about the abuse I went through. What they did to deal with the sometimes overwhelming information I gave them was to downplay what happened.

So I learned what to divulge and what to keep to myself. I stopped telling them major things about myself. My feelings were spared and their minds were at rest. But trying to keep those feelings in has been painful. I was upset a lot and couldn't concentrate. I still haven't dealt with the sexual and emotional abuse I endured for many years.

Recently, though, during a post-Christmas morning, my mother and I discussed my mental stability. We were incapable of doing that before, either because I feared rejection, or because she feared upsetting me.

I felt anxious, but I began to tell her how I felt. I told her about my panic attacks and my paranoid thoughts about what classmates and teachers might think of me. And she listened. I told her about my struggle to forget my former life. When she listened and spoke to me understandingly and encouragingly, I was surprised.

We even talked about my past foster homes, and I came to understand that she wasn't defending my old foster mother. She was trying to make me see that the foster mom had her own problems and was taking them out on my siblings and me. That was a weight-lifter, because for a long time I felt that the way the foster mother treated me was all my fault. I needed her to tell me it wasn't.

I've realized that there is no such thing as a normal family, and that I will drive myself crazy looking for families like the ones on television. From hearing my friends' description of their families' embarrassing acts and arguments, it seems to me that no one can always get along. That helps me to understand that my family isn't far off from normalcy, if there is such a thing.

I came to this new home with broken spirits and a heavy heart. Now I'm getting better, I'm almost revived. I have people who want to make me well. We're learning to trust each other and to be a lot more considerate of one another. I've almost found my dream family. I want to hold on to them.

### Sensitivity Chip

**Teens feelings must be safeguarded during the adoption process.** By Natasha Santos and Pauline Gordon. © *Represent*, May/June 2004. Reprinted with permission from Youth Communication.

Recently we went to the set of a TV program that features teens in New York City who want to be adopted. On screen was a number that parents could call if they wanted to adopt the teens on the show. It's a similar program to Wednesday's Child on CBS.

In fact, Deana, one of the teens who was featured the night we went, had already gone on Wednesday's Child, but she hadn't found a family yet. Deana wanted to be a model or an actor, and she was charismatic. She spoke clearly and vividly, and seemed to have everyone hanging on her every word. Deana had been in a lot of foster homes and wanted a family to love her. She said she didn't care who she lived with as long as they respected her, and that if they didn't, she'd talk back to them.

The audience was really interested in Deana. People were asking her: "Would you be comfortable living with a single father who'd help you pursue all your dreams?" "Would you be comfortable with a white family?" "Would you be comfortable having a sister?"

Marisol, 12, also went in front of the group. Marisol wanted badly to be adopted. She felt abandoned in foster care. Marisol thought adoption would be her cure-all, and that by telling her story on television she'd find a family that would take her home.

But when she got in front of the cameras she was shy and didn't talk much. Marisol said only that she wanted a family that would appreciate and love her. No one in the audience asked Marisol questions. We were relieved that Marisol hadn't seen how the audience reacted toward Deana, because if she had, she'd have felt pretty bad.

We worried about how it might affect these kids to expose themselves in the search for a family to love them. We feared they might think, "If no one accepts me for who I am, then who I am is not good enough."

We were also disturbed by the attitudes of some prospective adoptive parents. One woman asked a

teen, "How tall are you?" Why would you ask that question? It was like she was picking out an animal. Later we asked that woman why she wanted to know the girl's height. "I don't want anyone taller than me," she said, jokingly. But she seemed to mean it.

The kids on the program seemed like they were counting on adoption to fix their lives. One told me, "My caseworker told me I was going to get adopted today." Marisol shook her head when we asked, "What if it doesn't happen?" She refused to believe the possibility of not getting adopted. She said, "I'll get adopted if I behave."

So we got angry when we talked to the program's organizer, Pat O'Brien. He said that the goal of the show wasn't to get the kids adopted, but that it was a "consultation" for people thinking about adopting. We were shocked. Like Deana and Marisol, we really thought the parents in the audience were interested in making a home for them. Why else would the parents ask such invasive questions?

We hope the system will try harder to be sensitive to teens, despite the pressure to get kids adopted. Adoption is not a cure-all, and many teens in care will never be matched with an adoptive family. Teenagers are people, not objects. We don't need the false promise of adoption to mess with our minds.

### In Control

**I was able to choose a home that's right for me.**

By Tamara (Names have been changed). © *Represent*, March/April 2008. Reprinted with permission from Youth Communication.

Recently I moved in with my 22-year-old sister, Tasha, because my mother started using drugs again.

When I was 2, my brothers and sisters and I were placed in foster care because of her drug use. She got clean and regained custody of us four years later. I remember being so excited about going home. All I wanted was to be with my mother.

My mom stayed clean for ten years. But things weren't good at home. My mother was always yelling, making mountains out of molehills. She cursed at me every day, saying things so cruel that sometimes I hated having been born. Still, she was my mother, and we had our good days. If I was feeling sad, she would say things to make me feel better.

Then, last summer, things escalated. She was going from job to job, she was losing a lot of weight, there was never any food, and the arguments we had became way more intense, and more violent. Once

she slammed my head against a mirror, angry that I'd told Tasha how she'd blown the money meant to pay for our brother's graduation.

All these things were major clues to my mother's drug addiction, but I didn't want to believe she was at it again. Then came a signal I couldn't ignore: my mother stole \$100 from me that I had gotten as a birthday gift, and then lied about. I wasn't even angry, just disgusted that she could lower herself to such a level. I realized I'd been blind.

That same day my sister Tanya and I decided to go stay with our oldest sister Tasha, who'd moved out of mom's house about six months earlier. That night, while I lay on my "bed," (a bunch of quilts on top of quilts) I imagined going home, waiting for my mother to get herself together. What if she couldn't? What if staying with her began interfering with my own life plans? In three years I was going to be 18, and probably already in college. If I went into foster care again, my world would go topsy-turvy again. That would certainly affect my schoolwork, and maybe even my mental health.

I didn't want to hurt my mother, but I felt like staying with Tasha long-term was the only way for me to be in control of my life. Finally Tanya and I told Tasha how we felt. Her only response was, "If you don't want to go home, then I'm not going to make you."

A couple of days later, we all went to the social services office so that we would legally be able to stay with Tasha while she tried to get temporary custody. From there we had a month of court dates, only two of which my mother showed up for. Both times, my mother was enraged, and it was almost impossible to talk to her.

After a couple of weeks, we started having supervised visits with her at the agency. My mother was like another person during these visits. She'd talk about how she couldn't wait for us to come home, and how everything was going to be different. I didn't believe her, and I didn't want to let her continue this wishful thinking.

Finally I called my mother to tell her we weren't coming home. "Ummm, Mommy? I have something to tell you." My voice had already begun to wither away.

"What's the matter, what is it?" she asked with concern in her voice.

"I don't want to come back home, and neither does Tanya. It's not that we don't love you, it's just that we'd feel better if we stayed with Tasha. Please don't be mad."

There was a brief silence. Then my mother said, "No, it's OK, I understand. I know that I can't provide

you guys with everything you need right now, and Tasha is just doing a better job than I can. Trust me, I'm not upset. It's fine."

"OK," I said, feeling somewhat relieved. We exchanged I love you's and hung up, but I just lay down feeling overwhelmed with worry. I knew that in some way I was breaking my mother's heart. But I also knew that staying with Tasha was the best thing for me.

I'm glad I was able to make a good decision about where I wanted to live, and that the courts gave Tasha custody instead of placing my sister and me in foster care. I feel in control of my life again, and more sure of my future. Tasha takes the time to listen to me, treats me with respect and values my opinion. She makes me feel safe and wanted.

## Saying No to Adoption

**I want to reconnect with my own family.** By Akeema. © *Represent*, March/April 2008. Reprinted with permission from Youth Communication.

At 14, I moved in with my first foster family. My social worker kept telling me that this would be a nice family to adopt me because they'd adopted my younger sister at birth. But I didn't know this family, and they didn't know me.

Even though I've grown to know and love my current foster family, I still don't want to be adopted by them. In my experience, people have walked out of my life whenever I've started to count on them. For that reason I don't allow myself to really get close to anyone. I'm so used to being let down that I'm not willing to risk it.

I also don't want to commit to a family that's not my own. When I think about becoming part of a different family, I feel deprived from my own life, as though I'd be losing a part of who I am. My family is a part of me. If they were taken away from me I'd feel as if I didn't have a say in my own life, like social workers were deciding who I am.

I don't want to live my life through other people's families. My sisters who have been adopted since birth carry their adopted names, and they don't really know anything about "our" family. I especially don't want to change my last name. Your last name has a history behind it, and that's something very sacred to me.

I'd rather help strengthen my own family relationships than build the connections I have with my foster family. So instead of adoption, I've decided to stay



in the system until I age out at 21. That way, ACS (child welfare) can help me pay my way through college and then, hopefully, I can accomplish my goals.

### No, Thanks.

**I couldn't be another mother's daughter.** By Natalie Kozakiewicz. © *Represent*, May/June 2004. Reprinted with permission from Youth Communication.

About a year and a half after my picture was put in the adoption album, a few different families wanted me to be adopted. I wondered, "Do I have to be adopted? Who should I choose as my family? Can I wait before deciding?"

I thought it would be good to be part of a family again, with parents who would choose to adopt me and really care about me. I thought that I could become close to that family, although not as close as I was to my real parents who had died. My biological parents raised me and made me who I am.

But adoption also made me nervous. Who knew if I would go into a family that really cared about me, or one that would abuse or neglect me? I couldn't really tell what a family was like by going out to dinner with them a few times. For some family to think they could just walk into my life and claim that they're my parents made me feel uncertain about them.

My sister and I met one couple who wanted to adopt us a few times. They lived upstate and gave me a gold chain with a real sapphire on it and a pair of earrings to match. They had a nice big house and were planning to take us to Maine for the summer for a vacation. The couple seemed to really like us.

But the whole thing made me feel strange. I didn't like how far I'd be from the friends who have been there for me since before my mother died. I also felt like the family was trying to buy us. I was so confused. Finally, my sister and I decided to turn them down.

After that, a family friend, Gia, wanted to adopt us. She and her boyfriend lived in my family's building. They are great people with good advice and who care, but still something was holding me back. It took me a while to figure it out, but I felt that I had to be the way they expected me to be or else they wouldn't like me or accept me. It felt like too much pressure. So I turned Gia and her boyfriend down too.

I didn't have to worry about those things with my mother. She was there since I was born. I knew she would love me no matter what.

I don't have to worry about that with my foster

mother, either, since we don't have much of a relationship. But at least I'm left alone to figure out who I am. I like that. I also want to take advantage of the supports that foster care offers, like help with college tuition and housing vouchers. So I turned down the whole idea of adoption, period.

### Separated at Birth

**At least my siblings and I have visits.** By Jessica Wiggs. © *Represent*, May/June 2006. Reprinted with permission from Youth Communication.

At 12 o'clock on Christmas day, my grandma received a phone call from Kings County Hospital. My mother had just given birth to a baby girl she named Christmas Martha Wiggs. Christmas day is also my grandma's birthday and she wept, saying, "This is the best birthday gift ever."

Before Christmas was born, my mother already had eleven babies, and most of us had drugs in our system when we were born. For 16 years, I've lived with my grandma, two little sisters and my oldest brother. Two of my siblings live with their fathers, and the last four of my siblings (Christmas makes five) are all in different foster homes, or they've been adopted. I see my mother about twice a month, and I love her, but I can't forgive her. I often wonder what she will choose in the end: her kids or drugs.

When we arrived at the hospital they let my grandma go in to see her granddaughter. When she came out she said, "Jessica, you know that I love all of you and I will do anything to help you, but Christmas will not be able to come home with us." I understood that my grandmother already had enough children to raise.

During her first year, my family and I saw Christmas every other Friday. Christmas was placed with the same family as my brother Elijah, so I knew she was in good hands. My only fear for Elijah was that he was too spoiled! But when I held her for the first time and looked in her shining black eyes, I still cried. I felt joy being a sister again, and pain that she wasn't with me.

When Christmas was about 2 and Elijah was 3, their foster parents adopted them. They changed Christmas's name to Eliza, though I don't call her that. I do not feel that they should have the right to change her name because she is still our baby. I know that Christmas will always have some Wiggs in her.

Now that they're adopted, I no longer have a legal right to see them. It's hard to see her and Elijah and

know that their parents could decide not to bring them next time. It makes me wonder if at some point we might lose our connection.

Because I do not want to hurt too much, I try not to think about what's happened to my family, but just to let it go. I have learned to block out the thoughts. I have learned to live each day without my siblings. Instead, I keep my head up and let my siblings know they will always have a shoulder to lean on.

## Goodbye, David

**I lost my brother to adoption.** By Wunika Hicks.  
© *Represent*, July/August 1993. Reprinted with permission from Youth Communication.

When I was just 8 years old, I became a mother to my brother. I had to stay home all day to take care of David, who wasn't even a year old. My mother was never home. She'd be out trying to find a job, to make some money so we could have a decent meal.

So I had to do everything my mother couldn't do—make David's bottles, change his pampers (yuk!), wash him, and rock him to sleep. I'm surprised I didn't get left back because I hardly went to school. Do you know how it feels to look out the window in the morning and see other kids with their book bags while you're stuck in the house? So it was a relief in a way when my brother and I were placed in a foster home.

Five years later, I moved into a new foster home, and it was much better. It wasn't long before my social worker told me that my brother, now 6, would be moving into a new foster home, too. But there was a twist: the social worker said that my brother's new foster parents wanted to adopt him.

When she told me this, I stood up and just walked around the room. I was in complete shock. I began to cry. Was this really going on? I suddenly felt so protective of David. I asked my social worker if I could still see David after he was adopted. She told me that his new parents would make that decision. She also told me that they wanted to change my brother's name—not only his last name, but his first name too.

"How can they do this?" I asked the social worker. "What gives them that right? I took care of him. I'm more of a mother to him than anyone could ever be. I know what he likes and dislikes. I'm his mother, I'm his sister, I'm everything to him! I'm all the family he has—me, not some strangers!"

The social worker just looked at me. She could see the pain I was going through, but all she could say was, "That's the law."

I asked my social worker to find out if they'd allow me to see David. She said a good time for a visit would be around the Christmas vacation, if the adoptive parents agreed. I was happy that I'd finally get to see him. But before the visit could be arranged, my social worker transferred. A few months later I got a new social worker, but she didn't care that I missed my brother. Pretty soon, she left too.

The third social worker was better. At least she listened. I told her my problems, but she told me that when my brother was adopted his records were sealed. That meant I couldn't find out where he lived, much less visit him.

I couldn't cry. The tears wouldn't come. I felt completely alone and helpless. I had tried so hard but I hadn't gotten anywhere. I ran home. My foster mother asked me what was wrong and I told her. She got in touch with my law guardian, who is trying to help.

I can't believe my brother is in a complete stranger's home. I haven't seen him for three years. I don't know where he lives. I don't even know his new name. And I didn't have a chance to say goodbye.

I think of David every day—so much that it hurts. It hurts the most when his birthday passes. He's getting older without me. I hope he hasn't forgotten me, but remembers the times I took care of him as a mother.

## Two Moms in My Heart

**My new mom lets me stay close to my birth mother.**

By Eric Green. © *Represent*, May/June 2004. Reprinted with permission from Youth Communication.

I came into foster care in 1988, when I was 4 years old. Things at home were not good when I was very little. Sharon and my father, Billy, sometimes left my three siblings and me in the house for days. Billy was an alcoholic, and when he died, we came into foster care because Sharon was too sick to take care of us.

It hurt me to live with parents who were not really mine. I felt that Sharon was my family and no one else. When our foster mother, Ms. Hazel, took me downtown for a family visit, Sharon would rarely show up. But when she did, I was incredibly happy that I had the chance to see her face and talk to her. I wanted the visits to go on and on. Whenever the visits were over, I didn't want her to leave. For me, being separated from my biological parents felt like I'd been kidnapped and taken away for a very long time.

Then one day when I was 9 years old, Ms. Hazel got a call from the agency. She told my brother

William and me that we were moving. Ms. Hazel then took us downtown to our agency. To our surprise, we met Lorine and Robert. They were total strangers, but they told us that they were going to adopt us. I felt a bit sad about moving, but I hoped that things would turn out well.

Soon after moving in, I drew a picture of Chun-li, a character in my videogame. I showed it to Lorine and she told me that she liked my drawing. I found out that I was an artist. I felt very welcomed and cherished. I felt happy to have a family that cared about me. Then I wanted to be adopted. But I also felt sad. I knew that once I got adopted I would never go back home to Sharon again.

Lorine and Robert let me keep visiting Sharon. At Christmas, my oldest brother David picked up William and me and drove us to visit Sharon at her new home. In Albany, we did a lot of things together, like watch TV and movies, play videogames, draw, look at our pictures from when we were little, and stay up late—almost 'til morning. We had a great time. She gave me lots of laughs, hugs and kisses, and I called her Mommy.

But four years ago, Lorine told me she had an announcement to make. She told William and me that Sharon had passed away from cancer. I felt my world was blown to smithereens. I was stunned, petrified, sad, confused, but mostly I was infuriated. I was so upset that I just wanted to do something crazy. But instead, I remained calm, relaxed and composed. I didn't want to let on how hurt I was.

Since then, until this very moment, I have felt so mad inside because she's gone. I think about her and wish that she were alive again. Moving on is not something that I have been able to do.

Lorine and Robert don't know the pain and anger I feel about losing Sharon, and they don't know about the sadness and isolation I felt when I came into foster care. Inside, I am trying to deal with those feelings. I think I need help understanding those losses, but I won't share my feelings with Lorine and Robert because I don't trust them.

I know that Sharon thought it was a good idea for me to get adopted. Sharon told me that she thought Lorine and Robert could give me what she couldn't: good quality clothes to wear, a bed to sleep in, video-games to play, food to eat every day and a good life of happiness. Sharon could only give me fun and freedom.

Lorine has helped me feel less sad and less angry by pushing me to do my best. She has also told me to constantly keep in mind that Sharon still loves me. I

want Lorine to help me turn my life around and make me feel happy again.

I'd like to express my feelings to Lorine. I'm afraid that if I told her I think of Sharon as my real mother and miss her so much, Lorine might think that I don't love her. I also think it might be sad for Lorine if she understood that I'm going through so much pain.

It's affecting me not to try to trust Lorine. I'll feel bad if I'm sad and angry like this for the rest of my life. If I can find the nerve, I want to ask Lorine for help finding a way to feel happy again without forgetting my mother.

## Loving Letters

**Reconnecting with my mom through the mail.** By Erica Harrigan. © *Represent*, Sept./Oct. 2006. Reprinted with permission from Youth Communication.

My mother and I use letters to catch up on lost time and heal from our painful pasts together. For years my mother and I had lost contact completely. I was taken from her as a young child, and then again when I was 12. (My dad split from the family when I was little.) I've been in foster care since then, and during that time she lost her rights.

But last year I wrote a story for *Represent*, a magazine by and for teens in foster care, and sent it to her in the mail. My story described the two years I spent in a mental hospital as a child, and my struggles to deal with the effects of my mother's explosive temper and drug abuse. I also wrote about nights I spent sleeping in the hallway of our building, which led to me getting sexually assaulted.

Even though the story described the pain I went through, I sent it to my mother so she could see how well I was doing, and to show her how proud I was of my writing. I wanted to let her know that I still wanted her to be a part of my life despite the mistakes she made raising me.

I was unsure if it was a good idea to be in touch. The court demanded that my mother stay away from me, and I feared that if the judge found out that my mother was back in my life, I'd be in trouble. But taking the risk was worth it. When my mother wrote back, I felt like a piece of my broken heart was repaired and a part of my pain was wiped away.

In my letters since then, I've let my mother know that I am not angry at her for what I went through in foster care, but I am angry at her for not taking care of her responsibilities. I also let her know that I appreciate that she is now trying to make up for the bad

things she did. From my mom's letters, I've found out that she went through similar experiences to me. She wrote, "All my life I was being abused and raped also."

Another time she wrote: "I understand that it hurts to talk about the past. The courts have demanded that I face my fear. I've been sent to support groups for sexual abuse, and handling rejection and abandonment. All of us hate to talk about these painful problems." Reading her letters, I was glad that my mother could understand my pain growing up. I felt less alone knowing we'd been through similar things.

Writing to my mother also has given me a better insight into why she used to drink and become angry and violent when I was younger. Knowing her struggles, I felt I could forgive my mother and feel less hurt and anger, and that we could build a better bond.

My mother seems to feel sad about the way she parented me when I was a kid. She wrote: "I tried to be a good mother... When you grow up to be a mother try to be better than Joann Harrigan. Remember to set rules for your children. Hugs and kisses, Your mother."

Despite enduring a lot of violent behavior when I was living with my mom, I also experienced painful things living in foster care. Sometimes I feel I would have been better off with my mother than being placed in foster care. At least my mother has always loved me. She expresses that a lot in her letters.

I did go through a lot in the past with my mother, but I'm hopeful now that we're both growing together, getting to know one another and dealing with our problems head on.

# Adoption and Safe Families Act

## *No Second Chances?*

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### Introduction

**A**SFA established for the first time within federal policy the principle that maltreated children must be “the paramount concern” of the child protection system. At the same time, ASFA recognized that parents of abused children are seriously troubled and overwhelmingly plagued by mental illness, drug addiction, or criminal behaviors that lead to imprisonment. ASFA did not change the requirement that “reasonable efforts” be made to keep families together and the mandate that services be provided to these parents. However, this law unequivocally puts the child’s safety, permanency, and well-being above all other concerns of the foster care system.

### Child Abuse Has Lifelong Impacts

Research has shown that maltreatment has a lifelong impact on the abused child. The damage is irreversible, and affects the child’s socio-emotional, physical and intellectual growth. Attachment and bonding with safe, responsive adults are essential to healthy development. A child’s growth depends greatly upon receiving “good enough” parenting to successfully meet the increasingly complex developmental challenges that he or she will face at different ages.

According to mid-twentieth century theorists Erik Erikson and Jean Piaget, a sequence of “critical periods” characterizes child development. How children resolve successive challenges is based on their own interactions with and experience of the world. Children in responsive circumstances with a parent who provides a stable, caring environment grow up learning to trust, to feel loved, to be independent, to acquire language skills, and to think clearly and confidently. Conversely, children who are abused or neglected learn to mistrust, to feel unloved, to view the world as unpredictable and unsafe, and to struggle with cognitive concepts. There is no doubt that children recreate their world based on their own

experiences, and maltreated children are no different.

Recent neurobiological literature on brain development indicates that the brain is not “hard wired” at birth, but instead has a “plasticity” or “adaptability” that is highly dependent on environmental and parental input at specific “critical periods.” For example, evidence shows that the simple act of singing to a six-month-old baby significantly stimulates both the auditory and visual areas of the brain, whereas the lack of such stimulation can lead to delayed language development and compromise the brain’s ability to respond to auditory stimuli (Neville, 1995).

Abused and neglected children suffer from an impoverished environment due to the absence of a loving, responsive parent. There are strong correlations between maltreatment and a host of poor outcomes for children, including cognitive impairment, school failure, lack of self-control, behavioral disorders, and juvenile delinquency. Affected children run the risk of becoming the next generation of substance abusers, criminals, violent partners, and child abusers themselves (Ondersma 2007; National Survey of Child and Adolescent Well-Being [NSCAW], 2005; cited in Dwyer 2008.) Poor child outcomes are associated with a pervasive failure of services for parents—services that are either lacking, of low

quality, or of insufficient intensity to rehabilitate parents enough to safely return the child. At the same time, too many parents do not comply with service plan requirements, such as mandatory attendance at a parenting or anger management class.

There are no national, comprehensive figures on the number of children in foster care with substance-abusing, mentally ill, or incarcerated parents, mostly single mothers. Experts estimate that the proportion of foster children with substance-abusing parents ranges from about half to 80 percent of the total (Berrick et. al 2008). Research has shown that when parents abuse drugs or alcohol, they are more likely to neglect and to be physically abusive toward their children (Zuckerman 1994; CASA 1999).

Scant research exists on what services offered to these families are effective in rehabilitating a long-time addict or stabilizing a parent with mental illness, nor is it clear what policy to establish when a mother is sentenced to a prison term that will outlast her offspring's childhood. This is not to say that further research on prevention, intervention, and treatment for seriously troubled families should not be fully supported. But it is to suggest that at this point to over-rely on these strategies can put children's safety at risk. ASFA is not an anti-family piece of legislation, as some critics argue. Instead, it is a law based on the reality that research has yet to develop successful prevention, intervention or treatment models that will end the maltreatment of children, avert foster care placement, or ensure safe family reunification.

Some key questions arise: without evidence that services will keep children safe, how can determinations be made about the level of risk associated with making permanency plans for the child? How does a permanency plan for a child take into account the relapses that are often part of the process, according to substance-abuse treatment providers? What happens to the stability that children need in their lives during these periodic, to some degree predictable relapses? Some treatment programs call it a successful outcome when an addict has abstained from using drugs for six months. What happens to those children who have been reunited with their parents and siblings, but may then have to re-enter foster care in six months or so? ASFA was established to shorten the length of time that children were spending in foster care while waiting for anger management or parenting classes to make it safe to return home. ASFA promotes adoption as a better option for ensuring the safety, permanency, and well-being of many children lingering in foster care.

## Legislative History of ASFA

The origins of ASFA (Public Law 105-89) can be traced to the Republican "Contract with America" in 1994 and the "Adoption 2002" directive of President Bill Clinton in 1996. The "Contract" included four pro-adoption provisions, including one calling for a reduction in the length of time that foster children waited for permanency. Too many children suffered too many placements waiting for years for a family. Many children "aged out" of the system at 18, literally growing up with no more than "three hots and a cot." The "Adoption 2002" initiative pursued the goal of doubling the number of adoptions out of foster care by the year 2002.

The legislation was developed by a bipartisan group of members of Congress and their staff, as well as officials from the Clinton administration. Taking the lead on the House Committee on Ways and Means were Representatives Dave Camp (R-MI) and Barbara Kennelly (D-CT); and on the Senate Finance Committee, were Senators John D. Rockefeller, IV (D-WV), Mike DeWine (R-OH), John Chaffee (R-RI) and Charles E. Grassley (R-IA).

During the 104th and 105th Congresses, the House Committee on Ways and Means held eleven hearings focused on adoption. Witnesses painted a tragic portrait of the near doubling of children in care from roughly 1983 to 1993. Over the same period, adoptions out of foster care remained fairly level at around 15,000 children a year. Patrick T. Murphy testified that the foster care system was worse in 1995 than in 1980, in part because it too often assumes that "there is no such thing as a bad parent" (Murphy 1995, p. 120). Albert J. Solnit stated that the child welfare system should "respect the child's sense of time" and "develop a fast track" to permanency to avoid poor child outcomes (Solnit 1995, pp. 95-96). Richard Gelles asserted that the main goal of a child-centered welfare system should be to act as expeditiously as necessary to achieve permanency, so that children can have a nurturing relationship with an adult during the critical period of development (Gelles 1995, p. 60).

I also testified at the hearings that "child protection not family preservation or family reunification must be the guiding principle of any child welfare reform" (Bevan 1995, p. 108). Shortly afterward, I joined the House Ways and Means Committee staff to help set in motion the drafting of a bill that would meet children's developmental needs by putting child protection first, reducing the average length of time spent in

foster care, and increasing the number of adoptions out of foster care.

### Policy: What ASFA Did

For the first time in federal child welfare policy, deadlines were put into the statute to clearly establish that foster care was a temporary placement for children. The making of “reasonable efforts” to keep families together was clarified by requiring that such efforts must maintain the child’s health and safety as “the paramount concern.” This provision aimed at reducing length of stay for children in foster care and at expediting the movement of more children toward adoption. Toward this latter end, the statute mandated (with certain exceptions) a deadline for the termination of parental rights and placement into adoption if the child has been in care for 15 out of the past 22 months. Clarifying reasonable efforts and the 15/22 standard was geared toward respecting the child’s sense of time and recognizing the great harm that can be done to a child living in a setting designed to be temporary.

As a result of the enactment of ASFA, adoptions out of foster care went from 15,000 children in 1988 to a high of 53,000 children in 2002, maintaining nearly equally high numbers (51,000 to 52,000) over the following four years (Maza 2008). ASFA’s provisions dramatically doubled the number of children adopted out of foster care, changing the lives of tens of thousands of children (Maza 2008). Since the passage of ASFA, there has been a significant decline in the average time between removal of a child from his/her home and termination of parental rights (TPR), going from more than three years down to two years (Maza 2008). There has been an equally significant decline in the average time period between removal from the home and adoption, from more than four years to about three years (Maza 2008). Maza’s analysis of AFCARS data indicates that children who were removed before the age of seven account for most of the reduction in average waiting-time for adoption. On average, then, it is likely that abused children will spend one less year in a temporary placement, without a family and a place to call home.

These significant achievements, produced by ASFA’s requirements to impose a deadline on the length of time a child spends in the limbo of foster care and to provide incentives for states to move more children into adoptive families, represent life-altering “second chances” for children who have been abused

and cannot safely return to their families. The increase in adoption out of foster care means that tens of thousands of children will, as a result of ASFA, have the opportunity to form attachments to loving, responsive parents and grow up in stable and permanent families.

### Policy: What ASFA Did Not Do

While ASFA recognizes the child’s needs as overriding, it does not relieve states of the duty to provide services to parents. In fact, lack of service provision to parents can qualify as a “compelling reason” for the state not to move toward TPR and adoption. Under ASFA, states receive an illustrative list of the types of services that could meet this requirement, including 24-hour emergency caretaker and homemaker services, crisis counseling, home-based family services, and mental health, drug and alcohol abuse counseling (Greenbook 2004).

ASFA did not specifically address the effectiveness of treatment services for parental substance abuse. The congressional committees heard scant research findings as to how parental readiness to change might be determined, which factors were relevant to successful rehabilitation (e.g., length of drug use, specific drug use in question, ages of children involved), which treatment programs were most likely to work for which type of client, or whether rehabilitation can take place within a timeframe that respects the child’s sense of time.

ASFA did not specifically address parental mental health or imprisonment issues, since strategies for meeting these challenges were not available in the evidence-based research literature. ASFA does not require that termination of parental rights automatically take place after a child has been in care for 15 of the last 22 months. Rather, ASFA allows states to use three reasons they consider “compelling” for not moving to TPR: (1) if the child is living with kin; (2) if a determination is made that TPR is not in the “best interest of the child”; or (3) if timely family services were not provided.

ASFA does allow states to bypass reasonable efforts to preserve and reunify families when a parent has subjected the child to “aggravated circumstances” as defined by the state, which may include but are not limited to abandonment, torture, chronic abuse, and sexual abuse (Sec. 101 (a)(D)(i)). Efforts to preserve and reunify families are not required when the parent has committed the murder of another child of the parent; committed voluntary manslaughter of another child of the parent; attempted to commit the murder

or manslaughter of another child; or committed a felony assault that results in serious bodily injury to the child or another child of the parent. Such efforts may also be bypassed when the parental rights of the parent to a sibling have been terminated involuntarily (Sec. 101 (a) (D) (ii) (iii)). Interestingly, it appears that states are routinely using the “compelling reasons” provision for not moving to TPR, while the “aggravated circumstances” provision to expedite TPR is rarely invoked.

## Where Do We Go From Here?

The debate over ASFA continues. Members of Congress still want answers regarding how to reform what is supposed to be a system to protect children from harm. Is the financing of the child welfare system the problem? Is the system inequitable in guaranteeing room and board for the child but not drug rehabilitation or mental health services for the parent? Does the woeful lack of effective treatment for substance abusers and parents with mental illness or violent histories “cause” children to be “unnecessarily” removed and placed into adoption? Policymakers remain concerned for the instability of the foster care system, which is producing such poor outcomes for so many children.

Research on family support, family preservation, and family reunification programs since the enactment of ASFA suggests that these services alone are unlikely to be effective in protecting abused children from harm. An evaluation by Westat, Chapin Hall, and Bell Associates (2002) found these programs to be only “marginally beneficial” and argued that they should not be solely relied upon to keep families safely together and avoid foster care placement (Green Book 2004). Another study by Abt Associates (2001) cited the effectiveness of these programs as “mixed” (Green Book 2004). In the decade since passage of ASFA, there are still no better answers on how to protect children from harm. Thus, the best policy would seem to be expediting TPR and promoting adoption for more children in care who are not likely candidates to be safely returned to their families.

Research on effective family treatment modalities needs to continue and to be brought to the attention of policymakers. However, adoption must not be viewed as a last resort or an option resulting from the system’s failure to effectively preserve the biological family. This view will continue to condemn thousands of children to government care and lifelong damage. In circumstances where a sibling has already been vic-

tim to murder, manslaughter or seriously bodily harm, adoption ought to be the first option for the child removed for his or her own safety.

### *I do have several specific recommendations:*

- 1 Recalibrate the “15/22” rule based on the age of the child: the younger the child, the shorter the timeframe to move toward TPR and adoption.
- 2 Examine states’ use of the “compelling reasons” and “aggravated circumstances” provisions to ensure that the flexibility allowed is not being used to prevent or fail to expedite adoption when it is appropriate.
- 3 Value adoption as a better option for all children in foster care, since thousands of children are growing up without permanency for almost three years on average—a protracted wait that should take into account the child’s sense of time and critical periods of development.
- 4 Encourage voluntary relinquishment, recognizing that parenting is not for everyone; this option can be positive and life-altering for both the parent and the child.
- 5 Offer upfront high-quality, intensive services to parents who indicate they are ready to change and who are complying with treatment plan requirements.
- 6 Develop risk-assessment models based on empirical data to predict the level of risk attached to the range of decisions: to remove the child, not to remove the child, to return the child to the family.

## Conclusion

Maltreatment has a lifelong, deleterious, and irreversible impact on the child. The child has an inherent right to grow up free from abuse. Parental rights are not inalienable and children are not property. ASFA recognizes these facts by its policies of expediting the legal decisions surrounding the placement of a maltreated child. Adoption is a “second chance” for the child to grow up healthy and emotionally stable.

Researchers must be funded to develop effective prevention, intervention, and treatment services to demonstrate to policymakers and providers-at-large



that there are some substance abusers, parents with a mental illness, and incarcerated parents who have the will and determination to put their child ahead of their own needs. These parents can change, given their own second chances.

ASFA is a highly successful law, meeting the expectations of both the “Contract with America” and the “Adoption 2002” directive. With its provisions that led to Child and Family Service Reviews—the ongoing evaluation of state foster care programs in achieving permanency, safety, and well-being—there is every reason to be optimistic about identifying what is working or not working to make children “the paramount concern” of the system.

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# “Twenty” Years with the Adoption and Safe Families Act

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For those of us who worked in child welfare in the state of Ohio, the requirements of the Adoption and Safe Families Act of 1997 (ASFA), Public Law 105-89, 105th Cong., 1st sess. (2007), have been in place for almost twenty years. In fact, Ohio’s Senate Bill 89 was passed by the legislature and signed by the governor in 1988—a decade prior to ASFA. Drafted by several family court judges and supported by many public child welfare agencies, it was designed (like its federal successor) to make the promise of Public Law 96-272 (the Adoption Assistance and Child Welfare Act of 1980) into a reality. At the time, that earlier legislation did not appear to have made a dent in children’s length of stay in the system, nor did it appear to have led to more and quicker adoptions. Ironically, Chapin Hall’s research into key statewide data, which only began to appear in the mid-90’s, actually found that a positive long-term trend regarding key ASFA outcomes was already under way, especially regarding adoption, by the time ASFA had passed.

Ohio Senate Bill 89 called upon the family courts to act much more quickly and decisively in child welfare cases. It required courts to hold emergency detention hearings within 72 hours of the child’s removal; it mandated that fact-finding hearings be held within thirty days of removal; it required dispositional hearings be held within sixty days, if they were not held immediately after fact-finding. Tough requirements indeed. It is true that family courts were allowed thirty-day extensions for each of these hearings, for cause. Permanency hearings were required every ninety days after removal. But perhaps the most serious requirement was for temporary custody to automatically sunset after one year. At that point, the court’s options were termination of parental rights or the child’s return home.

As those familiar with child welfare understand, SB 89 called for major changes in how child protection agencies made their cases in court and how they developed and implemented their case plans. At the end of the line of any delays stood a *sunset provision*—if termination of parental rights was not being sought

at the end of a year, with a few exceptions, return to the parents was automatic. The onus for timely action and clear evidence of either success or failure was squarely on the public agency and the family court. Failure to get the work done led only to stark choices.

Now it is true that lengthy delays in a case being caused by adjournments were still possible until such time as the Ohio Supreme Court issued rules on them. It is also true that judges in one of the state’s largest jurisdictions often simply ignored the new law. But what was most startling about the implementation of SB 89 was how smoothly it happened. As in a number of other states after ASFA’s passage, because these major changes were now the law, most of us working in child welfare and the family courts in Ohio simply found ways to meet the new requirements. In addition, unlike ASFA, SB 89 saw very few advocates or child welfare agency representatives calling for repeal or insisting that the new law created unequal treatment or legal orphans, or fulfilled any other of the dire predictions that followed the Federal

legislation. The proof is clear: Ohio's family courts now hold hearings much more expeditiously, and both parents and children can have a more realistic expectation that cases will not drag on for years.

The Ohio law required that parents' rights to raise their children be given first consideration, except in certain defined cases, and that relative care and family foster care were to take precedence over group care. Permanent, safe return to family was preferred; if that were not possible, adoption was preferred. Unlike ASFA, there was no monetary incentive for placement of children in adoptive homes.

If a much tougher law met with little opposition in Ohio, what happened with ASFA? The reaction to passage of ASFA, I would argue, has been different. Driven by partisan fights in the Congress, ASFA from the beginning seemed *to many in the field* to be the handiwork of Republican ideologues who disparaged the families (overrepresented by families of color) caught up in the child protection system. ASFA was also seen as a triumph for those advocates—often upper-middle class, white academics—who attacked the system as overlooking the needs of children while attending to the needs of their parents. ASFA was further linked to the MultiEthnic Placement Act (MEPA) and the InterEthnic Adoption Provisions (IEPA) legislation passed by the same congresspersons, calling for an end to racially preferential adoptive placements (i.e., placing African American children in African American families).

This background led, I believe, to attacks on the law itself from some advocates, from some leaders in communities of color, and most strongly from the child welfare system's leaders, middle-managers, and frontline staff. Certainly, some of this reaction was self-serving—ASFA required public agencies foremost to take more timely action than they were used to. (Family Courts were required to act differently as well, but only public child welfare agencies faced sanctions if court orders were not correct and timely.)

Then there was crack cocaine. It is essential to understanding the child welfare system's reaction to ASFA to grasp the recent unprecedented impact that the AIDS and crack cocaine epidemics brought to this system. In New York City, for example, the number of children in foster care doubled in a very few years. Child welfare, police, and city medical institutions were swamped by families—especially families of color—in unparalleled crisis. *It is impossible to overestimate the impact* of crack and AIDS on urban child welfare systems already understaffed in normal times.

Then along came these academics, advocates, and congressional "ideologues" to tell the system's leaders that they had failed and the federal government needed to intercede. The feelings provoked by this crisis and this response, I believe, overwhelmed the ability of some of us to see the crying need for permanency for children drifting in foster care. They also led to a great deal of active and passive resistance to implementation of ASFA at all levels of public child welfare.

Based on my experience around the country, and after much of the finger-pointing and ideological battles have subsided, I would propose that ASFA's impact on child welfare systems has been the following:

- ▷ First, the system's attention to timely action has been increased. Do our workers and managers understand better the terrible price children pay for organizations' unnecessary delays? I hope so. But at least our attention has been more sharply focused on organizational timeliness.
- ▷ Next, many of the children who had been placed in foster care with a single family and then forgotten were in fact adopted. When it came to these children, our systems had gone on to deal with other crises or were taking years to get the paperwork in order. After ASFA these cases were more often cleaned out. A good outcome, surely, though much delayed.
- ▷ In addition, adoption has gotten much more attention from the public, from the child welfare agencies, and from the family courts. Even teens in care are finally getting the attention they deserve. But in many jurisdictions, after the old cases with children already placed in stable foster homes were taken care of, there has been a falling off in the awareness first raised by ASFA.
- ▷ Furthermore, we have not seen the huge increase in "legal orphans" some advocates predicted. The incredible demand placed on child welfare by the crack epidemic led to major increases in children in temporary care; as they age, these children are now moving out of the system, and foster care numbers are down. Did the system do right by these kids? Sometime yes; too often, no. Did ASFA cause or exacerbate these issues? I haven't seen it. In New York City in the early 90's, for example, very large numbers of children were placed with relatives, who were then poorly served by the agency. These are the

children who tended to sit in temporary care for years. That was our fault as a system, but ASFA had little or no effect on our poor performance.

- ▷ In addition, ASFA has helped some of the country’s family courts (in Los Angeles, Pittsburgh, Chicago, San Jose, and Louisville, to name but a few venues) to take up their appropriate role as protectors of the parents’ and children’s rights in child welfare cases—especially in terms of timely action as construed by “a child’s sense of time.” A number of those courts were onto this issue before ASFA, but the change in the law strengthened their hand. ASFA has been unable to induce other family courts to see behind the legal requirements (a permanency hearing) to the needs of the children and the rights of their parents. It is good that judges are making formal judgments to ensure that minimum efforts to keep children home safely have been undertaken. But—often because of increased dockets—that has not always led to real attention being paid to the children or their families.

Which brings me to a final review of my experience: All of the legal changes made in our child welfare systems, all of the better tracking of timely decisions and actions, all of the organizational overhauls, all of the improved (but still obsolete) data systems, all of the privatization efforts undertaken—let’s face it—have in too many jurisdictions led to perhaps important but only *marginal improvements* in how families and children are treated by the system. The major work lies yet ahead of us (or most of us: there has been real improvement in some communities). Real practice change has not become the norm. Practice has stagnated, and no legislation will change that until child welfare systems:

- 1 Hire the best people;
- 2 Train them to do this most challenging work;
- 3 Supervise them with our very best, most senior staff;
- 4 Lead them with managers whose focus is on the needs of the children, not the organization;
- 5 Pay them all enough to keep them, and finally;
- 6 Provide our agencies with leaders who know how to do this challenging work as well as how to manage a large system.

Until then we will continue to achieve outcomes that none of us are proud of.

Finally, academia, advocates, experts, and policy-makers need to learn the lesson some of us in the field now know. We in this country spend far too much of our time and energy arguing about legislation, politics, fiscal issues, systemic changes, privatization, etc. In fact, we *know* how to do good child welfare but as communities do not have the political will to carry through on the pressing tasks above. Only when we accept this most difficult challenge will we make lasting systemic change. That’s the challenge we should be undertaking.

## Judicial Viewpoints on ASFA

**Ernestine S. Gray**

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When I took the bench in November 1984, the Adoption Assistance and Child Welfare Act, Public Law 96-272, was the law of the land. And even though the law had been on the books since 1980, child welfare agencies and courts were still struggling with what it meant and how to implement its provisions. Congress had passed the Act to address many problems discovered in the child welfare system that were preventing the best results for children in foster care. Of particular concern was “foster care drift”—the phenomenon of children being left in limbo for long periods during which they were placed multiple times with no sense of permanence. Also of general concern were the many children coming into the foster care system and the impact upon families. To improve the system, Public Law 96-272 had several goals and objectives, chiefly to protect the autonomy of the family, to focus on placement and reunification, and to encourage adoption when in the child’s best interest.

In addition, Public Law 96-272 created an adoption assistance program that outlined major roles for the court system. Courts were required to review child welfare cases on a regular basis (every six months) to determine what was in the child’s best interest—whether the child should return home, be adopted, or continue in foster care within eighteen months after initial placement. Most importantly, the court was to make a determination as to whether the state agency had made “reasonable efforts” to prevent removal of a child from the home or to return the child as soon as possible after a removal. Public Law 96-272 initiated changes that led to some improvements in foster care trends; however, there were still problems in the child welfare system.

From many perspectives, one central problem involved defining “reasonable efforts.” This national legislation left to states the task of developing a definition, which was then to be approved by DHHS. The net result was that DHHS did not provide meaningful guidance to individual social workers, child welfare agencies, or juvenile court judges charged with deciding

whether reasonable efforts had been made. A second major failing was a lack of recognition of the important role played by primary prevention and a corresponding lack of commitment to funding it sufficiently.

Against this backdrop, we chose to act somewhat like the town represented in the poem “A Fence or an Ambulance (A Poetic Case for the Value of Prevention),” by Joseph Malins (1895). The poem recounts a community’s concern about residents falling off a cliff into the valley below. There arose a debate as to whether they should build a protective fence at the edge of the cliff or place an ambulance in the valley to pick up the fallen bodies. Two passages remind me of our own situation as it was under Public Law 96-272; the first is when the poem’s old sage says: “It’s a marvel to me that people give far more attention to repairing results than stopping the cause, when they’d much better aim at prevention... If the cliff we will fence, we might dispense with the ambulance down in the valley”; and the second reads: “To rescue the fallen is good, but ’tis best to prevent other people from falling.” Rather than fix the existing

law by adequately defining reasonable efforts and promoting primary prevention, and rather than tackle the real causes of child abuse and neglect—namely, poverty, parent mental health needs, alcohol and substance abuse of parents, and domestic violence—another piece of legislation was passed that sought to deal more effectively with children who suffered abuse and neglect. We were still placing “the ambulance down in the valley.”

This new legislation, the Adoption and Safe Families Act of 1997 (ASFA), Public Law 105-89, 105th Cong. 1st session (1997), was signed by President Clinton in November 1997. ASFA’s purpose was to provide for children’s health, safety, and well-being, to decrease the time that children spend in foster care, and to increase the use of adoption as a permanency option for children in foster care. ASFA also required a more active role of the court in processing and supervising abuse and neglect cases. Courts must conduct more frequent review hearings and make certain findings at designated times during the life of a case.

Over the course of the last twelve years, I have had the opportunity to discuss with many colleagues the pros and cons of this significant legislation. Generally, says one judge, “I think ASFA has led to a sea-change in the court community, apart from what’s done in child welfare. I think judges are far more attuned to their responsibilities and have a far greater understanding and appreciation for urgency and accountability in these cases than ever before.”<sup>1</sup> I couldn’t agree more. Perhaps this “sea-change” is a result of the Child and Family Service Reviews and the concern that states could lose eligibility for funding under Titles IV-B and IV-E of the Social Security Act.

*Specifically, judges believe the following are positive attributes or outcomes of ASFA:*

- ▷ more reunifications with parents or quicker placements with relatives;
- ▷ greater awareness of all parties (social workers, lawyers, parents, etc.) about the need to engage in the treatment plan quickly;
- ▷ more diligence in the system’s providing appropriate services and visitation up front, giving parents a better opportunity and a longer timeframe to address issues;

- ▷ more concerted efforts to find fathers and family members on both the maternal and the paternal side, as well as kin who may be placement options for the children in the short- or long-term;
- ▷ increased recognition of the unique needs of children in foster care, with safety, permanency, and well-being in the forefront;
- ▷ mandated concurrent planning (simultaneous efforts toward reunification and adoption or some other permanent arrangement).

*On the other hand, judges have concerns about the possible negative impacts of ASFA:*

- ▷ insufficient time (12 months) for a drug-abusing parent to kick an addiction and lack of available treatment for substance-abusing and mentally ill parents;
- ▷ more failed adoptions as a result of insufficient efforts to stabilize or support placements;
- ▷ creation of so-called legal orphans (the children continue to be wards of the state until they reach the age of majority);
- ▷ lack of clarity about when exceptions can appropriately be made to terminating parental rights (e.g., exceptions for parental mental illness or incarceration);
- ▷ over representation of children of color in the child welfare system.

From my perspective, this last concern is perhaps the most troubling aspect of the foster care system. Research has shown that “Nationally, African-American children made up less than fifteen percent of the overall child population in the 2000 census, but that they represented twenty-seven percent of the children who entered foster care during the fiscal year 2004, and they represented thirty-four percent of the children remaining in foster care at the end of that year” (GAO Report to the Chairman, Committee on the Ways and Means, House of Representatives, July 2007). Not only are these children disproportionately overrepresented in foster care, but once in the foster care system, children of color tend to receive fewer services, stay in care longer, and generally have worse outcomes than white children.<sup>2</sup>

## Conclusion

While ASFA has led to many positive results in the child welfare field, most judges would recommend the following, as we keep trying to improve the system that deals with vulnerable children and their families:

- ▷ continue a sense of urgency, reflected in distinct timelines, through processes of termination and adoption;
- ▷ expand the timeframe of “15 out of the last 22 months,” which is too stringent;
- ▷ do not terminate parental rights if there is no prospective adoptive parent in view;
- ▷ permit parents whose rights have been terminated to have those rights reinstated, if deemed appropriate, within a certain time period (if the child has not otherwise achieved permanency);
- ▷ consider race as a factor when placing children for adoption (e.g., by applying provisions similar to those in the Indian Child Welfare Act (ICWA) to African American children);
- ▷ vigorously recruit families whose background reflects that of children waiting to be adopted and who will adopt older children;
- ▷ promote placements with caring relatives through adoption or subsidized guardianship;
- ▷ ensure timely provision, by the state, of the services necessary for the safe return of the child to the family;
- ▷ renew the commitment to primary prevention through adequate funding;
- ▷ develop appropriate permanency options for children for whom neither returning home nor adoption is a viable option;
- ▷ consider more carefully the exceptions to filing a termination petition.

I believe that ASFA can have an even greater impact if we determine how to fund prevention, put services up front, and ensure that all stakeholders are adequately trained. Also needed are more social workers and lawyers with smaller case loads, so that agencies and the courts can work together and make every effort to eradicate racial disproportionality.

## Footnotes

- 1 Judge Susan B. Carbon, Grafton Court Family Division, New Hampshire.
- 2 Child Welfare League of America, National Data Analysis System. [https://ndas.cwla.org/research\\_info/specialtopic1a.asp](https://ndas.cwla.org/research_info/specialtopic1a.asp); [http://www.casey.org/NR/rdonlyres/053CD4C6-300D-402A-8C18-7E476C929D2A/413/0226\\_CC\\_BobHillPaper\\_FINAL.pdf](http://www.casey.org/NR/rdonlyres/053CD4C6-300D-402A-8C18-7E476C929D2A/413/0226_CC_BobHillPaper_FINAL.pdf).

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Policy Briefs on the Adoption  
and Safe Families Act (ASFA)



# Adoption from Foster Care

## *A Chronicle of the Years After ASFA*

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That the Adoption and Safe Families Act (ASFA) Public Law 105-89, 105th Cong., 1st sess. (1997) aimed to make a significant impact on adoption is heralded in its title. The law sought to correct problems that had become apparent in implementing the Adoption Assistance and Child Welfare Act, Public Law 96-272, as well as to build on successful state initiatives and on President Clinton's Adoption 2002 initiative to double adoptions from foster care. This paper explores ASFA's intended and unintended consequences, including successes, partial successes, ongoing concerns, and new issues that were not contemplated at the time of the law's passage. The paper argues that with the substantial changes that followed from ASFA, and the gains toward increasing adoptions, we have entered a "post-permanency" era in which challenges relating to post-adoption and post-guardianship services require much greater attention.

### *Background: Key provisions of ASFA*

As indicated in the framework paper, ASFA intended to encourage more timely adoptions by shortening the time before the expectation for making a permanent plan other than reunification—and preferably for adoption—was to kick in. This objective was partially achieved by getting states to recognize that *concurrent planning* was a legal practice that did not, per se, infringe on parent's rights to reasonable reunification efforts. ASFA further underscored the primacy of safety over permanency by requiring states to acknowledge that adoptions do not have to wait for failed reunifications, and that reunification efforts could be bypassed in favor of a more direct path to adoption when circumstances predicted an unsafe reunification.

ASFA included various mechanisms to implement the Minnesota-founded practice of freeing children for adoption—so they would be available for child-specific recruitment—even if there were no adoptive parent identified and waiting at the time of the

termination. This provision of ASFA aimed to spur interstate adoptions and was expected, in turn, to mitigate the types of harm that can befall children who have no legal parent by broadening the pool of potential adoptive parents beyond constrained localities to the entire country.

Another key element of ASFA involved the transfer and extension of state adoption bonuses—for increasing the number of children placed into adoptive homes—from the Adoption 2002 initiative into federal law (a provision just renewed and further expanded in 2008). Receiving this carrot hinged on CFSR (Child and Family Services Reviews) requirements that states meet performance targets for adoption—in this case, a quite inadequate singular measure of the percentage of children who exit foster care annually to a finalized adoption within twenty-four months of their latest removal from home. These quantitative indicators are complemented by case record reviews and "softer" markers of agency efforts to achieve permanency.

## What Has Followed Upon Enactment of ASFA

### *1. Changes in adoption and related outcomes for children*

The trajectory of change in the area of adoption had begun well before ASFA, with states coming to realize that too many children were accumulating in a status called “long-term foster care.” New York, California, and other large states had major adoption initiatives underway when ASFA passed, and many more states had launched similar reform efforts. As such, disentangling the specific effects of ASFA is impossible. The best we can do is to describe what has followed ASFA’s passage by studying some key indicators about which data have been gathered (recognizing that ASFA did not adequately fund evaluation).

The number of adoptions from foster care has certainly grown since ASFA. Although a good fund of national data has only recently emerged, the Adoption and Foster Care Analysis and Reporting System (AFCARS) indicates a doubling of the number of children adopted from foster care from 25,693 in 1995 to 52,468 in 2004. This growth appears to have been leveling off since 2002. Wulczyn, Hislop, and Chen (2006) show that the likelihood of adoption increased in the 1990s and that children in care when ASFA was implemented appear to move more quickly toward adoption. Overall, about twenty-five percent of children who entered foster care during the 1990s and after ASFA are likely to get adopted eventually. To judge by this research, among children placed into foster care at less than one year of age, thirty-eight percent will be adopted. This rate of adoption will drop by half for children placed in foster care between the ages of 1 and 5, and then will be cut in half again for children placed between the ages of 6 and 12. African American children are the most likely to leave foster care to adoption (and also the most likely to be represented in that infant group). The study’s findings on the consistency of adoption rates before and after ASFA suggest that the law may not have been pivotal to the growth in adoptions but may have helped sustain earlier state initiatives.

Other evidence hints at a possible “slowdown” in the reunification process following ASFA (Wulczyn, Hislop, & Chen, 2006), at least among children who are in care for the first time. Although ASFA was designed to reduce the number of children who were not reunified but were in “long-term foster care” or

had a permanent plan of independent living, it is possible that some children now being adopted come from the group who would have been reunified before ASFA, if given more time to do so.

### ■ Child and Family Services Reviews and adoption indicators

The federal report on child welfare performance in 2005 indicates that achieving adoptions in a timely manner remains a significant challenge for almost all states, at least as measured by CFSR indicators (US DHHS, n.d.). Only a small percentage of children who had been in foster care for seventeen months or longer at the start of the fiscal year were adopted by year’s end. Additionally, in the first six months of the year only about one in four of the children in foster care for seventeen months or longer became legally free for adoption.

Very few adoptions, only 3.6 percent, occurred within less than twelve months from the child’s entry into foster care. All states with the exception of Colorado, Iowa, and Utah were unable to finalize fifty percent of their adoptions within twenty-four months. There is no clear reason why these three states were more successful at timely adoptions, although Colorado’s law expediting permanency for very young children may be partly responsible (Potter & Klein-Rothschild, 2002). More positively, sixty-three percent of states improved in the percentage of adoptions occurring in less than twenty-four months from entry into care. In the United States as a whole, the average length of time that a child spends in foster care before adoption is nearly three years (thirty-two months).

### ■ More TPR than adoptions

ASFA’s emphasis on terminating parental rights (TPR) even before an adopting family has been found may be enlarging the group of children who have no parental ties and are also not going to be adopted. Expressed as a nationwide annual average, in the last few years there have been about 70,000 instances of TPR but only about 50,000 adoptions from foster care. Although children affected by a TPR decision may not be adopted within that same year, this gap is not closing with time. There is a growing awareness of the hardships facing youth who eventually emancipate and do not have any parental ties.

The strong possibility that the push for adoptions is competing with reunification, coupled with

the sizable proportion of children now being adopted by relatives, argues for more exploration of options for reversing TPR for families in which a reunification becomes more feasible following adoption (e.g., if a youth requests such a reversal and the birth parent is now functioning well while the relative has failing health). Given the variance from the current framework in which TPR can be “reversed” only with a subsequent adoption, such a redirection of policy would require considerable debate to clarify its optimal use and delve into possible unintended consequences. Several states (e.g., California) have begun such efforts.

## 2. *Changes in Practice and Policy*

### ■ Reunification bypass

Even before ASFA, many states had developed frameworks for foregoing reunification efforts with some families—e.g., cases involving egregious acts against other children in the same home—but ASFA’s requirement that states adopt the federal reunification exceptions spurred on this process. Berrick, Choi, D’Andrade and Frame (2008) have examined the uses of reunification bypass in the northern part of California, a state that pioneered a reunification bypass mechanism and lists fifteen conditions that exempt child welfare services from providing reasonable efforts. A review of case records indicated that a reunification exception could have been ordered in about thirty-eight percent of cases studied across the counties. Variations in practice by venue were notable. In some counties as many as twenty percent of cases involved a bypass recommendation, while in others the proportion was less than ten percent. When researchers examined cases that met conditions for exception but were nonetheless given reunification services, they found that more than forty percent of affected families were successfully reunified. Although this percentage was lower than for cases with no exception indicators, the success rate suggests a need for greater research on predictors for reunification so that exception policies do not become an undue barrier to reunification.

### ■ Services reconfigured to meet timelines

A benefit of the greater pressure for timely decision making under ASFA is that services are gradually being reconfigured to more rapidly pursue reasonable efforts. An American Bar Association study (Smith, Elstein, & Klain 2005) shows that some courts and child welfare agencies have responded to

ASFA’s accelerated timeframes by developing special programs for substance-abusing parents. New practices include speedier assessments, early and frequent case reviews, monitoring of court orders, accountability for following case plans, and provision of a range of services for parents and children. Yet no differences in treatment completion were found, indicating that these improvements did not often expedite a reunification.

### ■ Concurrent planning

One featured element of ASFA when it became law, concurrent planning, has seen little attention since. A recent study centered on Northern California found that concurrent planning activities had increased dramatically but that implementation is quite uneven across counties (D’Andrade, Frame, & Berrick 2006). Child welfare workers, parents, and foster parents all view concurrent planning as an effective permanency strategy for children, but there is a need for more training, communication, support, and services. The qualitative findings in the California study also agree with those from New York State showing that child welfare experts and foster parents perceive a lack of full disclosure of pertinent information. Child welfare workers also cited difficulties in fulfilling their role in pursuing concurrent permanency plans. Parents and foster parents reported tension with caseworkers regarding the development of permanency plans versus efforts toward reunification or long-term foster care, respectively.

The CFSR’s confirm that implementation in this area is not strong. Only nine states have formal concurrent planning processes and “a number of other states indicate that concurrent planning is being implemented to varying degrees,” hardly a ringing endorsement of the practice (Child Welfare Information Gateway 2005). Perhaps the concept has been thought of too broadly as applying to all children, even though relatively fewer older children benefited from having an adoption worker. Certainly, it has not been adequately funded, as no changes were made in Title IV-E to pay for concurrent child welfare worker efforts in addressing a single case.

## The Post-Permanency Era

As a result of the child welfare reforms of the last twenty-eight years, including ASFA, there are now nearly as many children in post-foster care adoptive

homes as there are in foster care. The proportion of the federal budget devoted to foster care is decreasing while the proportion devoted to adoption subsidies is increasing. In 2007, twice as many children received federally supported adoption subsidies (390,200 per month on average) as received federally supported foster care (about 211,900 per month) (Stolzsfus 2008). Although on a per-child basis adoption is much less expensive than long-term foster care (Barth, Lee, Wildfire, & Guo 2006), the growth in expenditures for subsidies has been startling. Nationwide, adoption assistance payments rose from \$442,000 in 1981 to an estimated \$100 million in 1993 to more than \$2 billion in 2007 (U.S. Senate, 1990; DHHS, 2007). This expansion has led to some ill-conceived and ill-fated efforts to roll back subsidies already given to families—such as an attempt in Missouri that was ruled unconstitutional by a federal court (*E.C., J.L., J.C., T.G., B.G., & A.G. v. Sherman*, 2006 U.S. Dist. LEXIS 27506 [May 9, 2006]). The U.S. is clearly well into the post-permanency era when the growth in subsidies signals such a shift in spending toward adoption. Yet for all that, post-adoption services as such remain both under-funded and poorly designed and coordinated (Barth & Miller 2004).

### *Adverse Adoption Outcomes: Disruption, Displacement, and Dissolution*

A concern about the growth in adoptions is that some placements are poorly done, which may result in a greater number of adverse outcomes. Adoption disruption means the breakdown of a planned placement, so that the child's legal ties to the adopting family are never legalized (although "disruption" is often used to cover *all* adoptions from foster care that go awry). Displacements occur when the adoptive family stays legally connected to the child, but the child is not in the home (e.g., has run away or is in residential care). Dissolution refers to instances in which the courts have legally terminated the adoptive placement. Research on these various outcomes is sparse, yet there is concern that they appear to be on the rise. However, the best evidence comes from Illinois, where the risk of disruption of adoptions from foster care seems to have lessened after passage of ASFA. This study of almost 16,000 children in foster care during the three years before and the three years after ASFA showed that the risk of disruption decreased by eleven percent after 1997 (Smith, Howard, Garnier, & Ryan, 2006). Estimates from less well-designed studies in North Carolina and

California suggest dissolution rates of about four percent over the first 3-6 years after the adoption, quite consistent with other work.

Despite the lack of evidence that growth in the rate of disruptions matches or exceeds growth in the rate of adoptions, concerns about adoption outcomes understandably persist. The National Survey of Child and Adolescent Well-Being clearly reveals that children in foster care—some of whom will later be adopted—have high rates of behavior problems that will predictably continue after adoption (Burns et al. 2004). Studies of adoption preservation programs indicate that high levels of family distress grow out of poor school performance, conflict in the home, and behavioral difficulties (Smith & Howard 1999). Residential care providers report that they are providing care to many adopted children, and some of the recent controversy about states' failure to provide residential care without requiring parents to relinquish legal custody was set off by adoptive parents who argued that this arrangement was a betrayal of their social compact with child welfare agencies (Gilberti & Schizinger 2000).

Kin make up a growing proportion of adoptive families. One impetus was the successful work conducted as part of the Illinois kinship guardianship waiver, which found many more kin ready to adopt than expected (Testa 2004). In this trend, we may see more adoptive parents who are not significant users of mental health services, as is the case with kinship caregivers of children in foster care, who also use mental health services infrequently (Leslie et al. 2000). Likewise, emerging evidence suggests that behavioral problems arising in kinship care may be fewer than in non-kin foster care (Rubin, et al. 2008). We can expect that this contrast would also hold for kinship adoption, which could mean that the demand for post-adoption services would not rise as rapidly as the number of adoptions might suggest.

To date there has been virtually no federal investment in developing or testing post-adoption services. A few studies have been done but none are rigorous or persuasive. The longest running and best evaluated effort is in Illinois (Smith & Howard 1999), which has recently added educational advocates to the usual clinical services because of the conviction that school matters create the greatest stress for adoptive families. Although the evidentiary base is still developing, the gist of the work is that these services must be sustained in order to help families address problems that arise in the education of their children.

## Future Directions

### ■ Improvements in monitoring and data

The CFSR process and adoption indicators need revision to better describe adoption processes. The new indicators are helpful insofar as they begin to consider the post-TPR experience but should, like all indicators, be broken down by the age at which children enter foster care, a crucial predictor of adoption. States who accept many older children into foster care under child welfare auspices because they need supervision are hopelessly disadvantaged by the current CFSR outcome scheme. The target of getting adoptions completed within two years limits success on that indicator for states with very efficient court processes or laws that have shortened the permanency timeline for younger children (e.g., Colorado). On the other hand, states working diligently to find adoptive parents for older children who have been in care for many years are the least likely to succeed on this indicator.

Data should also be gathered on reasons for reunification bypasses to help understand the conditions under which no reunification efforts are being made. More centrally, the reliance on exit indicators seriously hampers the utility of CFSR adoption indicators. Finally, there is a need to develop an overall measure of “time to permanency” that includes all possible courses that a case may take. A child welfare program that balances the goals of reunification and adoption should also have balanced indicators.

### ■ Termination of Parental Rights

The growing number of children who leave foster care without any parental ties needs to be more seriously addressed through program development. We should also be exploring options for reversing TPR for older youth or for young adults and parents who are ready to resume their legal relationship, especially if the numbers grow in this area, too. This possible trend should at least be monitored in the follow-up surveys mandated by the Chafee Foster Care Independence Act Public Law 106-169.

### ■ Subsidies

Adoption subsidies are important for encouraging adoption of foster children, yet growing subsidies also raise budgetary concerns. Subsidies were intended to ensure that families did not suffer a fiscal disincentive to adopt, not as a payment to those

who would not otherwise adopt. One way to reduce costs without undermining families with older troubled children who need to pay for special services is to curtail the use of subsidies for very young children—up through age 3, for example—for whom there is no established risk. Children should remain eligible for a later subsidy, but these subsidies may not be needed, from the outset, for families to adopt. This is how the program originally operated in most states; the extraordinarily high proportion of children adopted with a subsidy is relatively new. Programs will improve with a more focused use of resources to support those children and youth with the most post-adoption needs.

Subsidies should be based on a livable foster care rate and allowed to be as high as the foster care rate, or in some cases higher (e.g., when a child needs extra home health care that is not otherwise reimbursable). At the same time, subsidies should not reach the point of becoming an incentive for families to adopt solely to address existing financial problems.

Further, the receipt of subsidies should be tied to ongoing review of the care of adopted children. Subsidy renewal should require evidence that school-aged children are enrolled. Federal support should go toward improving subsidy management information systems to trigger notices to post-adoption service units when families request subsidy changes, move on a frequent basis, or otherwise signal a need for services (Barth et al. 2003).

### ■ Post-adoption services

The evidence that post-adoption services are needed is much stronger than the evidence for their efficacy. This imbalance needs correcting through greater attention to adoption services research. The burden for providing post-adoption services falls primarily on the states. Although in theory states can use their adoption bonuses to pay for post-adoption services, these modest bonuses often go toward paying for adoption agencies to recruit, conduct home studies on families, and complete legal requirements (Maza 2000). Another source of support for post-adoption services must be found to generate the much-needed expansion of evidence-based interventions. Otherwise, the mounting number of children in the post-adoption status will yield a mounting number of families under substantial strain.

## ■ Title IV-E waivers and adoption services research

It is critical to developing a stronger adoption program to resume Title IV-E waivers and to fund field-initiated adoption services research. Almost all efforts under the auspices of ASFA are based on limited information from a few states with a weak evidentiary base. That base will not be substantially improved without options for trying new ways of financing and delivering services and a renewed commitment to testing the best ideas that the field offers.

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# The Impact of ASFA on Family Connections for Children

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## The Importance of Family Connections for Children

More than 800,000 children are in foster care each year—about 513,000 on a single day. Some 360,000 of these more than half a million children reside in foster family homes, with just over a third of these children in relative foster homes; others are in group care settings of various sizes. On average, children are in foster care for almost two and a half years. Many children, especially those who spend more than two years in care, experience multiple placements. More than 180,000 have been in care for two years or longer without being connected to a permanent family.<sup>1</sup>

The importance of family connections to children is widely recognized, and much is known about the benefits of family connections and parent-child interactions, especially from the child development literature. Nonetheless, hundreds of thousands of children across the United States do not have permanent family connections, including many of the one-half million plus children in foster care at any one time. Children without families lack comfort and security. Family connections offer children a sense of well-being and belonging that encompasses their racial, ethnic and cultural heritage; a model for their own relationships when they become adults; and a personal safety net.

The Adoption and Safe Families Act of 1997 (ASFA)<sup>2</sup> recognized the importance of family connections in its emphasis on permanent families for children. During the Act's consideration, members of Congress voiced concerns about children's long stays in foster care, the large numbers of children who languished in foster care without permanent families while waiting to be adopted, and the need to expedite decision making for children. ASFA highlighted the importance of permanent families for children and

the kinds of harm children face when denied that permanence and stability. In so doing, the Act renewed a congressional commitment from almost two decades earlier that foster care, when necessary, should be only a temporary alternative for children who are abused and neglected.

At the time ASFA was being considered, many interpreted permanence as synonymous with adoption—adoption being the most familiar permanency option—even though permanence with birth families and with other relatives were also options recognized in federal law. This paper focuses on the impact of ASFA on family connections for children beyond adoption, looking first at connections to extended family and also at reunification. The paper begins with a discussion of the benefits of these family connections, the corresponding challenges in policy and practice, and the ways in which ASFA addressed these challenges. It then describes the types of activities ASFA has spurred in various states and in Congress, as well as the steps that still need to be taken at the federal policy level to further promote family connections as a means of improving outcomes for children and their families.

### *A Look at the Benefits of Family Connections*

To gauge the importance of family connections to children, it is helpful to review what is known about the benefits of living with extended families or of staying connected or reconnecting with birth families. While research on reunification is limited and mixed in its findings, more is known about the benefits to children living with relatives in foster care.

The North Carolina Department of Health and Human Services, through its Division of Social Services, has operated a Family Reunification Services Program since 1999, and recent research on its impact is encouraging. Family reunification programs in North Carolina vary in terms of the services they provide, but all must meet established state standards. Services are provided for no more than twelve months within the fifteen-month period after a child enters foster care. Caseloads are small and services responsive to families' needs. Most relevant to assessing outcomes, the state uses the North Carolina Family Assessment Scale for Reunification to measure family functioning at both the beginning and the end of services. A recent evaluation looked at family reunification programs in the state over a five-year period during which the assessment scale was used. It found that reunification services had improved family functioning to a substantial degree on a number of indicators, including living environment, parental skills, safety, interaction patterns and behavior, child well-being, and readiness for reunification. Importantly, these improvements in family functioning were shown to be statistically associated with family reunification.<sup>3</sup>

A number of studies have found that children placed in foster care with relatives generally do better than those placed with non-relatives. They are at least as safe, and sometimes safer.<sup>4</sup> Research shows that whether children stay with relatives or eventually return home to their parents, placements with relatives lead to greater stability for children. They experience fewer placements than those in non-relative homes, giving them a greater sense of stability both at home and in school.<sup>5</sup> They are more likely to be placed with their siblings—a very important connection for children.<sup>6</sup> For those children who return to their parents, they are less likely to re-enter foster care after reunification.<sup>7</sup>

New research done at Children's Hospital of Philadelphia<sup>8</sup> demonstrates that children placed in foster care with relatives have significantly reduced behavioral problems, when compared to children in non-kin foster care. The study also showed that these children had even fewer behavioral problems when

### Subsidized Guardianship Promotes Family Connections

Subsidized guardianship programs, offering support similar to that provided through adoption assistance programs, can help to advance family permanence. Investing in subsidized guardianship provides clear benefits to children, reports Mark Testa, Director of the Children and Family Research Center at the School of Social Work at the University of Illinois at Urbana-Champaign; this finding comes from randomized clinical trials in federally supported subsidized guardianship demonstrations in Illinois, Wisconsin, and Tennessee.<sup>9</sup> Where guardianship is offered, children are more likely to be in permanent families and to move to permanency more quickly, satisfying two key goals of ASFA. In each of the three studies, there was a boost in permanence in the experimental group, which was offered subsidized guardianship, as contrasted with the control group, which was not. Illinois saw a 6.6 percent increase in children in permanent families (guardianship, adoption, reunification, and custody to kin), and in Wisconsin and Tennessee the increases in permanency were 10 and 15 percent, respectively. In Illinois, after 10 years, the average length of time that children spent in foster care was reduced by 22 percent for families offered subsidized guardianship; in Wisconsin, after three years, average length of stay was reduced by 32 percent. Children who leave care with guardians also are spared the intervention of regular caseworker visits, as well as periodic reviews and court appearances, which frequently cause concern among both relatives and children that family connections may be interrupted. Finally, there was no evidence that the subsidized guardianship programs lowered rates of reunification with birth parents or increased intake of children into foster care because of the higher financial support available under subsidized guardianship.

they moved more quickly into relative placements. Importantly, the study countered potential selection bias by controlling for the problems that children already had when they entered foster care.

Children living with relatives in foster care also have been found to experience more positive feelings about their placements when compared to children living in non-relative homes. They are more likely to like the people they live with, to want to stay with the relative and make the placement their permanent home, and to feel loved.<sup>10</sup>

Research has documented that children of color, particularly black children, remain in foster care longer than white children. Some of this difference is owing



to the fact that children of color are more likely to be living with relatives, some of whom may feel that adoption is not an appropriate option.<sup>11</sup> A July 2007 Government Accountability Office (GAO) study, along with other research, confirms that guardianship is often seen as a more appropriate response according to cultural norms in Black, Hispanic, and Native American communities, some of which do not recognize the practice of termination of parental rights (TPR)—a step required to proceed to adoption.<sup>12</sup> In such instances, relatives may believe that their only option is continued foster care for the children, and in some states it is the only option. Although thirty-seven states and the District of Columbia have subsidized guardianship programs, many are small-scale and do not offer relatives the level of supports for which they would be eligible if they adopted children in their care.<sup>13</sup> However, research in Illinois demonstrates that when relatives have the opportunity to carefully weigh permanency options for the children they are raising, they are more likely to choose adoption over guardianship.<sup>14</sup>

### *Challenges in Policy and Practice*

For all the documentation of the benefits of family connections for children, challenges in policy and practice to truly engaging families and maintaining such connections existed prior to passage of ASFA and, despite important gains, persist today.

For many years, federal and state child welfare policies focused almost exclusively on the importance of substitute families for vulnerable children in care, both foster and adoptive families. Little attention was paid to enhancing children's chances for permanency within their own families, asking families what they needed or responding to those needs, or involving families in the planning and delivery of care for their children. There was seldom a requirement that extended families be sought out as placement options.

As often happens, practice followed policy. Staff training rarely stressed the importance of engaging birth families or other relatives in the day-to-day care and nurturing of children in foster care. Only a few states provided funding for a range of alternative services such as intensive home-based services or comprehensive family-based substance abuse services for families. As the pressures on families increased and their problems intensified, fueled in part by an influx of crack cocaine and other drugs in the 1980s and early 1990s, it became even more difficult for staff to envision children remaining in troubled families or to

view these families as reunification resources.

The Adoption Assistance and Child Welfare Act of 1980<sup>15</sup> called for greater attention to families throughout the child welfare service continuum, beginning with efforts to preserve families and keep children safe, and instituted protections to encourage such connections. Yet limited resources and other demands on budgets prevented many goals of the legislation from being realized. The economic downturn, coupled with the crack-cocaine epidemic, left many child welfare agencies barely coping with daily responsibilities. While demonstration programs promoted family preservation and reunification and encouraged outreach to relatives, child welfare systems generally did not change the way they approached families or try to connect or reconnect more children with families.

### **How ASFA Addressed Family Connections, for Better and for Worse**

In passing the Adoption and Safe Families Act in 1997, Congress attempted to strengthen the focus in federal law on safety and permanence for children who had been abused and neglected. The emphasis on permanency helped to highlight the importance of family connections for children. While many of ASFA's proponents were more familiar with adoption and focused on the more than 100,000 children in foster care then waiting for adoptive families, ASFA expanded permanency options beyond adoption and amended strong provisions already in federal law that promoted other types of family connections for children. The discussion below takes up pertinent key provisions of ASFA. It highlights the awkward balance that resulted as the law tried to create new family connections for children through adoption while at the same time maintaining children's connections to parents and other family members.

### *Promoting Adoption*

Undoubtedly, ASFA's promotion of adoption and efforts to move children more promptly to adoptive families got the most attention. Unfortunately, other permanency options did not receive comparable attention. Families caring for children with special needs in federally supported foster care who decided to adopt were eligible for adoption assistance payments, as they had been in the past, but families who wanted to care for children permanently as legal guardians were not made eligible for ongoing assistance if they left foster care. A new Adoption Incentives Program authorized

funding for states that increased adoptions of children from foster care, but no similar incentive payments were provided for children who were returned home or who moved to permanent homes with relatives as legal guardians. There was concern, too, that ASFA's emphasis on adoption would hinder reunification efforts. In particular, some worried whether the new ASFA provisions that required reasonable efforts to move children to adoption and guardianship, as well as to reunification, which had been previously required and that allowed all such efforts to be made concurrently, would set up a competition pitting reunification against adoption and the other permanency options.

### *Expanded Permanency Options*

Despite its emphasis on adoption, ASFA specified that appropriate permanency options should include placements with a fit and willing relative, with a legal guardian, or in another planned permanent-living arrangement, in addition to safe return home. "Long-term foster care" was removed from the law as a permanency option. Although guardianship was already established as a permanency option in federal law, ASFA recognized placement with relatives as such an option for the first time. ASFA also allowed states to exempt children living with relatives from the requirement for initiating TPR proceedings, as elaborated upon below. It further required that relative caregivers be given an opportunity to be heard at court proceedings involving children in their care. Finally, ASFA called for the convening of a Kinship Care Advisory Panel and the preparation of a report on kinship care by the Department of Health and Human Services (DHHS) for submission to Congress.

### *Expedited Timeline for Permanency Decisions*

ASFA expedited timelines for determining if and when children in foster care can be moved to permanent homes. It required that permanency hearings be held six months earlier than previously required and that states, in certain cases, initiate TPR proceedings when a child had been under state responsibility for 15 of the preceding 22 months. However, as the Framework Paper explains, the law also specified exceptions to the new timeline, recognizing the importance of taking into account individual child and family circumstances as decisions were made about the appropriateness of proceeding with TPR.

ASFA exceptions included cases in which the child was in the care of a relative, the state agency documented a compelling reason as to why filing for TPR

was not in the child's best interest, or the child's family had not received services necessary for safe reunification within the period specified in the case plan. These exceptions recognize the importance of family connections to a child and the danger of prematurely or inappropriately terminating parents' rights. Advocates for them had underscored that too often parents whose children entered care waited months before any services were provided. They also pointed out serious tensions between ASFA's new permanency timelines and the amount of time it takes, even in the best situations, to help such parents resume parenting, especially those who are engaged in substance abuse treatment or are incarcerated.

### *Clarifying Reasonable Efforts*

As ASFA was being considered, some members of Congress expressed concern that existing provisions in federal law were delaying permanence for children and threatening their safety. Some cited as problematic the requirement in Title IV-E of the Social Security Act, added in 1980, that "reasonable efforts" be made to prevent unnecessary foster care placements and to reunify families. They feared it *might* keep children in unsafe homes and prevent children in foster care from moving to new permanent families. This reservation was in spite of the use of the term "reasonable," which implied situations dangerous enough to make efforts "unreasonable" and to justify immediate and sometimes permanent removal of children from their parents' home. To be cautious, ASFA retained the requirements to prevent unnecessary placements and to reunify families but explicitly stated that nothing in federal law requires a child to remain in or to be returned to an unsafe home, and included examples of aggravated circumstances that might make it "unreasonable" to reunify a child with his or her family. ASFA also added that reasonable efforts must be made to place a child in a timely manner with a new permanent family when the child cannot be reunified with family members. It clarified that these efforts to place a child with a legal guardian or for adoption may proceed concurrently with efforts to reunify a child with his or her parents, recognizing that some states already had implemented such concurrent planning.

### *Insufficient Resources for Agencies and Courts*

In thinking about the impact of ASFA on family connections, it is equally important to focus on what the 1997 law did *not* do. Funding for a range of family support and family preservation services was in even

## ASFA's Mixed Messages

ASFA sent a number of mixed messages to those trying to implement its provisions to benefit children and maintain family connections.

**ASFA ignored distinctions between relative and non-relative homes.** Placements with relatives are key to maintaining family connections. ASFA recognized this in principle, yet restricted such placements. ASFA regulations require that relative foster homes be licensed in the same way as foster homes for children who are not related to their caregivers, allowing only limited, case-by-case exceptions. Core protections are essential for all children—in relative and non-relative homes alike—yet certain non-safety-related licensing rules may be less relevant for children in relative homes. Examples include rules relating to the square footage of a house, the number of children per bedroom, or the overall number of children living in the house. More attention to developing core protective elements and describing how licensing rules for relative homes should differ from those for non-relative homes might have resulted in more permanent homes with relatives than using the case-by-case approach.

**ASFA did not offer relatives the supports needed to ensure permanence.** Even as ASFA encouraged states to see fit and willing relatives as permanent family options, it continued pressuring agencies to reduce the number of children in foster care, regardless of whether the children were living with relatives, and did so without offering ongoing financial assistance to help relatives who were foster parents caring for children as their guardians outside of foster care. ASFA provided incentives to encourage movement of children to adoptive families, but no similar fiscal incentives to help children leave care to live permanently with legal guardians or relatives who were not adopting them. As a result, there were frequent tales of relatives being pressured by agency workers either to adopt children in their care or to lose custody of them. Although some relatives seek to adopt, grandparents sometimes are especially hesitant because of the need first to terminate their own children's parental rights and the hope that these adult sons or daughters will one day be able to resume parenting.

**ASFA created more “legal orphans.”** The ASFA requirements for expedited timelines and initiation of TPR proceedings once a child is in care for 15 out of 22 months were intended to help children waiting in foster care find new permanent families through adoption. In reality, these provisions left children in some states as “legal orphans,” with parental rights terminated but without success in finding adoptive families.<sup>16</sup> These children have no viable family connection, and in some states have no way to reconnect with birth parents or birth-family relatives. Without such connections, these children may also forfeit options for kinship care or for supports from family when they age out of care.

shorter supply after ASFA. Even though programs saw more funding through ASFA and afterward, these resources could not adequately cover the expanded range of time-limited reunification and adoption promotion and support activities added to the Promoting Safe and Stable Families Program by ASFA. This shortfall caused intense pressure on activities already underway and increased competition between family support, family preservation, family reunification, and adoption services.

To truly achieve sound family connections, there needs to be sufficient support for agencies and also for courts, whose role in pursuing permanency for children is often overlooked. Frequently, the courts decide which services the child and the family receive and how quickly a child can be successfully returned home, or alternatively be placed permanently with a relative or in an adoptive home. ASFA assigned more responsibilities to the court—expedited timelines, more frequent permanency hearings, new permanency options, and new impetus to speed up adoptions—but did not increase the funds needed to carry them out. Although the Court Improvement Program, authorized four years prior to ASFA, made steps in this direction, ASFA did not increase funding for the courts.<sup>17</sup> Expedited timelines for decision making will mean little if courts are overwhelmed and fall behind in their periodic reviews of children's cases and permanency hearings. Such backlogs result in delays in movement toward reunification and other permanency options.

## A Look at ASFA's Impact on Family Connections in the States

Despite its shortcomings, ASFA renewed an emphasis on permanent families for children in the states and, over time, helped to broaden the conception of permanence beyond adoption to other permanent family connections. Increasingly, talk about permanence encompasses children being reunited with their parents, placed permanently with relatives, or adopted. There is also growing attention to the need to connect older youth in care and exiting care to family members and other caring adults. ASFA helped to discredit the long-held notion that children in foster care, especially those in care for extended periods, did

not have families to connect with. In reestablishing foster care as a short-term solution, ASFA also prompted states to develop strategies to keep children out of foster care in the first instance or to get them out, once placed, which has helped give greater attention to the need to support and strengthen birth families.

While many factors contributed to movement in these directions, the pressure of ASFA's timeframes and push toward TPR made states receptive to new approaches. There also was increased accountability for progress in these areas. The accountability measures in ASFA triggered assessments of children entering and leaving care and greater attention to their connections to family. ASFA required DHHS to prepare annual reports on outcomes that tracked state performance in protecting children and moving them out of care. ASFA also prompted DHHS to fully implement the Child and Family Service Reviews (CFSRs), which had been dormant for a number of years, by spelling out the outcomes and system variables against which state performance would be judged and program and policy improvements instituted. The CFSR process examined the continuity of family relationships and the connections preserved when children enter foster care, the proximity of children to their homes, and the means for helping children stay connected with siblings.

In discussing ASFA's impact on family connections in states, we will not be looking at specific outcomes for children, as these outcomes have generally not been realized yet. We will also not be looking at state data patterns, as we have no pre-ASFA baselines on connections to relatives or reunification with birth families from which to make comparisons. Rather, we highlight the development of approaches and services that have gradually improved the opportunities for more children to benefit directly from increased family connections and to experience better outcomes. A DHHS analysis of findings from the first round of CFSRs reported that states demonstrated more progress in preserving family relationships and connections than they did on any other permanency, safety, or well-being outcome measure. Although only seven states were in substantial conformity with all of the indicators, more states showed progress on individual indicators such as finding more placements close to family and with siblings.<sup>18</sup> The discussion below starts with activities that have promoted connections to extended family, and then addresses some positive efforts underway to promote connections to birth families.

### *Placement with and Outreach to Relatives*

The focus on fit and willing relatives in ASFA seemed to take hold first in the states, perhaps in part because it was highlighted as a permanency option, but also because it followed upon a requirement in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Public Law 104-193, of the year before. The latter provision required states to consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided child protection standards were met.<sup>19</sup>

In a number of states the focus on extended family started with subsidized guardianship programs to help children living in foster care with relatives to live permanently with those relatives outside of foster care. Massachusetts enacted the first such law in 1983 and was followed later in the decade by South Dakota and Nebraska. Eventually many other states came to see subsidized guardianship as a means to increase permanency options for more children and reduce their foster care caseloads. By 2008, thirty-seven states and the District of Columbia had subsidized guardianship programs that provided ongoing support to children exiting foster care to permanent placements with relatives.<sup>20</sup> Programs vary significantly in the characteristics of the children, grandparents and other relatives they serve, the nature of the assistance given (e.g., amount of payment, provision of Medicaid, and other services provided), the number of children served, and the mode of funding. The state of Illinois saw 10,000 children exit from foster care to permanent guardianship in the ten years after its program started in 1997.<sup>21</sup> Illinois and ten other states have used federal funds provided under Title IV-E of the Social Security Act for subsidized guardianship programs through Child Welfare Demonstration Waivers, which ASFA had extended to additional states. Six states are presently continuing subsidized guardianship programs under such waivers, although authority for new waiver programs has been terminated.

More than half of the forty-four existing subsidized guardianship programs (five states have multiple programs) require that both reunification and adoption be ruled out before a child may be placed permanently with a relative under a subsidy. Almost all programs require that the caregiver be the child's legal guardian. About half of those that restrict their purview to children in foster care require the child to live with the prospective guardian for a period of time beforehand, thus testing the strength of the family connection. More than a dozen programs allow siblings of eligible children to be placed with the same

relative and to benefit from guardianship even if they themselves do not meet all eligibility requirements.

Attention to relatives as permanency resources also prompted greater state and community attention to relatives as a resource for children before they enter foster care. Some states with subsidized guardianship programs have expanded them to help prevent children from entering foster care in the first place. Nationally, at least six states provide monthly subsidy payments for children who are living with permanent guardians and who otherwise would be at risk of placement. A few of these have only a preventive guardianship program.<sup>22</sup>

States also have begun to seek out relatives for ongoing support and connections, not just placement options. A review of “relative search” strategies by ChildFocus highlights that many states require diligent efforts to locate relatives and engage them on behalf of the child, and that these “good practice” models are expanding. Minnesota’s *Relative Search Best Practice Guide*, cited as a model for other states, reinforces the value of using multiple strategies to connect children with relatives.<sup>23</sup>

A number of states also have grandparent notification laws and others use the internet to locate relatives. Providing notice immediately when children are removed from their families allows relatives to decide early on whether and to what extent they can be involved in caring for the child. Even when relatives cannot provide a home for the child, they may help maintain connections that ease the child’s sense of loss. When the relative is able to care for the child, early notice can minimize the number of moves a child has to make. If a child cannot be returned to his or her birth parents, the early involvement of relatives may also help find a permanent home for the child more quickly. Some states bring relatives to the table earlier through family group decision-making meetings, giving them a role in planning for children before or as they enter care and providing another resource for the child in or out of care.

Increasing contact with relatives made staff and state and local officials more aware of the supports that many families needed as they became involved in care-giving. Ohio and New Jersey were the first states to dedicate significant funds to Kinship Navigator Programs to link relative caregivers to services and programs both for the children they are raising and for themselves.<sup>24</sup> New York, Washington, Connecticut, and Delaware have more recently funded similar activities. Some states offer additional aid for kinship

navigator programs through their Area Agencies on Aging or informal networks of caregivers and support groups. In some cases, the programs have linked help for relative caregivers to state 2-1-1 systems of telephone-accessed resources and referral services.

### *Maintaining Family Connections at the Front End of the System*

As noted above, in ASFA a child’s family of origin continues to be the preferred permanent family whenever it is a safe option. To encourage more attention to keeping children safely with their families, a number of states have implemented alternative or differential response systems, offering families options beyond the routine investigation process and help in locating community supports that might enable children and parents to remain safely together.<sup>25</sup> This type of response network can be especially valuable to families that in many states get little help from the child protection system, even when child abuse and neglect reports are substantiated. Considerable experience with this service approach in Missouri and Minnesota has demonstrated positive results.<sup>26</sup> In Missouri, evaluations have shown that children and families get help more quickly than with traditional interventions and benefit from community supports.<sup>27</sup> Other states use structured decision making to assess early on both family needs and strengths and to guide decisions about whether children can safely remain with their families.<sup>28</sup> States also employ family group decision making to divert children when they first come to the system’s attention or to connect them with families and other supportive adults as they are about to leave foster care.

### *Returning Children to Families More Quickly*

There are also pockets of progress toward greater efforts to reunify children with their families. Reviews of state child welfare practices, conducted as part of the CFSRs by the DHHS Children’s Bureau, have highlighted approaches to promote timely and stable reunifications. Engaging families early through various models of family group decision making, assessing child and family strengths and needs, and shaping individualized responses enable more reunifications and decrease the likelihood of children re-entering care. The Children’s Bureau findings emphasized states’ recognition of the importance of funding services, gaining support from the courts, and maintaining competent staff in order to realize successful reunifications. The Children’s Bureau also cited research bearing out the effectiveness of concrete services, substance

abuse treatment using intensive case management and tailored to the needs of mothers and children, home-based services, and post-reunification services.<sup>29</sup> Kevin Campbell's Family Finding model<sup>30</sup> has succeeded in promoting reunification or other family connections for older youth in care, and in forging family connections for children before placement.

Some reunification approaches intensify child and family assessments immediately when problems arise so that prompt decisions can be made about the likelihood and relative timeliness of reunification. Others focus on getting children extra supports to stay with or return to their families. Many approaches incorporate both strategies.

ASFA's expedited timelines for decision making and TPR and provision to bypass reunification owing to aggravated circumstances have encouraged in some states more cross-agency collaboration on behalf of children and families among child welfare and substance abuse treatment agencies and the courts. States are also placing more priority on addressing substance abuse to promote reunification or other timely permanency options and on addressing racial disparities in foster care. This attention grows out of recent findings that placement rates are highest for children under age one and that a black infant's risk of placement in foster care is nearly three times that of a white infant.<sup>31</sup> Comprehensive assessments and family-based treatment are essential to progress on this front. The National Center on Substance Abuse and Child Welfare has prepared a guidebook, *Screening and Assessment for Family Engagement, Retention, and Recovery (SAFERR)*,<sup>32</sup> to help agencies work with one another and the courts to identify and respond to families affected by substance abuse disorders. The guide emphasizes the importance of making more timely referrals for treatment and of addressing both safety decisions and family engagement. It encourages involving parents and other family members as active partners in tackling substance abuse problems and in staying connected with the child.

Operating in some states, comprehensive family-based substance abuse treatment programs model the importance of family connections for both children and parents. The most exemplary approaches allow a parent to bring his or her children into the treatment program and work to meet the respective needs of the whole family. They furnish health and mental health services, children's early intervention services, and nursery and pre-school programs as well. In some cases, a child joins a parent from foster care as the parent progresses with treatment. Such programs help the

family strengthen parent-child interactions and adjust to their new routines together before transitioning to the community. A 2001 study of these treatment programs found they succeeded in treating the multiple problems typical of parents who come to the attention of the child welfare system. The study reported major decreases in the use of alcohol and drugs and less criminal involvement by the mothers in treatment. Equally as important, the cross-site study found substantial benefits for infants and improved parenting.<sup>33</sup>

The Michigan Family Reunification Program is comprehensive, intensive, time-limited and cost-effective. Components include assessment, case management, transportation, 24-hour service, flexible funds, in-home services, and availability of two degreed staff for each family. According to one evaluation, children of families who participated in this program were more likely to reunify and to remain at home than those in the control group. The Michigan program has resulted in savings of more than \$5,000 per family and has served more than 2,500 families in the last three years.<sup>34</sup>

Another model of support for connecting children in care with their families is the Family to Family program sponsored by the Annie E. Casey Foundation (AECF). Family to Family began before ASFA and has subsequently expanded, focusing on four key strategies: recruiting, training and supporting resource families (foster family and relative homes); building community

### Family Group Decision Making Can Help Reduce Racial Disparities

The U.S. Government Accountability Office has recognized family group decision making as a successful strategy for reducing racial disproportionality in state child welfare systems.<sup>35</sup> This approach engages families early on to help prevent removal, ensures that children return home more promptly from care, and (when that outcome is not possible) identifies another permanency option for the child. Texas has employed family group decision making to promote family connections, and has also witnessed a remedial effect on racial disproportionality in some parts of the state. Participating families are more likely to have their children return home than families receiving traditional services, and benefits were even more significant for black and Latino families. When families received traditional services, only 14 percent of black children and 13 percent of Latino children returned home; however, when the families participated in family group decision making, these rates of success more than doubled for black children and tripled for Latino children.<sup>36</sup>

partnerships; promoting team decision making (bringing parents, relatives, and other supporters to the table to plan for children); and conducting self-evaluation. Recruitment aims to cultivate local foster families in order to allow children to stay in their original neighborhoods and maintain connections with their parents. In 2006, the AECF selected fifteen “anchor sites” from among its sixty Family to Family sites to better realize the model’s full potential. Since becoming a Family to Family site five years ago, Denver, Colorado, has seen important improvements in the functioning of its child welfare system. Today ninety percent of children in the system participate in family team decision-making meetings.<sup>37</sup> Reliance on congregate or group care settings has dramatically declined, and kinship and foster family placements have increased by more than sixty percent.<sup>38</sup> Denver has developed seven community collaboratives that reflect the needs of different communities and help prevent children from entering the child welfare system.

## Federal Attention to Family Connections beyond ASFA

### *The Fostering Connections to Success and Increasing Adoptions Act and Other Reforms*

As states expanded efforts to promote family connections, Congress recognized the need for more supports at the federal level as well. The most significant federal reforms for children in foster care since ASFA were enacted as part of the Fostering Connections Act of 2008. These reforms build upon ASFA and intervening service, practice, and policy innovations.

Following ASFA, several child welfare bills further recognized the need for permanency options other than adoption for various groups of children. States received little specific direction, however, on promoting family connections to birth or extended families to achieve permanency. The John H. Chafee Foster Care Independence Program (CFCIP) was established in 1999 to assist older youths aging out of foster care at 18.<sup>39</sup> Several new initiatives came as part of the reauthorizations of the Promoting Safe and Stable Families Program in 2001 and 2006. These initiatives raised the visibility of the needs of children of incarcerated parents and those at risk of placement or already in out-of-home care because of a parent’s or a caregiver’s methamphetamine or other substance abuse. In neither instance, though, was specific attention paid to promoting permanency outcomes for such children. The 2006 legislative action also empha-

sized increasing caseworker visits to children to ensure timely permanence. Unfortunately, the new investment was limited and focused only on agency visits with children and not on parent-child visits.

In considering Fostering Connections Act,<sup>40</sup> Congress took a careful look at the challenges facing children and families in the child welfare system. Congress heard from youths raised in foster care about lost opportunities to remain with their birth families, to get necessary supports to live with grandparents or other relatives, and to find permanent connections when they left care. The Act’s numerous improvements target better outcomes for children who are at risk of entering or who have spent time in foster care, as well as offering children in out-of-home care enhanced family connections. Among other things, the Act:

- ▷ requires states to identify and notify relatives when children are removed from their parents’ custody, so that they may become a placement resource for the child or help support the child in other ways;
- ▷ allows states to claim federal funds for guardianship subsidies to help more children exit foster care and live permanently with relatives who become their legal guardians, and to offer these families supports like that already afforded to those who adopt children from foster care;
- ▷ provides funding for new “Family Connection Grants” that will allow states, localities, and non-profits to invest in Kinship Navigator programs, family group decision making, intensive family-finding efforts, and comprehensive family-based substance abuse treatment;
- ▷ clarifies that agencies may, on a case-by-case basis, waive non-safety licensing standards when licensing a relative’s home, and requires a report to Congress on the efficacy of this clarification in eliminating barriers to licensing relative homes for children;
- ▷ requires states to make reasonable efforts to place siblings together in foster care, guardianship, or adoption, unless it would be contrary to their safety or well-being, and to help children otherwise stay connected with their siblings;
- ▷ gives Native American tribes and tribal consortia the opportunity to expand federal support and protections for Native American children;

- ▷ increases training opportunities, with federal child welfare training funds, for current and prospective relative guardians and others working in the child welfare system.

Many provisions in the new Act build upon the experience base and lessons learned since ASFA was enacted. They further promote innovative policies and programs developed by states after ASFA and rely on research showing the benefits of family connections for children. Together they give child welfare agencies the chance to expand efforts to maintain family connections and thereby to improve outcomes for children. Children should benefit from notice to relatives, increased support for subsidized guardianship programs, expanded innovative family engagement and family finding approaches, and efforts to keep siblings together or in close contact for mutual support.<sup>41</sup>

### *Moving Toward Improved Outcomes for Children*

In the decade since the passage of ASFA, important steps have been taken to improve conditions for children in foster care, including attending to some of ASFA's unfinished business. The Fostering Connections Act has made additional advances. But now it is time for major improvements in federal child welfare policies to promote better outcomes for children and create new opportunities to ensure permanent family connections for every child. In pursuing these improvements, it is vital to keep heeding the voices and strengthening the involvement of youths, parents, grandparents and other relatives who know firsthand the importance of family connections and the benefits accruing from services that actively engage families with their children.

Most crucial is the need to revamp federal programs like those under Title IV-E of the Social Security Act that guarantee funds to states for out-of-home care of children, for help with adoption of children with special needs, and, in states that take the option, for help with relative guardianship. The current financing structure of Title IV-E fails to adequately invest in services and supports necessary to keep children safely with their families, to return children promptly to families, and to promote other permanency options and post-permanency services when temporary placement in foster care is necessary. The Title IV-E Foster Care Program guarantees funding for the room and board of certain eligible children in foster care, but only very limited funding to develop alternative services for abused and neglected children and their

families—services that should come into play both before a child must be placed in foster care and after a child returns home from a placement. Child welfare financing improvements are needed to increase investments and redirect federal and (to a degree) state resources to strengthen capacity in the following areas so as to ensure better outcomes for children:

#### ■ **Prevention and early intervention**

Prevention and early intervention strategies, with incentives for using evidence-based practices, will enable early engagement of families and provide the advice and supports needed to safely keep their children at home. The ability to use federal dollars for differential or alternative response, family group decision making, and more intensive services for families will help maintain important family connections for children. These approaches ensure that families are asked what they need and treated as partners in keeping their children safe. In 2008, about \$7 billion in federal funds, just over half of all child welfare spending, went into out-of-home placements, while less than \$900 million went into early intervention and prevention for children and their families. Forty percent of children who are abused and neglected get no services at all after the initial investigation, and many more receive inadequate services.<sup>42</sup>

#### ■ **Specialized treatment**

Specialized treatment is needed to address substance abuse, mental health problems and domestic violence—problems that often make it difficult to maintain or resume family connections. Current gaps in services and treatment are attributable to a lack of funding for specialized services and poor coordination among child-serving systems. Comprehensive family-based treatment approaches engage children and parents, address trauma and other abuses, successfully pursue recovery for parents with substance abuse and mental health problems, while at the same time maintaining or reuniting families. Although as many as two-thirds of all children in the child welfare system have parents with substance abuse disorders, less than a third of these parents get treatment. In a 2007 GAO survey, more than thirty states reported that inadequate mental health and substance abuse services compromised their ability to improve outcomes for children in their care.<sup>43</sup> The National Survey of Child and Adolescent Well-Being indicates that many children in out-of-home care with significant behavior problems are not receiving mental health services.



In one recent year, less than a quarter of children in foster care received at least one specialty mental health service, despite presenting numerous risk factors.<sup>44</sup>

#### ■ Expanded permanency incentives and post-permanency services

The current adoption incentive program should be expanded to reward states' efforts to reunite children with their families and place them permanently with relatives, as well as to move children to adoptive families. There is also a need to expand funding for post-permanency services to help children placed in permanent families to remain there. Analyses of states' data have shown that fifteen percent of children who leave foster care return to care within a year of discharge.<sup>45</sup>

#### ■ Permanent family connections for older youths

The child welfare financing agenda should also include federal incentives for states to ensure permanent family connections for older youths in group care and other residential settings, for they often remain in care the longest. Targeting attention for a 3-5 year period to identify these youths, assess their needs, and connect or reconnect them to family and other adults with whom they have established relationships over the years will be of great benefit to them. This sort of initiative will also reduce the large number of such youths who remain in group care settings and have been overlooked in other permanency reforms at the federal and state levels.

Improving infrastructure is imperative to increasing knowledge about children's needs and the importance of family connections at all points on the service continuum. It is also instrumental to ensuring accurate assessment and reporting as to the overall progress in promoting family connections in states. The absence of a pre-ASFA baseline seriously impeded efforts to gauge the law's impact. Steps should be taken to avoid a similar information deficit in the future. A number of these much-needed changes can be made administratively, with possibly some incentives in legislation. These include:

#### ■ Improvements in the child welfare workforce

Any reform should set a high premium on increasing the quality of all staff working with children in the child welfare system, including those from other child-serving systems, and on rewarding those who are doing the best work. To ensure positive outcomes

and experiences for children that involve sound family connections, it is crucial to maintain a skilled and knowledgeable child welfare workforce. Staff must know how to accurately assess and provide for the range of child and family needs. They must have the necessary resources and time to work with children and families toward addressing their complex challenges. They also must be connected to local communities and to families so they can access both informal and formal services and engage families in meeting their children's needs. The Title IV-E training program must be improved, and investments made in loan forgiveness, new workforce demonstrations, and enhanced data-collection and tracking mechanisms to respond to workforce concerns as they affect the lives of children and families.

#### ■ Improvements in data and the tracking of children's connections with families

Both the Adoption and Foster Care Analysis and Reporting System and the Statewide Automated Child Welfare Information System (SACWIS) need to be updated to ensure that the experiences of children who come to the attention of child welfare can be tracked before they enter foster care and throughout their time in the system.

#### ■ Improvements in the Child and Family Service Reviews

Steps must be taken to improve the CFRs now conducted in states to ensure that they accurately measure progress in the care of children and supports to their families.

#### ■ Additional accountability measures

External review bodies in states, including independent ombudspersons to field inquiries from parents, youths, the public and staff, are necessary to ensure that reforms are meeting their goals and that challenges facing youths and parents are both promptly responded to and used to refine policy and practice. Ongoing evaluation of state efforts to expand services and supports and to improve child outcomes is essential to meaningful accountability.

## Footnotes

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# The Impact of ASFA on the Permanency and Independence for Youth in Foster Care

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In the last decade, youth in foster care (broadly defined as children ages 11 to 20 unless otherwise noted)<sup>1</sup> have captured the attention of policymakers, advocates, and children-serving professionals. The attention is justified. Research documents that youth in foster care remain in care disproportionately longer than their younger peers and that their chances for achieving permanency diminish as they get older (DHHS 2006). Very few are adopted and when they do not find permanent homes, but instead “age out” of foster care, many do not fare well. Research shows that they tend to have poor employment outcomes, earn very little, and struggle with their education. Moreover, developmentally, adolescence brings a whirlwind of conflicting feelings and emotions that can make decisions about permanency as complicated for the youth as for the professionals serving them.

The Adoption and Safe Families Act (ASFA) set a policy goal of permanent families for all children, including youth, and other laws have followed to sharpen the focus on permanency for youth. The primary aims of this paper are to understand how efforts toward this policy goal have played out so far and to identify important next steps in pursuit of the goal. However, ASFA and subsequent laws focused on permanent families cannot be considered in isolation from a parallel series of laws, enacted over the same period, that seek to help youth transition successfully to self-sufficient adulthood. The most important such legislation was the Foster Care Independence Act (FCIA) of 1999, Public Law 1096-169, signed just two years after ASFA. Since it has been about a decade since the passage of these two landmark pieces of legislation, this is an opportune time to step back and examine how they have reshaped our approach to supporting youth in foster care. Additionally, with a new administration and a

new Congress in place, experts, practitioners, and policymakers alike will want to draw on the experiences and lessons of the past in order to think strategically about what ideas and actions will be most urgent over the next decade to support youth in foster care.

*To inform a future policy response to the needs of youth involved with child welfare systems, this essay will seek to answer the following:*

- ▷ Who are youth in foster care, and what do we know about their circumstances and experiences?
- ▷ What have been the policy and practice responses to the needs of youth in foster care, especially in light of the permanency goals emphasized by ASFA? What have been the permanency outcomes so far?
- ▷ What are the key unmet needs and emerging issues?

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## Who Are Youth Involved with Child Welfare Services?

Understanding the basic facts about youth in foster care will help to underscore ASFA's important implications for their lives. The most basic is the significant number of youth in care, both those who have grown up in care and those who enter as youth. These youth represent almost half of all children in foster care at any point in time and a third of all children newly entering care. Another reason to be concerned about ASFA's effects on youth is that the number of youth entering care differs vastly by state. This would suggest ASFA could have prompted potentially different policy and practice issues across states. We also know that once youth enter care, and especially after they leave care, they do not generally fare well in their life circumstances. They tend to stay in care longer than their younger counterparts, and their chances of achieving permanency diminish with time. Many of these youth also present an array of special needs that can make achieving permanency even more challenging.

### ■ How many youth enter and live in foster care?

As noted, this population includes both youth who grew up in care and those who entered care as youth. About 103,000 of children entering care in 2006 were youth (defined in this case as being from ages 12 to 20), representing a third (34 percent) of the new foster care population (DHHS 2008b). The proportion of youth entering foster care varies enormously between states, suggesting likely policy and practice differences. For example, in Pennsylvania in 2005, 55 percent of children entering foster care were 12 and older, three times the proportion (17 percent) in Texas (DHHS 2008c). Nationwide, considering the entire population in foster care ages 12 and older (those who entered as youth plus those who grew up in care), youth represented roughly half of the total (43 percent or 220,000 youth) on September 30, 2006 (DHHS 2008b).

### ■ Why do youth come into the child welfare system?

The reasons youth come into care tend to be different from those for younger children. For about 43 percent of youth entering the system (now using the standard of ages 11 and older), the most serious type of maltreatment reported was neglect (30 percent for "failure to supervise" plus 13 percent for "failure to provide"). For a third of these youth (33 percent),

physical maltreatment was the most serious type of abuse. Sexual maltreatment was reported as most serious for 15 percent, and for 10 percent it was another, unspecified type of abuse (DHHS 2005).<sup>2</sup> In contrast, for two-thirds of children under age 3 the most serious type of abuse reported was neglect (37 percent failure to supervise; 30 percent failure to provide), with fewer being reported with physical or sexual maltreatment as "most serious." Interestingly, for most youth entering the system (86 percent), the onset of maltreatment occurred when they were already adolescents, ages 11 or older, suggesting that these children may be a unique group entering care (DHHS 2005).

Another growing concern is that many youth enter foster care because they are in need of mental health services for which their families cannot provide. The GAO estimates that in 2001, more than 12,700 children, mostly adolescent boys, were placed in the care of child welfare or juvenile justice agencies by their parents in order to receive mental health services (GAO 2003).<sup>3</sup> The degree of unmet need for mental health services for youth also became clear when Nebraska enacted a safe haven law in 2008.<sup>4</sup> Unlike in other states, where such laws focus on infants, Nebraska allowed parents to turn over to state custody, without prosecution, children up to age 18. In less than three months, thirty-five children, many between the ages of 10 and 17, were dropped off at hospitals, most by parents saying the children were "uncontrollable and violent and needed more counseling or psychiatric services than they could find or pay for" (Eckholm 2008).

### ■ What are the needs of youth in foster care?

Youth in care have a unique set of needs as they struggle with both the challenges of being in foster care and the trials of adolescence. It is estimated that 19 percent of foster youth experience a major lifetime depressive episode, compared with only 12 percent of the general youth population (White, Havalchak, Jackson, O'Brien, and Pecora 2007). They are also more likely to suffer post-traumatic stress disorder (PTSD) than youth in general (13 percent vs. 5 percent). Youth in foster care for one year also report high levels of behavioral problems, and more than half of these youth (52 percent) had committed at least one delinquent act in the previous six months (DHHS 2003). Foster youth also have particular educational needs. A study of foster youth in the

Chicago public schools showed that 15-year-olds in foster care were only about half as likely as other students to graduate within the next five years. Nearly half (45 percent) of foster children between sixth and eighth grade were classified as eligible for special education, compared to only 16 percent of other students (Smithgall et al. 2004).

#### ■ What are the experiences of youth in care?

Youth's time in care can be a long and disheartening experience. Youth in foster care for one year are more likely than younger children to be living in group homes or other residential programs (DHHS 2003). According to recent statistics, about one in six youth (here 12 and older) in foster care wait to be adopted, meaning that their permanency goal is adoption and/or that parental rights have been terminated in their cases (DHHS 2008b). It remains unclear what proportion of these youth go on to emancipate and enter their adult lives as legal orphans, having seen parental rights terminated without having reached permanency. An analysis of caseload dynamics between 2000 and 2005 found that youth in care undergo more placement moves than younger children, are less likely to be adopted, and when discharged as youth have a higher likelihood of re-entering care within one year of exit (Wulczyn, Chen and Hislop 2007). Other research suggests that children ages 9 and older stay in foster care longer than younger children, noting that in 2003, for instance, 31 percent of children in this age cohort had been in care for 4 years or more (DHHS 2005b).

#### ■ What are the outcomes of former foster youth?

In 2006, about 7,500 youth (ages 12-20) were adopted from foster care, a number that has grown fairly steadily over the last decade (see Figure 9 and discussion below). In the same year, more than 26,000 youth emancipated from the child welfare system, a number that has also grown steadily in the last decade (see Figure 10 and discussion below). Youth who emancipate from care generally do not fare well as young adults. One recent study found that at age 21 a quarter of youth who had aged out of care did not have a high school diploma or GED, only half were currently employed, and three quarters of the males and more than half of the females had ever been arrested (Courtney et al. 2007). Another study examining youth in California, Minnesota, and North Carolina found these employment patterns persist for many at age 24, with only a small portion

of youth (25 percent in California, 22 percent in Minnesota, 16 percent in North Carolina) managing to maintain consistent connections to the labor market and earn as much as their peers nationally (Macomber et al. 2008). One striking finding is that many of these youth go on to become parents themselves at an early age; in one study, more than half of the young women and almost a third of the young men were parents by age 21 (Courtney et al. 2007).

### ASFA and the Policy Response

With growing awareness of these youths' circumstances, the last decade has brought major legislation focused on two policy goals: permanency and successful independence. No doubt the most significant aimed at permanency was the Adoption and Safe Families Act (ASFA) of 1997. ASFA prompted a new sense of the importance of finding families for foster children, heightened efforts to seek permanent connections for children growing up in foster care, and raised the profile of kin who might offer supportive family connections and permanent homes. However, it did not necessarily focus on the permanency issues of youth relative to younger children.

Since ASFA, additional legislation has sought to bolster states' efforts to find permanent families for youth. The Adoption Promotion Act (2003) increased the bonuses to the Adoption Incentive Payments Program for the adoption of children over age 9. The Keeping Children and Families Safe Act (2003) provided further resources to increase adoptions of older youth, stressing child-specific recruitment strategies. In 2005, the Children's Bureau awarded 5-year cooperative agreements to nine organizations to provide adoption services and support to youth who want to retain contact with family members in order to improve permanency outcomes. These programs focused on introducing the concept of open adoption to youth, connecting youth with caring adults, and promoting models of youth leadership and involvement in planning (DHHS 2006). Most recently the 2008 Fostering Connections to Success and Increasing Adoptions Act further advanced permanency efforts for youth by doubling incentive payments for older child adoptions and adoptions of children with special needs. The Act also makes children 16 and older who are adopted from foster care, or who leave for guardianship with a relative, eligible for independent living services and education and training vouchers. Perhaps most significantly, the Act gives states the option to use federal

Title IV-E funds for kinship guardianship payments. These payments would be for foster children being raised by relative caregivers who are committed to caring for them when they leave foster care.

Given this emphasis on achieving permanency for youth, what progress has been made? Adoptions of youth in foster care have increased substantially since 1998, both in absolute numbers and in terms of the proportion of all adoptions (see Figure 1). In 1998, there were about 4,400 adoptions of youth (ages 12 to 20) from foster care, representing just eleven percent of all foster care adoptions. In 2006, 7,500 youth were adopted from foster care, representing fifteen percent of all foster care adoptions.

Yet states still face significant obstacles in finding permanent families for youth. In a report to Congress on adoption and permanency for older youth, DHHS (2005b) notes several challenges to older child adoption: lack of permanent families, lack of services, inadequate permanency planning, resistance from youth themselves, staff issues, and court and legal issues. The report also suggests promising strategies. They describe the potential value of child-specific recruitment strategies, which seek out a specific family for a given child. For youth, they note programs that recruit families from among people that a youth has known and suggest that engaging older youth in the process of finding a family for themselves may be a particularly promising strategy. They further suggest the value of pre- and post-placement services in smoothing the transition to adoption and increasing the chances of success over the long term. The report cites studies suggesting the hiring and training of staff

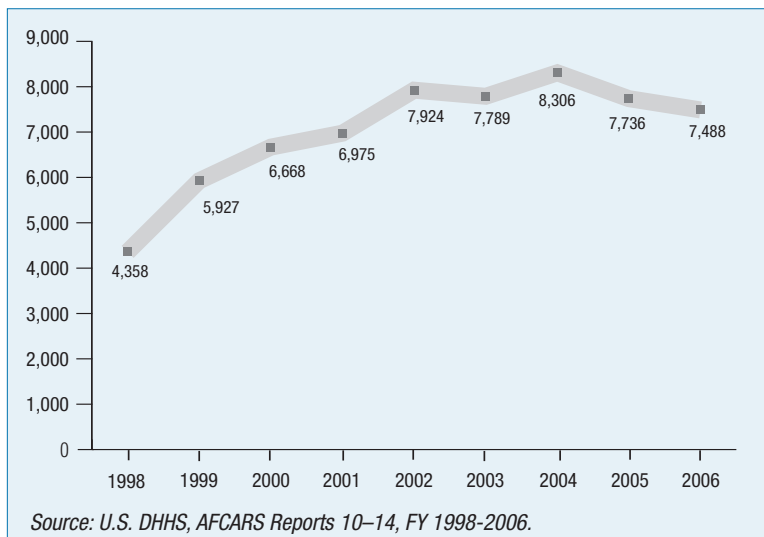
who are effective with teens as vital to successful permanency efforts. Also highlighted is the overall role of court and child welfare system reform, including developing better tracking systems, improving collaboration, and strengthening service provision.

Regarding the goal of promoting youth independence, the most significant legislation in the last decade is the Foster Care Independence Act. This law provided states with more funding and greater flexibility to design services to help youth transition from foster care to self-sufficiency. It doubled funding provided through the Title IV-E Independent Living Program and established the John H. Chafee Foster Care Independence Program (Chafee). The law also allowed states to assist youth ages 18 to 21 who had left foster care, to extend Medicaid coverage for foster care youth to age 21, and to provide youth with aid for room and board payments.

Other legislation since FCIA has sought to further assist youth in making the transition to successful independence. The Promoting Safe and Stable Families Amendments (2001) augmented the John H. Chafee Foster Care Independence Program with a voucher program for education and training of youth aging out of foster care or adopted from foster care at age 16 or after.

The 2008 Fostering Connections Act took a significant step in supporting services to youth who age out of foster care by continuing federal support, at the state's option, for youth until they reach 21. States can receive federal reimbursement for care of youth 18 to 21 who live in foster family care or group homes, or who live independently in a supervised setting. States

**Figure 1**  
Adoptions of Youth (Ages 12–20) from Foster Care between 1998 and 2006



can also extend adoption assistance and/or guardianship payments on behalf of youth through age 21. Some research suggests that allowing youth to stay in care past 18 may benefit them by encouraging pursuit of higher education, increasing earnings, and possibly deferring pregnancies (Courtney, Dworsky, and Pollack 2007). Staying in care until 21 also makes it more likely that youth will get the services intended from independent living programs (Courtney, Dworsky, and Pollack 2007).

What progress has been made in moving youth toward successful independence? The answer appears mixed. More youth are emancipating from foster care (see Figure 2). For example, more than 17,000 emancipated in 1998, representing seven percent of all exits from foster care, and nearly 27,000 in 2006, or nine percent of all exits. It is uncertain what factors are behind this increase. One hypothesis is that with the crack epidemic of the late 1980s and early 1990s, child welfare systems saw an influx of infants and toddlers into care and that this cohort is now reaching the age of majority. At the same time, many youth enter care when they are already older. More research assessing caseload dynamics with a specific focus on youth in care will be needed to understand the reasons for this increase.

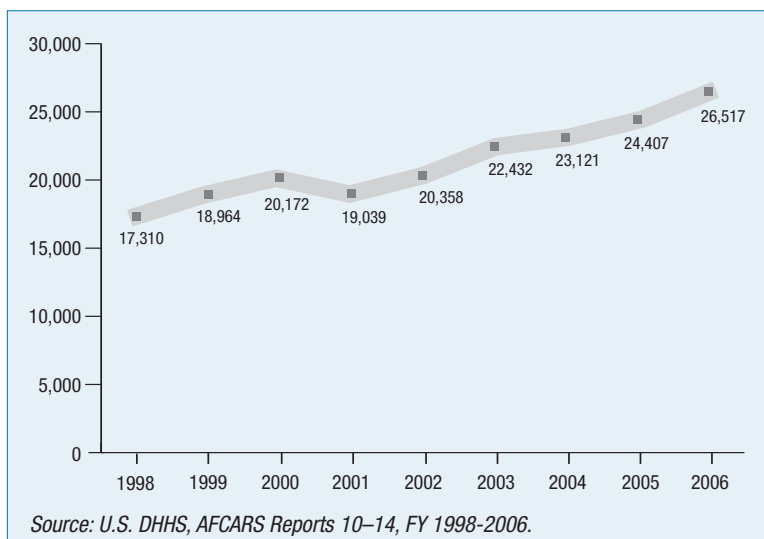
Despite ongoing concerns about permanency, progress has been made in helping emancipated youth develop the skills needed to live independently. A study of the first round of state Child and Family Service Reviews (CFSRs) noted that many states have improved youth services since Chafee, although there is still more work to do. The study identified several

barriers states note in serving youth: 1) gaps in a host of services, such as life skills and job skills training, substance abuse and mental health treatment, general independent living assessments and services, inpatient mental health care, and services for pregnant and parenting teens; 2) inadequate placement resources for adolescents; 3) training for staff and foster parents on adolescence issues; 4) inconsistency in service availability between counties or regions; and 5) differing levels in quality of planning for independent living. States' Program Improvement Plans in response to the CFSRs also varied greatly in the extent to which and how adolescent issues were addressed (Winkle, Ansell, and Newman 2004). Courtney (2007) also concludes that "receipt of independent living services during the transition to adulthood is arguably spotty at best" and that the types of services youth are most likely to report receiving are educational supports, and many youth do not even receive these. Moreover, recent evaluations of two independent living programs did not yield impact, perhaps suggesting that the field is still grappling with how best to serve these youth (DHHS 2008b; DHHS 2008c).

### Future Issues for Policy and Practice

Although evidence suggests that youth adoptions have increased, the total is equivalent to only a third of the number of youth who emancipate each year and to less than ten percent of the number who enter care. While significant effort is being made to prepare youth for emancipation, policymakers, and practitioners have yet to figure out which services will demonstrably

**Figure 2**  
Number of Youth Who Emancipated from Foster Care between 1998 and 2006





improve their lives. This section highlights key issues in thinking about the next generation of policies for youth in foster care. It draws on research findings and practice trends, and seeks to build on lessons learned from the past decade, in which permanency and independence have been primary goals.

### ■ Permanency vs. independent living

Current practice for supporting youth, driven largely by ASFA and FCIA, typically presents youth with two permanency goal options: permanency through adoption or reunification and independent living. As Frey (2004) writes: “Our oldest youth get to have one or the other—permanent families or life skills and long-term supports.” Developmentally, however, youth at this stage require both: they are trying to separate and become independent adults, but still have a strong need to belong in a family (Charles and Nelson 2000). Divergent goals of permanency and independent living might inadvertently push youth and professionals toward one versus the other.

Policymakers and practitioners may want to think about ways to make these two goals more complementary. The Fostering Connections Act took a big step in this direction by making children 16 and older who are adopted from foster care or leave for guardianship eligible for independent living services and education and training vouchers. Youth can now realize permanency through adoption or guardianship and still receive assistance in the transition to adulthood. Further research should seek to clarify the psychological issues involved for youth in forging a relationship with a new family, separating from a biological family that was abusive or neglectful, and forming a distinct adult identity.

### ■ Biological parents

ASFA emphasized finding new permanent families for youth, but it is important to remember that most youth maintain strong ties with their biological families. A recent study found that a quarter of youth who had aged out of foster care were living with a parent or other relative at age 21, and that more than four-fifths had at least weekly contact with a member of their biological family; many were also receiving assistance in the form of cash or child care from families (Courtney, Dworsky, Cusick, et al. 2007). Beyond such contact, Samuels (2008) notes of the foster youth in her study that “biological family remains psychologically present for participants

despite their physical separation.” Youth may need help in understanding and reconciling their feelings about their biological parents in order to welcome new parents into their lives or develop their own identity as independent adults. Practitioners and policymakers will want to incorporate an awareness of the importance of these connections in helping youth plan for permanency and independence.

Some approaches to achieving permanency for youth may present opportunities for productively involving biological families. One such approach is family group decision making, which brings together extended family members and other significant people in a youth’s life to establish a plan for safety, well-being, and permanency (DHHS, 2006). An evaluation of this model found a reduction in re-abuse, more relative care, fewer moves between care settings, greater chances of reunification, more family supports, and increased involvement of fathers and paternal relatives (Merkel-Holguin, Nixon, and Burford 2003—from DHHS 2006). Another strategy, open adoptions, facilitates the forming of a permanent legal family, while allowing children to stay connected with their biological family (DHHS 2006). More exploration of how this strategy might work best for youth and their adoptive and biological families will be useful. Finally, guardianship is another valuable option for providing a legal and permanent family without forcing youth to sever ties with biological parents (DHHS 2006). The Fostering Connections Act will likely facilitate more of this type of arrangement by giving states the option to use federal Title IV-E funds for kinship guardianship payments.

### ■ Engagement with effective services

As noted, youth who age out of foster care are less likely to be employed or have a GED or high school diploma by age 21; many have been arrested, and many become young parents (Courtney et al. 2007). More work is needed to understand what will help these youth engage with effective services. Youth may have difficulty engaging if developmentally they are trying to form their own separate identity and are resistant to strong adult influences. Poor attachment in childhood could also complicate forming relationships with employers, caseworkers, or other concerned adults. Given their exposure to child welfare, they may not want further involvement with the system. At the same time, foster youth cite emotional support as the type most

desired and most often missing (Samuels 2008). Different and creative approaches might be needed to reach youth.

For instance, child welfare agencies might engage other partners in serving youth and administering Independent Living programs, such as churches, schools, employers, or adult service systems. Affiliating programs and services with these other entities might reach older youth who are no longer keen on interacting with child welfare. Involving youth themselves in service development is another important approach that has received increased attention in recent years. The Jim Casey Youth Opportunities Initiative believes that “it is possible to run a foster care system that prepares youth for success as adults only if youth in care are fully engaged in the system’s design and operation.” To this end, they have established Youth Leadership Boards in 12 cities around the country that play a role in designing the Initiative’s activities at the local level, ensuring youth are engaged in shaping their futures, and advocating for changes in foster care systems.

#### ■ Family formation and relationships

The intense focus on finding families for youth can miss the fact that many are forming families of their own. As mentioned above, recent research suggests that a striking fifty-five percent of women who age out of foster care have a baby by age 21, while a corresponding twenty-nine percent of young men become fathers (Courtney et al. 2007). Many also appear to be in serious relationships, as indicated by their living arrangements. Nearly a third of the women and over a fifth of the men were either married or cohabitating (Courtney et al. 2007) at age 21. Developing greater psychological intimacy in dating relationships is a key feature of this stage in life (Berk 1999), but these youth may not have good models for doing this. Given the absence or weakness of family ties experienced by many of these youth, it may not be surprising that they would have a desire to form a new family of their own.

This situation raises three questions for consideration. First, does adoption help with or complicate the wish of older youths for families of their own? Finding new permanent families might be coupled with efforts to help youth delve into their own motivations to form families of their own, and to address issues of sexuality, relationships, and parenting. Two, future independent living programs

will want to consider possible specialized strategies to support this group of youth. The special needs of these youth may require a well-coordinated response, including more housing options and help navigating available services and supports (Max and Paluzzi 2005). And finally, when youth in foster care have children, the child welfare agency may concentrate on these youth (the “wards in care”) and miss opportunities to support the development of their babies. These include monitoring to ensure appropriate prenatal care, connecting youth with Early Head Start or home visiting programs, and helping to secure housing where youth can care for their new infant.

#### ■ Mental and behavioral health

Youth with mental or behavioral health problems may face special challenges in achieving permanency or finding their way as independent young adults. These issues could be especially problematic for former foster youth who are parenting, and these problems could also be detrimental to the prospects of their children. A study of youth who were involved in the child welfare system as adolescents and were parenting at ages 18 to 21 found that twenty-four percent of the mothers and nine percent of the fathers reported signs of clinical depression (Research Triangle Institute International 2008). A related concern would be the youth described above who are coming into care as a result of mental health issues for which their parents cannot address or services in the community are not available.

Mental health issues raise a couple points for future consideration. One, access to effective, comprehensive, and intensive mental health services have been shown to be effective in addressing foster youth depression (Landsverk, Burns, Stambaugh, and Reutz 2006). Specifically a review of the research suggests that particular therapeutic treatments that are largely behavioral or cognitive-behavioral are effective at improving youth depression (Landsverk et. al. 2006). These may be essential to helping youth form new relationships with adoptive families and/or learning to live independently. Two, thinking more broadly about systems to support youth with mental health issues to prevent child welfare involvement, in a GAO report (2003) officials from six states pointed to the following contributors to the problem: limitations of public and private health insurance, inadequate supply of mental health services, limited availability

of mental health services in schools and health agencies, and difficulty meeting eligibility rules for services. They suggested seeking new ways to fund or reduce cost of mental health services, improving access to mental health services, and expanding the array of available services as ways to address the problem (GAO 2003).

### ■ Developmental expectations

Adolescent conflicts with foster families, potential adoptive families, and birth families are inevitable, but at times these tensions can be seen as problematic behaviors when in fact they are normal. Unfortunately, when parents, caregivers, and practitioners are not equipped with sufficient knowledge of adolescent development, this behavior might lead to unnecessary placements in foster care or disruptions in foster or pre-adoptive placements. Youth who were exposed to illicit drugs prenatally may be especially vulnerable. Their often impaired ability to regulate emotions or sustain attention on tasks (Mathias 1998) can exacerbate typical behavioral and learning challenges and complicate the responses of parents and caregivers.

Foster parents, potential adoptive parents, and caseworkers may benefit from training on the developmental stages of adolescence and the transition to adulthood. Explaining that adolescents are trying to form independent adult identities and undergoing dramatic hormonal changes, making conflict unavoidable, might ease tensions and improve chances for permanent connections. A review of CFSRs noted that eighty-seven percent of the states reviewed (forty-five at time of report) cited a need for more training on adolescent issues for staff and foster parents (Winkle, Ansell, and Newman 2004).

### ■ Gender identity and sexual orientation

In a small survey of foster youth, about five percent identified their sexual orientation as gay, lesbian, bisexual (GLB) or questioning, and more (eleven percent) reported having questioned their sexual orientation at some point in their lives (White, Havalchak, Jackson, O'Brien, and Pecora 2007). A larger study of Midwestern youth who are or were in foster care found that almost seven percent identified as gay or bisexual (Courtney, Dworsky, Ruth, Keller, Havlicek, and Bost 2005). One other smaller-scale study has called for more policy attention to permanency, safety, and well-being for these youth. Researchers found that the youth had very unstable placements and expressed significant concerns about their safety

whether at home, in school, or in foster care placements. Many desired to be adopted or sought out permanent relationships with mentors, role models, and individuals with whom they have an emotionally significant relationship (Mallon, Aledort, Ferrera 2002).

As for strategies to serve these youth, Mallon et al. (2002) note the value of gay-affirming environments. Two examples are the Green Chimneys Gay Lesbian Bisexual Transgendered and Questioning (GLBTQ) Programs in New York City and Gay and Lesbian Social Services in Los Angeles, which promote educational and life skills of self-identified GLBTQ youth and their families (Mallon et al. 2002). The study also suggests that safely reunifying GLBTQ youth with their families may require that family preservation practitioners develop specialized competencies for working with families of GLBTQ youth. And while there is no evidence that GLB adoptive parents are necessarily better for GLB youth, research suggests that less than a fifth of adoption agencies attempt to recruit adoptive parents from the GLB community (Gates et al. 2007).

### ■ Cultural identity

Over half of children in foster care are minority children (DHHS 2008b). For these youth, exploring their ethnic heritage can be a key focus in their identity formation. This process can be very difficult as youth become aware of discrimination and inequality and feel caught between loyalty to their heritage and the social pressures of the larger society (Berk 1999). Research suggests that youth who successfully form bicultural identities adjust better to their life circumstances and have more positive adult relationships (Phinney and Alipuria 1990). A survey of youth in foster care finds that a substantial majority (sixty-nine percent) wish they could learn more about their ethnic backgrounds (White, Havalchak, Jackson, O'Brien, and Pecora 2007).

As practice and policy push toward ensuring permanent connections and advancing independence, it is critical not to lose sight of how issues of identity formation for minority youth impinge on these goals. In 2004, Casey Family Programs convened a group to identify “the knowledge, skills, and supports social workers need to address racial and ethnic identity formation for all youth in care.” The consensus was that in order to assist youth in their growing self-understanding, practitioners must become more aware of their own racial and ethnic identities. To this end, they developed the *Knowing*

*Who You Are* project, which provides a curriculum to help professionals achieve a healthy sense of identity (CWLA, Children's Voice, 2006).

## Conclusion

Major inroads have been made in raising awareness of the importance of helping youth establish independence and permanent connections with family. Adoptions increased for youth leaving care, and although more youth are emancipating, progress has been made toward establishing independent living services to help with a successful transition to adulthood. ASFA spotlighted the special challenges of helping youth find permanent families or make other permanent connections to caring adults. And the Fostering Connections Act reflects a new understanding of the special needs of youth. Yet more work is still needed to ensure the goals of permanency and successful independence for youth can be achieved.

There are many places to start. Policymakers might consider changes that maintain a simultaneous focus on permanency and independence rather than on one goal versus the other. They might also find ways to ensure intensive mental health services are available to youth in child welfare systems and those at risk of entering. Administrators and practitioners might seek guidance from developmental experts in helping youth to understand relationships with their biological parents, to deal with separation and identity formation, to forge strong new relationships with caregivers, and to seriously examine their objectives in forming families of their own. They will want to continue to elicit the input and opinions of the youth themselves. And caseworkers and caregivers could receive more training on what to expect of youth at this crucial developmental stage. Finally, there is a continued role for research to play in identifying the types of services that engage youth and support their successful transition to adulthood. Researchers could also track how states differ in developing policies to support youth, especially as the Fostering Connections Act leaves them the option to implement such provisions as using Title IV-E for guardianship payments or for support of youth in care until age 21.

The past decade was a period of rapid change in policy and practice for youth in foster care. Through these efforts, it became increasingly clear that adolescence and early adulthood are periods of unique need for foster youth. As ASFA has prompted efforts to expediently achieve permanency, new challenges have

arisen, notably that of finding permanent families for older youth. Although we have seen meaningful headway in helping youth transition to adulthood, there is still much to learn about how best to promote independence and self-sufficiency. Cumulatively, we have a reasonable blueprint of the issues that will demand the continued attention and vigorous efforts of policymakers and practitioners concerned with the safety, well-being, and permanency of youth in foster care.

## Footnotes

- 1 Studies cited in this paper use varying age groups to define youth. When available, the specific age range of youth studied is noted.
- 2 Percentages may not total 100 percent due to rounding.
- 3 The results are based on estimates from child welfare directors in 19 states and juvenile justice officials in 30 counties. GAO suspects this estimate is understated because child welfare officials in 32 states did not provide data and the study included only a limited number of county juvenile justice officials.
- 4 Safe-haven laws are meant to provide an incentive to mothers in crisis to safely relinquish an infant to designated places without prosecution (DHHS, 2007).

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# ASFA Twelve Years Later

## *The Issue of Substance Abuse<sup>1</sup>*

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The typical pre-ASFA approach to parents with substance abuse<sup>2</sup> as a barrier to reunification was to identify the most obvious cases, refer them to “treatment,” expect that they would return ready to assume parenting roles, and hope for the best. Yet the cocaine “epidemic” of the late 1980s and early 1990s forced some departures from this practice. Initiatives developed in response, such as the National Center on Child Abuse and Neglect’s funding of a network of programs to outstation substance abuse counselors in child welfare offices, which included projects in Illinois, Ohio, Connecticut, and New Jersey. The Substance Abuse and Mental Health Services Administration (SAMHSA) also initiated programs focused on serving women and their children—particularly newborns—establishing priority access to treatment for pregnant and parenting women through the Substance Abuse Prevention and Treatment Block Grant.

Despite these efforts, a 1995 Government Accountability Office (GAO) report on foster care suggested that substance abuse was a contributing factor to the growth in foster care placements:

...between 1983 and 1993, sharp increases in the number of foster children combined with unprecedented service needs led to a crisis in foster care. Reports of child abuse and neglect nearly doubled, and foster care caseloads grew by two-thirds. Demands for child welfare services grew not only because the number of foster children increased but also because families and children were more troubled and had more complex needs than in the past.<sup>3</sup>

This paper reviews the scale of the problem, cites provisions of ASFA that addressed substance abuse in five key areas, points out connections between these issues and larger national policy concerns, and concludes with suggestions for policy refinements under ASFA that would improve linkages between child welfare and substance abuse treatment.

### Call Me Tuesday

In an all too typical case in the early 1990s, two young children in California were removed from the home of a single mother with a long history as a poly-drug user. The court hearing to take jurisdiction in the case was on a Friday, and afterward the child welfare investigator explained to the mother what would happen next, adding that she needed to get into a drug treatment program as soon as possible. The mother said she would do anything to get her children back and asked if the social worker could help her get into such a program. The worker responded, “I don’t have my referral list with me today and I’m off on Monday. Call me Tuesday and I’ll give you a list of numbers.”

## How Big Is the Problem?

As the problem of substance abuse has come more clearly into view, its magnitude has become more striking. To assess the numbers requires a journey along the boundaries of the child welfare system, since most children affected by alcohol and drug abuse are not in the formal system. Over 8.3 million children under 18 years of age (11.9 percent) lived with at least one parent who was dependent on or abused alcohol or an illicit drug during the past year. By contrast, of the 900,000 children identified as substantiated child abuse or neglect cases each year, around 600,000 are reportedly affected by parental substance abuse. Of those, about 170,000 are removed and placed in out-of-home care. Another subset of the children living with parental substance abuse consists of the estimated 400-500,000 infants born each year having been prenatally exposed to alcohol or illicit drugs. Only five percent of these children are identified at birth and even fewer are referred to child protective services and removed from their families.<sup>4</sup>

### How Many Children?

- ▷ 6,000,000 children living with alcohol or drug-dependent parents
- ▷ 700,000 children in the child welfare system affected by substance abuse
- ▷ 500,000 prenatally exposed infants each year
- ▷ 9,000,000 prenatally exposed 0-18 year olds

The difficulty of capturing these data is underscored by one recent study based on the National Survey of Child and Adolescent Well-Being (NSCAW), which revealed that child welfare workers missed sixty-one percent of the documented substance abuse among parents investigated for child maltreatment.<sup>5</sup>

Against the backdrop of this growing body of information,<sup>6</sup> a senior state child welfare official in the late 1990s articulated a widespread perception in her field, even after ASFA: “Substance abuse is just one more thing that child welfare has to deal with among these families.” She was right—but also profoundly wrong, for at least two reasons. Substance use disorders are among the multiple, overlapping problems faced by these families. But if substance abuse problems are ignored or subjected to delayed referrals to ineffective

programs, then progress on the other co-occurring issues will be far more difficult. Parents cannot attend to parenting and issues of neglect while in the midst of active substance abuse. Furthermore, the fact that the majority of families in child welfare are affected means that timeliness of permanency and improved reunification rates cannot be achieved without making timely services for substance abuse a priority.

During debates on ASFA in 1997, some members of Congress contended that expanded drug treatment services were needed for parents of children in the child welfare system. But proposals for such services were set aside, in part due to disagreements about whether the control of resources should be vested in child welfare or in treatment agencies. Instead, a directive required the secretary of Health and Human Services to submit a report “which describes the extent and scope of the problem of substance abuse in the child welfare population.” The report was to “examine the services provided to this population, the outcomes attributable to those services, and [to] make recommendations for legislation to address the problem.”

A 1999 review of ASFA summarized the results of this attempt to address substance abuse:

There is no mention [in ASFA] of what should be done for children whose parents are incapacitated by substance abuse and unable to provide the most basic physical and emotional care...ASFA mentions drugs only in the context of requiring a study of the drug problem...This passed the buck in a major way.<sup>7</sup>

From another perspective, however, ASFA succeeded in calling attention to substance abuse and other services needed by parents in the child welfare system, namely by “speeding up the clocks.” The faster “clock” that ASFA established, in response to studies of the effects of family disruption and trauma on younger children, included time limits on children’s placements in foster care and an accelerated process of six-month reviews for younger children. Initially, these changes were widely perceived by those providing treatment services as being out of sync with the timetable for service delivery and recovery. Yet by putting a brighter spotlight on the amount of time it takes to get parents into treatment and other essential services, ASFA highlighted the need to coordinate responses from the different systems involved with children and parents.

The metaphor of “four clocks” was used to communicate to the different systems that they needed to

work together to address the varying timetables in (1) ASFA and (2) welfare reform of 1996, the Personal Responsibility and Work Opportunity Act, as these interacted with the very different schedules of (3) children's development and (4) parents' recovery. Each of these timetables is distinctive, ranging from the six-month review deadlines of ASFA to the "one day at a time, for the rest of your life" timetable of recovery.

The report mandated by ASFA was presented to Congress in 1999. *Blending Perspectives and Building Common Ground* made the first estimate by the federal government as to the scope of the issue: approximately one-third of families served and two-thirds in which a child was removed were affected by substance abuse.<sup>8</sup> The report set forth five broad national goals to improve services for these families:

- ▷ Building collaborative working relationships;
- ▷ Assuring timely access to comprehensive substance abuse treatment services;
- ▷ Improving the ability to engage and retain clients in care and to support ongoing recovery;
- ▷ Enhancing children's services;
- ▷ Filling information gaps.

These goals form a useful framework for reviewing subsequent accomplishments.

### **What Happened after ASFA and the *Blending Perspectives* Report?**

Overall, considerable progress has been made toward realizing the report's five goals. Yet major obstacles remain, and progress has been much slower in some areas. This section will review the relevant history and assess outstanding challenges. Notably, the report to Congress came within a two-year span during which four other important studies addressed the problem.<sup>9</sup> These gathered the emerging lessons at the level of state and local practice, describing innovative programs such as family drug courts, outstationed substance abuse workers, and new models for jointly training staff from the three major systems: child welfare, treatment agencies, and the courts.

#### ***Building Collaborative Working Relationships***

Several actions occurred at the federal level to address the goals set forth in the report to Congress. Within DHHS, national conferences and regional meetings built on existing state and local efforts. The National Center on Substance Abuse and Child Welfare

(NCSACW), funded in 2002, focused on bridge-building between substance abuse treatment, child welfare systems, and family courts. This represented a major collaborative step, since NCSACW received funding from both the Center for Substance Abuse Treatment (CSAT) in the Substance Abuse and Mental Health Services Administration (SAMHSA) and from the Children's Bureau in the Administration for Children and Families (ACF).

In 2007 came passage of the important Child and Family Services Improvement Act (Public Law 109-288) as a part of reauthorization of the Protecting Safe and Stable Families (PSSF) program. The Act included funding to build partnerships under the rubric of "Targeted Grants to Increase the Well-Being of, and to Improve the Permanency Outcomes for, Children Affected by Methamphetamine or Other Substance Abuse." A total of fifty-three Regional Partnership Grants were awarded in late 2007.

An area of potential collaboration stimulated by ASFA is still evolving in the federal Child and Family Services Review (CFSR) process, now in its second round of state reviews and corrective Program Improvement Plans (PIP). While substance abuse issues appeared in many reviews of problems facing child welfare, in the first round no state included treatment agencies as full partners in self-assessments or developed Program Improvement Plans that accepted treatment and recovery outcomes as major components of child welfare outcomes.<sup>10</sup> Several CFSR assessments did note that substance abuse services were inadequate to respond to treatment needs among the child welfare population. As of mid-2008, most states were still not utilizing the CFSR process as a means of achieving fully coordinated efforts between the two systems.

Beyond federal changes, many state and local agencies have undergone intensive self-assessment of their ability for cross-system collaboration to help children and families involved with the three systems. Strategic planning has led to improved practice and policy across systems. Thirty-five states and 350 localities have used a self-assessment tool, the Collaborative Capacity Instrument, to set priorities for broad-based changes to improve outcomes for families.<sup>11</sup> National associations representing the three systems have developed a consensus document of principles of agreement for working with families in the child welfare system affected by substance use disorders.<sup>12</sup>

The boundaries of collaboration have also begun to expand beyond those addressed in *Blending*



*Perspectives* and ASFA. From an initial focus on child welfare and the treatment system, with the addition of the family courts as critical players, collaborative efforts have reached out to include several other important agencies and community forces. The emphasis on children's services has led to linkages that draw in child development agencies, the Part C agencies that handle developmental disabilities<sup>13</sup> (discussed below), and mental health agencies, given the co-occurrence of mental illness and substance use disorders. Maternal and child health agencies are taking on the problem of prenatal exposure by means of expanded screening efforts, and schools have joined partnerships as children experience school readiness problems or require special education services.

Training in collaborative efforts expanded considerably within the child welfare and treatment systems, as more than 13,000 registrants utilized new online curricula as of fall 2008.<sup>14</sup> Utah and Michigan require new child welfare workers to pass the online course on substance abuse. Colorado's substance abuse agency requires counselors to complete the child welfare course as part of treatment provider certification.

The many persons incarcerated for drug offenses—including fathers who remain in touch with their children—have inspired model prison-based and re-entry programs. These programs treat parents whose incarceration has led to their children entering child welfare.<sup>15</sup> They are only pilot projects, however, and do not address the treatment needs of hundreds of thousands of incarcerated parents. It is estimated that two-thirds of all incarcerated persons in the U.S. are parents of children up to age 18, and that one-third of female prisoners need drug or alcohol treatment.<sup>16</sup>

### *Assuring Timely Access to Comprehensive Substance Abuse Treatment Services*

The best evidence of progress in timely access to treatment comes from two reforms—one in daily practice and the other structural. First, substance abuse specialists (discussed below) represent a new kind of professional, advancing how clients are engaged and retained in treatment. Second, family drug courts (FDCs) provide court-supervised treatment for a segment of the child welfare caseload with substance abuse problems. Evaluations show that for many FDCs, children and parents spent less time in the child welfare system, received referrals to treatment faster, and were reunified at higher rates than comparable children and parents elsewhere.<sup>17</sup>

Screening and assessment, another critical ingredient

of timely access, have been improved by new protocols and interagency agreements developed in dozens of jurisdictions during the past decade. More than 10,000 copies of a comprehensive guide to screening and assessment have been distributed.<sup>18</sup> Michigan's model protocol was a breakthrough in identifying substance abuse issues, since it "assumes in" substance abuse as a factor, requiring the caseworker to document its absence rather than its presence.

Again, a closely related issue is that of timelines affecting court decisions about permanency through reunification or termination of parental rights (TPR) leading to adoption. The six-month reviews for younger children and the 15/22 requirements have an obvious impact on the timetable for treatment services. The issue is two-fold: (1) how long it takes for parents to enroll in treatment, and (2) how much progress toward recovery has been made by the time the court reviews the case. This issue becomes a key test of effective linkages among the three major players—the courts, child welfare, and treatment agencies (see the tense dialogue recorded in the accompanying box).

In one county, after lengthy discussions, a child welfare official responded in frustration to repeated complaints from treatment agencies that the new ASFA timeframe was not responsive to the timeframe of recovery and relapse: "Look, we all have to live with these timetables, so just get over it!"

A final example of changes that improved access to treatment in a few sites is the clear, forceful statement, within the treatment system, of the priority of serving child welfare parents. In Arizona, Sacramento County, California, and a few other jurisdictions, formal statements of this policy have come in the form of gubernatorial executive orders or pronouncements of legislative bodies. In Florida, the priority is expressed in contract language contained in contracts with both substance abuse treatment agencies and child welfare providers.

The reasonable efforts requirement for services to parents also affects access to treatment. ASFA added circumstances under which reasonable efforts (and active outreach in cases involving Native American children) to prevent removal or to reunify families were not required and enabled states to apply further criteria for bypassing reasonable efforts. Some have suggested that implementation has proven very difficult to enforce, as the definition of timely, effective

treatment programs for parents remains insufficiently clear. For example, some states deemed that efforts to reunify were not required if the parent had previously been referred to treatment or had “failed” in a treatment program. Firm, lucid definitions are still needed as to what constitutes both reasonable efforts in referrals of parents with substance use disorders and “failure in treatment.”

### *Improving Our Ability to Engage and Retain Clients in Care and to Support Ongoing Recovery*

ASFA timetables are obviously affected by the extent to which parents utilize the services offered to them. New data show a serious falling-off in numbers when comparing parents screened and referred to services to those who successfully complete treatment. Some sites have begun addressing the problem, but in others as many as half of the parents referred for voluntary services never enroll. Reasons may include clients’ lack of readiness, a poor “handoff” from child welfare to treatment services, or an information deficit in child welfare agencies as to available treatment.

In response, retention efforts have tried several strategies: motivational interviewing, additional substance abuse specialists (a catch-all term for the recovery coaches), and parent partners or peer mentors who work with parents hands-on as they move through the courts and the treatment and child welfare systems. The result is a shift from simply monitoring compliance with court orders to fully engaging clients in their own treatment, with the help of peer mentors who understand both the recovery process and the child welfare system.

Fully engaging clients also requires that the systems serving these families understand their differential effects on families of color. Racial disproportionality in child welfare is related to substance abuse in at least three ways. First, the well-documented differential enforcement of drug laws for women of color means that they are more likely to be incarcerated for drug use. Second, women of color are also more likely to be tested for use of illegal drugs upon delivering a baby.<sup>19</sup> Third, a 2007 assessment by the Government Accountability Office found that closer scrutiny by public agencies resulted in more frequent reports of abuse and neglect among lower-income minority families.<sup>20</sup> Correcting the disproportionate impact requires more equitable enforcement, especially in light of recent analysis of prenatal screenings that document considerably higher rates of drug and alcohol

use during pregnancy among white clients than among minorities.<sup>21</sup>

### *Enhancing Children’s Services*

In terms of both practice and the literature, family-centered treatment services are building upon impressive work already done by treatment agencies and child welfare agencies in early identification of developmental delays and early interventions.<sup>22</sup> The changes initiated by the Child Abuse Prevention and Treatment Act (CAPTA) of 2003, while not fully implemented (see below), sent a clear signal that early intervention was a high priority.<sup>23</sup> Although the CAPTA referral provisions for drug-affected infants and those for 0- to 2-year-olds with substantiated abuse or neglect cases are separate provisions, some states have linked them closely. For example, Oregon’s June 2005 interagency agreement between the Department of Human Services and Department of Education states:

To ameliorate the serious consequences these delays can have on future health and emotional outcomes, all children who are substantiated victims of child abuse or neglect, including children who are substantiated as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure, shall be identified early and receive appropriate follow-up services and interventions in a timely manner.<sup>24</sup>

### *Filling Information Gaps*

This has been the arena of least progress, since neither of the mandated national information systems that report on child welfare and treatment cases are linked to track children and parents from one system to the other, or to track progress over time, measured by indicators of permanency and child well-being, for families affected by substance abuse.<sup>25</sup> It is not just that there is no requirement for tracking whole families across systems by linking variables in these information systems; it is also that the disconnect between the parallel processes of the Children and Family Services Reviews (CFSR) and National Outcome Measures (NOMS) does not enable capturing cross-system outcomes for whole families.

For example, state CFSR processes do not require the substance abuse treatment agency to participate and have not looked at child welfare outcomes differentially for families affected by substance use disorders. On the other hand, the treatment data system does not require agencies to report on the presence or

status of minor children in the cases of those seeking services, and therefore does not differentially assess treatment outcomes for parents versus non-parents.

Innovative projects at the state and local level have established strong information and evaluation systems, especially in family drug courts. But the typical “fix” is a new data system operating on top of the mandated systems, rather than an integration or linkage of the two with the court systems. Systems run parallel but are not connected, and may be hard to link, since a given agency tends to focus on results it can measure within its own data sets rather than referring to less familiar data from other agencies. One remedy is the recently developed “data dictionary” to be used by the Regional Partnership Grants Program. The dictionary defines and locates data in federal data sets for purposes of measuring indicators of child safety, permanency, and well-being, as well as treatment engagement, retention, and completion.<sup>26</sup>

A final information gap concerns the financial costs and benefits of innovation. Many innovative projects cannot document the added costs of their new models or calculate the cost offsets that constructive changes should produce over time. This inadequacy jeopardizes the sustainability of innovative projects, since new funders are likely to ask about the costs of changes being proposed to help child welfare parents in need of treatment and their children.

### The Core Question: Whose Resources?

In some ways, the discussion about ASFA’s effect on families with substance abuse problems has come full circle to a continuing debate about resources and control. The 1997 debate over including expanded treatment as part of ASFA was deferred in favor of what became the *Blending Perspectives* report. *Blending Perspectives* made clear that timely access to effective treatment was critical to meeting ASFA’s new timelines, yet was silent on cost implications. Notably, those states and localities that most improved access reduced delays in treatment entry, and generally did so within the limits of existing resources.

From a clinical perspective, ASFA got it right: faster access to effective treatment is better for vulnerable children than removing them and letting their parents wait for treatment as a child’s developmental clock ticks away. Placing a higher premium on access to treatment, which the ASFA timetable does, is right for children and parents alike. What remains is the debate about

where the funding should come from, and who should control it, as initially framed in the 1997 discussions. The fundamental question of whether child welfare can achieve its mandated goals with existing resources must be answered in the negative, in view of widely documented needs for services to ameliorate the effects of substance abuse, domestic violence, mental illness, and poverty on parents and children. Therefore, the rest of the discussion is about taking collaboration seriously and going beyond meetings and memos to specific strategies to get the needed resources.

But those strategies are unlikely to succeed if they boil down to “let’s you and me collaborate with *your* resources.” To seek more set-asides and earmarked funds from treatment sources is to make a one-way demand on other systems, without reciprocity or serious negotiations. Such an approach also assumes that these are the only relevant funding streams, which is demonstrably untrue. A few states, notably Arizona, have inventoried the full range of funding sources for treatment and prevention, revealing a breadth of options. A recent paper by NCSACW details these sources further.<sup>27</sup>

### Cross-Cutting National Issues

If ASFA is seen as a categorical program largely separate from other critical national concerns, then the problem of substance abuse will be framed as a relatively small issue in ASFA’s purview. But parental substance abuse affecting children in the child welfare system directly affects three major cross-cutting issues in wider arenas: child poverty, health reform, and school readiness.

- ▷ Children are reported to the system far more often for neglect than for abuse. Neglect is widely understood to be driven by two major factors: substance abuse and poverty. But too often these are seen by child welfare agencies as belonging in someone else’s province. Despite recent efforts to link welfare/Temporary Assistance to Needy Families (TANF) programs and child welfare in some jurisdictions, they usually operate separately from each other and from treatment programs. Any serious effort to reduce the effects of poverty on our thirteen-million-plus poor children (or more, given an outdated poverty line) requires better connections among these programs.
- ▷ Increasing public and private insurance coverage of parents’ treatment and children’s health problems caused by pre- and post-natal effects of substance

abuse should be a top priority in reforming our nation's health system. The recent passage of parity legislation offers a new opportunity to improve coverage, although access to quality care remains a challenge.

- ▷ School readiness is a goal for expanding preschool investments at state and local levels—a goal toward which billions of public dollars have been allocated. But attention to special needs children has typically been marginal in thinking about school readiness, and many special needs efforts do not address the effects of substance exposure on learning disabilities and behavior problems.

These three national issues—poverty, health care reform, and school readiness—all cross-cut the child welfare-substance abuse intersection. But ASFA, being categorically driven, overlooks these connections and focuses its efforts within the child welfare system in most states and localities.

## Recommendations

### ■ Implement existing legislation

In several states, there are laws already on the books concerning child welfare and substance abuse that are not being implemented effectively or at all. In some states, hospitals are required to have protocols to screen newborns for prenatal exposure to alcohol and illicit drugs, but these protocols are not consistently followed. Other states require an annual report on the number of prenatally exposed births, usually to the Child Protection Services (CPS) agency, but this requirement also goes unheeded. Those pursuing new legislation should first make sure that existing measures are being enforced.

### ■ Fully implement CAPTA

The new Child Abuse and Treatment Act (CAPTA) requirements represent an important step forward by Congress in linking child welfare, substance exposure, and special education. But most states and localities have not fully implemented CAPTA's provisions, and no states appear to have compiled annual baseline totals of children reported and assessed under these provisions, theoretically in effect since 2004. *Blending Perspectives* raised this issue, and ten years later there is an opportunity to spotlight this important group of children at the front end of the system who often require early intervention.

### ■ Strengthen the CFSR partnership

If other agencies' resources are essential to achieving CFSR outcomes, then those agencies should be full partners in the CFSR process. At a minimum, such a partnership would include using those agencies' data as part of the required self-assessment, tracking the results of referrals to other agencies rather than simply counting referrals, and developing full-funding inventories of treatment resources available to child welfare clients. This activity would go well beyond simply citing a "treatment gap" in CFSR documents while not comparing parents' treatment needs with available treatment slots or reviewing enrollment of child welfare clients in treatment system caseloads. This sort of initiative would give real meaning to the 1999 report's call for closer interagency collaboration in state CFSR processes.

### ■ Pursue access to treatment under "reasonable efforts"

Amending ASFA to strengthen the reasonable efforts requirement for access to treatment must start by clarifying which standards of treatment should be enforced. Since the federal government has already issued guidelines for effective treatment in child welfare and for women's treatment, either amendments to ASFA or the states' own actions could re-emphasize using these guidelines to assess the quality and timeliness of such treatment.<sup>28, 29</sup> States could be required or encouraged to set forth their own definition of effective treatment for child welfare clients affected by substance use disorders (as they are required to define "compelling reasons" for not filing for TPR) and to report on how this definition functions in the CFSR process. One proposal suggests that states (or the federal government through amendments to ASFA) would allow a delay in TPR proceedings "until it can be ascertained that the parent has had unimpeded access to quality treatment based on the individual's treatment needs and any normally expected relapses."<sup>30</sup> Closer definition may be difficult, but making access to quality treatment a requirement of reasonable efforts would be a sizable step forward.

### ■ Give a higher priority to broadening the range of treatment funding

There is a need to explore the full range of possible funding sources for effective treatment. Giving child welfare funding sources more flexibility is critical, as in the Title IV-E waivers in four states that allowed

addressing substance abuse needs.<sup>31</sup> Some of this expanded funding must go beyond immediate treatment needs to addressing substance use disorders with chronic care management (as with hypertension and diabetes). The aim is a continuous network of supportive services and children's services for those most affected by their parents' substance abuse.

## Conclusion

ASFA unquestionably turned up the spotlight on the problem of substance abuse, through the publication of the *Blending Perspectives* report and other actions described in this chapter. The progress summarized here represents major steps forward by the federal government, states and localities, and service providers throughout the nation. But substance abuse treatment remains underemphasized in the arsenal of tools used by the child welfare system to achieve its outcomes. Despite the advances of the Regional Partnership Grants, very few states respond fully to the proportion of their caseloads affected by substance abuse. Some states' recording systems are so inadequate that they implausibly report only four percent of their foster care caseloads as being affected by substance abuse. Clearly, in all but a few places, current resources and attention are not proportionate to the problem as it affects child welfare outcomes.

One of the greatest challenges put in play by ASFA is to reach outside the boundaries of the child welfare system to define child well-being as the responsibility of a broad constellation of agencies, community groups, and caretakers. But when legislation is categorical in nature, the actions it triggers are largely confined to the categorical system in question. That leaves child welfare seeking help from other agencies, and often frustrated by the response. But it is abundantly clear by now that child welfare cannot achieve the desired outcomes all by itself. Child welfare systems operating alone are classically "downstream" responses that wait until the problem becomes serious and registers in the form of child maltreatment.

One direction for future changes in ASFA is evident in the CAPTA amendments of 2003. These changes were a powerful antidote to the categorical approach of most child welfare legislation; just as the CAPTA amendments addressed child welfare issues, special education legislation—the Individuals with Disabilities Education Act (IDEA), Public Law 108-446—was amended to include developmental screening responsibilities for child welfare cases. Progress will demand

more cross-agency legislative coordination of this kind and continued efforts to build on the strong foundations of interagency work within the federal government and its state and local counterparts, thus sharing the task of achieving child well-being more widely.

Ultimately, however, child welfare systems operating under ASFA face a choice: how high a priority should be given to substance use disorders as they affect child welfare outcomes? If thorough assessment of the prevalence and impact of this problem continues to document its severity, renewed efforts to connect children and parents with effective treatment will be needed both within and outside of child welfare systems.

## Footnotes

- 1 This chapter is prepared under the auspices of Children and Family Futures and does not reflect the views or approval of any of its public or private funders. Nancy K. Young, Ph.D. is the Executive Director and Sid Gardner is the President of Children and Family Futures.
- 2 We are using the phrase "substance abuse" because of its widespread usage in place of the more accurate term *substance use disorders*.
- 3 U.S. General Accounting Office (GAO). (1995). *Foster care: Health needs of many young children are unknown and unmet* (GAO/HEHS-95-114). Washington, DC: U.S. GAO.
- 4 The assumptions underlying these estimates include
  - 8.3 million: Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (April 16, 2009). *The NSDUH Report: Children Living with Substance-Dependent or Substance-Abusing Parents: 2002 to 2007*. Rockville, MD.
  - 700,000: This assumes 70-80 percent of the 900,000 substantiated cases [2006 data] involve substance abuse.
  - 170,000: This assumes that 2/3 of the children in out-of-home care are affected by substance abuse—a conservative estimate, according to nearly all child welfare officials with whom we have spoken.
  - 400-500,000: This is a conservative estimate based on recent prenatal screenings in multiple sites, as well as prevalence studies based on screening at birth. N. Young et al. (2008) *Substance-Exposed Infants: State Responses to the Problem*. National Center on Substance Abuse and Child Welfare, Irvine, CA.
  - 5 percent prenatally exposed identified: the 5 percent figure is the product of comparisons of infants reported to CPS in several jurisdictions to available data about overall prevalence of prenatal exposure [Orange County study: <http://www.ochealthinfo.com/docs/public/2007-Substance-Expose-Baby.pdf>; N. Young et al. (2008) *Substance-Exposed Infants: State Responses to the Problem*. National Center on Substance Abuse and Child Welfare, Irvine, CA.
- 5 Gibbons, C. B., Barth, R. P., & Martin, S. L. (in press). Substance abuse among caregivers of maltreated children. *Child Abuse & Neglect*.

- 6 Young, N., Boles, S., and Otero, C. Parental Substance Use Disorders and Child Maltreatment: Overlap, Gaps, and Opportunities *Child Maltreatment* 2007; 12; 137.
- 7 *Nobody's Children: Abuse and Neglect, Foster Drift, and the Adoption Alternative* (1999), by Elizabeth Bartholet. Reprinted by permission of Beacon Press, Boston, MA.
- 8 U.S. Department of Health and Human Services. Blending Perspectives and Building Common Ground. A Report to Congress on Substance Abuse and Child Protection. Washington, DC: U.S. Government Printing Office, 1999.
- 9 *Responding to Alcohol and Other Drug Problems in Child Welfare: Weaving Together Practice and Policy*. Washington, DC: Child Welfare League of America. 1998. *Foster Care: Agencies Face Challenges Securing Stable Homes for Children of Substance Abusers*. Washington, DC: U.S. General Accounting Office. September 1998. *No Safe Haven: Children of Substance-Abusing Parents*. New York: The National Center on Addiction and Substance Abuse at Columbia University. January 1999. *Healing the Whole Family: A Look at Family Care Programs*. Washington, DC: Children's Defense Fund. 1998.
- 10 <http://www.ncsacw.samhsa.gov/files/SummaryofCFSTRs.pdf>.
- 11 The Collaborative Capacity Instrument is at [www.cffutures.org](http://www.cffutures.org).
- 12 <http://www.ncsacw.samhsa.gov/files/Shared%20Values%20and%20Guiding%20Principles.pdf>.
- 13 Part C of the Individuals with Disabilities Education Act (IDEA) refers to the responsibilities of state agencies for children ages 0-2 with disabilities.
- 14 The curricula are available at [www.ncsacw.samhsa.gov](http://www.ncsacw.samhsa.gov).
- 15 See sources at the National Resource Center on Children and Families of the Incarcerated.
- 16 M. Zavez, "ASFA at 15/22 Months for Incarcerated Parents," *The Vermont Bar Journal*. Spring 2008.
- 17 S. Worcel, et al. (2007) Family Treatment Drug Court Final Evaluation. NPC Research <http://www.ncsacw.samhsa.gov/files/FTDC%20Evaluation%20Final%20Report.pdf>. Family drug courts are dependency courts that require parents with substance abuse problems to agree to court supervision of their treatment and condition reunification upon successful completion of treatment as monitored by the court.
- 18 Young, N. K., Nakashian, M., Yeh, S., & Amatetti, S. (2007). *Screening and Assessment for Family Engagement, Retention, and Recovery (SAFERR)*. Rockville, MD: Substance Abuse and Mental Health Services Administration.
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- 20 *African American Children in Foster Care: Additional HHS Assistance Needed to Reduce the Proportion in Care*—GAO Report 07-816, July 2007.
- 21 Testimony of Ira Chasnoff, M.D., to California Assembly Select Committee on Drugs and Alcohol, January 2008. <http://www.democrats.assembly.ca.gov/members/a24/jan10.aspx>.
- 22 K. Dennis, N. Young, S. Gardner, (2008) Funding Family-Centered Treatment for Women with Substance Use Disorders. SAMHSA. [http://www.womenandchildren.treatment.org/FINAL\\_Funding\\_Paper\\_8-13-08.pdf](http://www.womenandchildren.treatment.org/FINAL_Funding_Paper_8-13-08.pdf).
- 23 These changes included two new reporting and referral requirements:
- Public Law 108-36, Sections 106(b)(2)(A)(ii and iii)(the CAPTA amendments of 2003) requires states receiving CAPTA funds to adopt "Policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born and identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, including a requirement that health care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of such condition in such infants;" "states must also ensure that there is a plan of safe care for the infant born and identified as being affected by illegal substance abuse or withdrawal symptoms..."
  - A second provision requires states to develop and implement "provisions and procedures for referral of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect to early intervention services funded under part C of the Individuals with Disabilities Education Act."
- 24 <http://www.eip.uoregon.edu/conferences/DEC/2005/MEMORANDUM%20OF%20UNDERSTANDING.pdf>
- 25 Those two information systems—the SACWIS (State Automated Child Welfare Information System) and NOMS (National Outcomes Monitoring System) are requirements under the Children's Bureau Administration of Title IV of the Social Security Act and the Substance Abuse and Mental Health Services Administration's oversight of the Substance Abuse Prevention and Treatment Block Grant.
- 26 In some states, engagement and retention data can be derived by comparing referrals to treatment from child welfare with clients who completed treatment and the different categories of completion, e.g., positive discharge, discharged without completion, etc.
- 27 White Paper on Funding Comprehensive Services for Families with Substance Use Disorders in Child Welfare and Dependency Courts (2004) National Center on Substance Abuse and Child Welfare (draft). <http://www.ncsacw.samhsa.gov/files/FundingWhitePaper.pdf>.
- 28 [http://www.nasadad.org/resource.php?base\\_id=1482](http://www.nasadad.org/resource.php?base_id=1482).
- 29 <http://www.csat.samhsa.gov/treatment.aspx>. These treatment protocols and guidelines were issued over the past two decades.
- 30 M.J. Hannett, "Lessening the sting of ASFA: The rehabilitation-relapse dilemma brought about by drug addiction and the termination of parental rights." *Family Court Review*. Vol. 45, Issue 3, pp. 524-537. Published online May 26, 2007.
- 31 The Title IVE waivers, which were part of ASFA, were evaluated as to their impact on substance abuse enrollment and child welfare outcomes. "Overall, outcomes related to permanency and reunification were more difficult to affect in all states than outcomes related to treatment access, engagement, and retention." [http://www.acf.hhs.gov/programs/cb/programs\\_fund/cw/waiver/substanceabuse/index.htm](http://www.acf.hhs.gov/programs/cb/programs_fund/cw/waiver/substanceabuse/index.htm).

# Parents with a Mental Illness and Implementation of the Adoption and Safe Families Act

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## Introduction

This paper examines how implementation of the Adoption and Safe Families Act (ASFA) may affect families in which a parent has a mental illness. We present evidence that such parents may suffer discrimination when the psychiatric diagnosis alone leads to an assumption of risk in lieu of a more complete assessment of a parent's behavior or parental competence. We argue that decisions about child placement, custody, or termination of parental rights should never be based solely on a diagnostic label or on assumptions about the possible ramifications of a parent's mental illness. Instead, parents with mental illnesses and their families deserve a thorough assessment that takes into account all dimensions of parent and family functioning and needs, and thus can better inform service planning and/or legal proceedings. Further, if it is determined that a parent's mental illness, compounded by inadequate services and supports, does compromise his or her functioning as a caregiver, then those resources should be provided and accessible as a part of "reasonable efforts." The goals of child safety and child well-being should always remain paramount, but we must also bear in mind that separating children from their parents and transferring responsibility for their lives to multiple caregivers in the foster care system can often be traumatic and not in their best interests.<sup>1</sup> We offer recommendations for professional training and for innovations in policy, practice, and research that will improve the implementation of ASFA and reduce the likelihood of negative impact on children and families coping with parental mental illness.

A key challenge in thinking about the impact of parental mental illness on children and parents is how to negotiate the tension between the rights of parents and the best interests of children. In examining this basic tension, Allen and Bissel (2004) note that parents' rights are rooted in the due process clause of the Fourteenth Amendment; this clause provides protection against governmental interference with fundamental rights, the oldest of which is the interest of parents in the "care, custody, and control of their children" (p. 57). The concept of "the best interests of the child" has its own strong foundation in Supreme Court decisions that have held for the state's prerogative to restrict or override parental rights when there is "compelling government interest" to do so (p. 57). Striking the proper balance between these competing interests is an ongoing concern of our government systems and our society alike.

### Parents with Mental Illnesses and the Child Welfare System

When the children of parents with a mental illness are placed in foster care, families face many barriers to reunification. Even before ASFA was enacted, parents who had mental illnesses found themselves at high risk of losing permanent custody of their children, because of their own needs and circumstances, a lack of appropriate services, the ill-informed responses of others, such as child welfare personnel, and adverse state laws or state agency policies and practices (Hollingsworth 2004).

Several studies document a long history of states' placing of legal restrictions on the rights of persons with mental illness. For example, Hemmens, Miller, Burton, & Milner (2002) found that the number of states restricting the parenting rights of persons with a mental illness rose from twenty-three in 1989 to twenty-seven a decade later. A recent study of state statutes (Scott 2008) revealed that five states and the territory of Puerto Rico listed a parental mental illness among possible "aggravated circumstances," (i.e., as potential grounds for not making reasonable efforts to reunify a family [see Table 1]). The basis for deciding that reasonable efforts are not warranted varies among the five states. Arizona and California cite parents' inability to care for a child or to benefit from services; Alaska and Kentucky apply the same standard but require a finding that remediation is unlikely within a twelve month timeframe. North Dakota focuses on parents' lack of effort to obtain treatment.

In some cases, these statutes list mental illness alongside crimes such as murder, manslaughter, and felony assault—remarkable evidence of the social prejudice and stigma associated with having a mental illness. In addition, thirty-six states currently list a parental mental illness as a possible factor when termination of parental rights is being considered (Lightfoot & LaLiberte 2006).

### *Parental Mental Illness and Child Maltreatment*

The body of research evidence pertaining to the relationships between parental mental illness, child maltreatment, and parental competence is complex, and findings depend on the nature of the research questions asked. Addressing the frequency of mental illness among parents who abuse their children, Gelles (1996) found that only about ten percent could be diagnosed either as suffering from a mental illness or as affected by psychopathology. The percentage of parents with mental illness in the U.S. who neglect or abuse their children is unknown. Three population-based studies (Bland & Orn 1986; Egami, Ford, Greenfield, & Crum 1996; Walsh, MacMillan, & Jamieson 2002) have established an association between parental mental illness and increased risk of child maltreatment. This correlation, however, is neither inevitable nor universal; Walsh et al. (2002) point out that the majority of respondents in their sample who reported that one or both parents had a mental illness did not report a history of being involved in abuse or neglect.

### *Impact of Parental Mental Illness on Children*

Whether involved in the child welfare system or not, children of parents with mental illnesses are more likely to face developmental and behavioral problems than children of parents without such challenges (Beardslee, Keller, Seifer, Podorefsky, Staley, Lavori, & Shera 1996; Oyserman, Mowbray, Meares, & Firminger 2000; Riley, Coiro, et al. 2008). Programs that have succeeded in improving the health and functioning of children, as well as in aiding parents with mental health disorders, include those designed for families with a parent who suffers from depression (Riley, Valdez, et al. 2008) and those assisting families with more diverse challenges, including depression, who are enrolled in Early Head Start programs (Chazan-Cohen, et al. 2007; Love, et al. 2005).

Besides parental mental illness, risk factors for possible child maltreatment include environmental and social drawbacks such as unaffordable housing,



**Table 1: State Statutes Addressing Mental Illness as Grounds for Not Providing Reasonable Efforts**

<b>State</b>	<b>Statute</b>	<b>Mental Illness</b> as grounds for not providing reasonable efforts	<b>Protective Language</b> for people with a mental illness	<b>Excerpt</b>
Alabama	12-15-65(m)	NO	NO	
Alaska	47.10.086(c)(5)	YES	NO	A mental illness or mental deficiency of such nature and duration that, according to the statement of a psychologist or physician, the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury even if the department were to provide family support services to the parent or guardian for 12 months.
Arizona	8-846(B)(1)(b)	YES	NO	A mental illness or mental deficiency of such magnitude that it renders the parent or guardian incapable of benefitting from the reunification services.
Arkansas	9-27-303(46)(c)	NO	NO	
California	W.and I.361.5	YES	NO	A mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.
Colorado	19-1-115	NO	NO	
Connecticut	17a-111b	NO	NO	
Delaware	Tit. 13 1103	NO	NO	
DC	4-1301.09a	NO	NO	
Florida	5.39.806	NO	NO	
Georgia	15-11-58	NO	NO	
Hawaii	587-71	NO	NO	
Idaho	16.2005	NO	YES	If the parent has a disability, as defined in this chapter, the parent shall have the right to provide evidence to the court regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child.
Illinois	705 ILCS 405/2-13.1	NO	NO	
Indiana	31-34-21-5.6	NO	NO	
Iowa	232.102.12	NO	NO	
Kansas	38-2255	NO	NO	
Kentucky	610.127	YES	NO	Mental illness as defined in KRS 202A.011 or mental retardation as defined in KRS 202B.010 or other developmental disability as defined in KRS 387.510 that places the child at substantial risk of physical or emotional injury even if the most appropriate and available services were provided to the parent for twelve (12) months.
Louisiana	Ch. Code Art. 672.1	NO	NO	
Maine	22 §4055.	NO	NO	
Maryland	§ 3-812	NO	NO	
Massachusetts	I.119.29C	NO	NO	
Michigan	712A.19b	NO	NO	
Minnesota	260.011	NO	NO	
Mississippi	43-21-603	NO	NO	
Missouri	211.183	NO	NO	

**Table 1: State Statutes Addressing Mental Illness as Grounds for Not Providing Reasonable Efforts** (continued)

<b>State</b>	<b>Statute</b>	<b>Mental Illness</b> as grounds for not providing reasonable efforts	<b>Protective Language</b> for people with a mental illness	<b>Excerpt</b>
Montana	41-3-423	NO	NO	
Nebraska	43-283.01	NO	NO	
Nevada	432B.393	NO	NO	
New Hampshire	169-C:24-a	NO	NO	
New Jersey	30:4C-11.2	NO	NO	
New Mexico	32A-4-22	NO	NO	
New York	FCA 1039-b	NO	NO	
North Carolina	§ 7B-507	NO	NO	
North Dakota	27-20-32.2, 27-20-02	YES	NO	Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of those conditions for a period equal to the lesser of: (1) One year; or (2) One half of the child's lifetime, measured in days, as of the date of the petition alleging aggravated circumstances is filed.
Ohio	2151.419	NO	NO	
Oklahoma	10-7003-4.6.	NO	NO	
Oregon	419B.340	NO	NO	
Pennsylvania	42 Pa.C.S.A. § 6351, § 6302	NO	NO	
Rhode Island	40-11-12.2	NO	NO	
South Carolina	20-7-763	NO	NO	
South Dakota	26-8A-21.1	NO	NO	
Texas	262.2015	NO	NO	
Tennessee	37-1-166.	NO	NO	
Utah	78A-6-302	NO	YES	In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of (b) mental illness or poverty of the parent or guardian; or (c) disability of the parent or guardian, as defined in Section 57-21-2.
Vermont	22-18-1.1 Ann. Stat. Tit. 33, 5515	NO	NO	
Virginia	Ann. Code 16.1-281	NO	NO	
Washington	Rev. Code 13.34.132	NO	NO	
West Virginia	49-1-1	NO	NO	
Wisconsin	Ann. Stat. 48.355	NO	NO	
Wyoming	Ann. Stat. 14-2-309a,b	NO	NO	
Puerto Rico	8-23B-4-447s	YES	NO	A mental disability or defect of such magnitude that it prevents him or her from benefiting from reunification services and he or she will not be able to care properly for the minor.

inaccessible or inadequate health care, prevalent community violence, social isolation of families, parents' physical illness, and parental involvement in substance abuse or criminal activity (Brown, Cohen, Johnson, & Salzinger 1998; Hay & Jones 1994; Leventhal 1996). Hollingsworth (2004) found that one or more of these environmental factors, when combined with the presence of mental illness, correlated very significantly with the loss of child custody among affected women. Examining the effects of social-context factors on the positive-parenting practices of African American women, Oyserman et al. (2002) found that the relative degree of social and financial stress and the women's current mental health status strongly predicted the character of parenting attitudes, the extent of parental involvement, and the type of parenting style. It is within this complex framework of interacting forces that we should seek to understand the historical ramifications of ASFA.

## Impact of ASFA Provisions

### *Reasonable Efforts*

Federal law requires state social service agencies to demonstrate that reasonable efforts are made to “provide assistance and services to prevent the unnecessary removal of a child from his or her home” and to “make it possible for a child who has been placed in out-of-home care to be reunited with his or her family” (Child Welfare Information Gateway, [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/reunify.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/reunify.cfm) retrieved on July 25, 2008). Satisfying the reasonable efforts requirement would seem to entail that services should be *available* and *accessible* to families confronting parental mental illness, and that the timeframe of service delivery should be sufficient to allow parents to participate meaningfully and benefit fully. Those overseeing the process should carefully gauge the necessary timeframes for treatment, prognosis, and predictions of future parenting capacity in light of the characteristics of mental illnesses in general, while also taking into account the nuances and distinctive patterns of a given parent's illness. In order to do this job right, child welfare practitioners and mental health specialists must be well trained, strongly supported, and prepared to work together.

### ■ **Effective interventions may not be available**

Families in need often have trouble finding appropriate services, meaning empirically tested interventions that successfully address the specific challenges

of parents living with mental illnesses and the special circumstances confronting their children (Hinden, Biebel, Nicholson, Henry, & Katz-Leavy 2006). A recent study of programs across the U.S. that include services to parents with a mental illness and their respective families revealed that of fifty-three such programs, only twenty had been *specifically* designed to meet the needs of these parents. In most cases, the type of funding source—its particular mission and set of priorities—dictated or shaped the program's distinctive target group, eligibility requirements, and intended outcomes. The programs' theoretical orientations, geographical settings, and relative comprehensiveness of outreach also varied widely. Despite these differences, however, the programs shared an essential set of family-centered and strengths-based services, such as flexible family case management, parent support, education and parent skills training. Unfortunately, very few of the programs reviewed had undergone formal evaluations from which it is possible to generalize about their effectiveness (Hinden et al. 2006; Nicholson, Hinden, Biebel, Henry & Katz-Leavy 2007).

### ■ **What works?**

Hollingsworth (2004) concludes that parents with a mental illness benefit from being connected with respite services and support groups, receiving information and practical guidance on aspects of parenting, and getting help in locating and accessing community services. Based on their study of parenting among African American women with mental illness, Oyserman et al. (2002) assert that providing access to financial resources, social support, and quality mental health services can play a vital role in enabling positive parenting.

In a similar vein, the Nurse-Family Partnership model (Olds, et al; 2002) is being implemented and tested in Louisiana and targets the needs of young mothers with depression and their children (Boris, Larrieu, Zeanah, Nagle, Steier & McNeill 2006). In this approach, nurses and mental health counselors take corrective aim at the impact of depression and partner violence on the mother, the infant, and the mother-infant relationship. Another promising model, Family Options (Cowling 2004; Nicholson, Biebel, Williams & Albert 2008), blends principles and strategies of psychiatric rehabilitation with a family team concept. Preliminary data on this family-centered model indicate that mothers are making gains in receiving useful

services and improving their life skills, parenting practices, and showing improvements in well-being and functioning. (Nicholson et al. 2008).

■ **Services may be available but may not be fitting or easily accessible**

Parents with mental illnesses and providers alike describe extensive barriers to the accessing of effective mental health services (Blanch, Nicholson & Purcell 1994; Nicholson 1996). Parents' participation may be impeded or constrained by services that are too far away, are offered at inconvenient times, or are simply ill-suited to their particular needs. Extended family members may undermine parents' efforts to seek care by not providing emotional support (Nicholson, Geller, Fisher & Dion 1993) or by neglecting to help out with transportation or child care (Nicholson 1996; Nicholson, Sweeney & Geller 1998b). Traditional adult mental health services tend not to focus on parenting or parental needs as such; in fact, a recent survey of state mental health program directors found that only twelve states routinely asked clients about their status as parents, and only four of these states had written policies or practice guidelines covering the provision of services to this segment of the client population (Nicholson, Biebel, Williams, & Katz-Leavy 2004). Furthermore, existing services are often not family-centered, and services for adults and children are sometimes offered in separate locations, creating logistical problems for families. Mental health and child welfare services may not be well coordinated, while adult and child mental health services may be fragmented in terms of design and delivery (Blanch, et al. 1994).

■ **When “reasonable efforts” are not required**

ASFA spells out situations in which states are exempted from making “reasonable efforts” to provide assistance and services to parents or families (Child Welfare Information Gateway, [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/reunify.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/reunify.cfm)). A core example of such an exemption would be a case in which the courts determine that a parent has committed a heinous crime such as murder, torture, or chronic abuse. States may adopt additional grounds for bypassing the “reasonable efforts” standard. As noted, five states and Puerto Rico specify that reasonable efforts to support reunification are not required when evidence is presented that cites a parental mental illness as the reason that it is unlikely that the parent will be able to care for a

child within a reasonable timeframe. (Scott 2008).

Central to the concept of “reasonable efforts” is an emphasis on assisting families to preserve or repair parent-child relationships in order to maintain the integrity of the family unit. Ironically, certain routine practices in child welfare and mental health, often instituted with little or no empirical evidence of their efficacy, may work against family preservation or reunification for parents with mental illness (Nicholson, Geller, & Fisher 1996); indeed some of these procedures may exacerbate parents' mental illnesses and lead to increased maladjustment in children (Nicholson, Sweeney, & Geller 1998a). For example, removing children from their parents' care may sometimes trigger symptoms of trauma in parents as well as in children. Another example stems from the common practice of setting a period of time during which parents may not have contact with their children who have been placed in foster care. Often justified as a means of allowing the child “time to settle into the foster home” or of giving a parent “time to work on his or her own issues,” this practice may aggravate emotional and behavioral dysfunction among both children and parents. Foster parents and kinship care providers may not be sufficiently attuned to the nature of birth parents' mental illnesses (Nicholson 1996). They may refuse to allow birth parents access to their children, resulting in lost opportunities to guide and support those parents in ways that could promote family reunification.

Parents' feelings and behaviors, growing out of past experiences, affect their willingness and ability to form productive relationships with professional and natural support providers (Nicholson, et al. 1998b). Many parents report finding it difficult to trust mental health and child welfare providers (Nicholson et al. 1998a) and extended family members, most obviously in cases where one of those family members had abused them as children (Nicholson, et al. 1998b). Parents who themselves had negative experiences in foster care may understandably become very upset at the prospect of placing their children in foster care.

The rationale of “time to work on your own issues” often comes into play with parents who must be hospitalized, yet a lack of information as to their children's whereabouts and well-being may contribute to parents' worries and, in the worst case, to their decompensation (Nicholson, et al. 1998a). Some psychiatric hospitals go so far as to

automatically file child abuse reports whenever parents are admitted for treatment. Some hospitals also have policies that either prohibit or work to discourage parent-child contact (Nicholson, Geller, et al. 1993; Biebel, Nicholson, Williams & Hinden 2004; Biebel, Nicholson, Geller, & Fisher 2006). From the other direction, children whose parents are hospitalized may not be given information regarding their parents' condition, location, or timeline for release and return. The courts may hold parents responsible for any negative impact of the routine child welfare and mental health practices described above on the parent-child relationship. The courts then blame parents for having an "insecure relationship" with their children, and their children may be removed from their care and/or custody.

The matter of visitation also presents complicated challenges for parents with mental illnesses. Those who are allowed weekly visitation in accordance with child protection service plans, as long as they "show up" and behave "appropriately," are judged to be committed to their children by caseworkers and by the court. If either parents or children express anger or pain, however, they may be deemed dysfunctional or labeled as "difficult." Parents will sometimes opt out of these visits altogether if they become too distressed by the repeated separations from their children or feel too burdened by the fear of ultimately losing custody (Nicholson, et al. 1998a).

Certain common characteristics of mental illnesses (e.g., conditions that are perceived as chronic or cyclical, or in which relapse is common) may lead the court to determine that reasonable efforts are not required (Nicholson, et al. 2004). Although new treatment and rehabilitation strategies for mental illnesses have never been better, the course of an illness—emergence of symptoms, diagnosis, treatment, and recovery—is rarely linear, while prognosis and outcomes may vary depending on gender, race, and ethnicity (DHHS, 1999).

Therefore, affected parents required individualized approaches that take into account their unique circumstances throughout the family's period of contact with the child welfare system.

### *Initial and Ongoing Evaluation*

Concern for a child's safety may appropriately trigger his or her prompt removal from parental care. Effective service planning, however, hinges on an ongoing assess-

ment that closely tracks each parent's expression of mental illness, each child's unique needs, and the shifting contours of family life over time. Evaluations based on information obtained at only one point in time may not accurately capture the parent's capabilities or the child's needs. Illnesses may wax and wane, with periods when the parent is functioning well and other times when he or she requires greater attention and help. Or, a parent with a mental illness may function well in one area and face challenges in another; for example, he or she may be able to provide care for children, but have difficulty balancing care-giving with the demands of work. Thus an instance of perceived child neglect may stem from an inability to sustain employment, or perhaps a consequent loss of housing, and yet be attributed to a more basic incapacity to parent.

Parents with mental illnesses report a common feeling of being under intense scrutiny because of the routine assumption that they are unfit to parent, sometimes from the moment of a child's birth (Nicholson, et al. 1998a). This scrutiny can sometimes serve as motivation to perform well, but can also undermine a parent's self-confidence. Parents who mask their difficulties for fear they will be judged as inadequate may be perceived as "withholding information" or as having a "lack of insight." Children of parents with a mental illness may welcome an opportunity to talk with someone about their situation, but they may also be confused or anxious about betraying their parents or being separated from them.

### *The Place of Assessment in Termination of Parental Rights*

The concepts of "reasonable time" and "foreseeable future" are particularly important in assessing parental competence in termination of parental rights proceedings. Factors that complicate the task of determining how a mental illness will affect the capacity to parent or of predicting future "competence" include the lack of a clear and widely accepted definition, the unsuitability of traditional psychological instruments, the uncertain impact of situational influences such as poverty or family structure, and the scarcity of normative data from which to measure parenting abilities (Ackerson 2003; Budd & Holdsworth 1996; Budd, Poindexter, Felix, & Naik-Polan 2001; Grisso 2002; Ostler 2008). Decisions of great consequence to parents and children are often made with little basis in careful, scientific assessment, and with considerable discretionary authority granted to the state. In Montana, for example, if two outside mental health professionals testify that a person will be

unable to assume a parenting role because of mental illness, the child welfare system is relieved of any requirement to provide services to the parent (Lightfoot & LaLiberte 2006).

To address this critical issue, Jacobsen, Miller, and Kirkwood (1997) recommend the model of a multidisciplinary assessment team that promotes collaboration between mental health and child welfare personnel and that shapes interventions according to an assessment of parents' particular strengths and deficits. Other constructive guidelines aimed at more comprehensive assessments of parenting competency call for direct observation of parenting and for information-gathering that relies on multiple sources, perspectives, and points in time (Ostler 2008). Budd (2005) identifies three core features that should distinguish parental assessment: a focus on parenting rather than diagnosis, a functional approach that emphasizes behaviors and skills in everyday performance, and the application of a minimal parenting standard. Risley-Curtiss, Stromwell, Hunt, and Teska (2004) contend that some assessments of parental fitness focus on *optimal* capacity rather than the more appropriate standard of *sufficient* parenting capacity.

The American Psychological Association has issued guidelines for evaluations in child protection cases that emphasize objectivity, specialized forensic expertise, informed consent, and nondiscriminatory practice (American Psychological Association Committee on Professional Practice and Standards 1998). Yet current practice appears to be at odds with many of these guidelines (Budd 2005; McWey, Henderson, & Tice 2006; Risley-Curtiss, et al. 2004). For example, mental health professionals conducting assessments to be used in court proceedings will sometimes meet with parents only once or twice for a period of one or two hours (Budd 2005; McWey, et al. 2006). In addition, some never observe parents interacting with their children (McWey, et al. 2006; Risley-Curtiss, et al. 2004). Yet the reports of these professionals often have great influence in family court decisions.

### *When Reasonable Efforts Require Reasonable Accommodations*

Many state statutes put forward the concept of "mental disability" as possible grounds for the termination of parental rights (Bazelon Center 2008. <http://www.bazelon.org/newsroom/2007/UNJUST011107.html> retrieved on October 3, 2008). Embedded in the Americans with Disabilities Act (ADA) is a requirement that public agencies pursue strategies for ensuring effective

participation of individuals with disabilities in the operations of publicly funded services. Unfortunately, there has been little success in invoking ADA mandates on behalf of parents with *psychiatric* disabilities in termination of parental rights proceedings (Bazelon Center 2008). However, the ADA requirement of "reasonable accommodations" to ensure client participation in services would seem to apply to publicly funded legal services for parents with mental disabilities, as well as to more traditional family preservation services.

The Clubhouse Family Legal Support Project (CFLSP) is a good example of an effort to integrate mental health and legal services, and to tailor legal services to the needs of parents with mental illnesses (Nemens & Nicholson 2006). CFLSP provides low-income parents with legal advice and referrals, pro bono representation, and linkage to community supports, training and education. The project also gives attorneys representing parents with mental illnesses coaching and information on matters such as custody and visitation, child welfare proceedings, housing and other family-related concerns in the legal system. CFLSP has provided training on parenting and mental illness to attorneys, judges, and mental health clinicians since 1999.

### *ASFA Timeframe*

Commendably, ASFA's timeframes were designed to prevent children from languishing in the foster care system (see Framework Paper), but they can present further trials for parents with mental illness. ASFA establishes that if reasonable efforts are not required, then an initial hearing regarding termination of parental rights must be held within thirty days of the permanency planning hearing (Baker, et al. 2001). This timetable in essence expedites the process of terminating parental rights. Even when reasonable efforts to reunify are required, a hearing must be held within twelve months to finalize the permanency plan. Some parents with mental illness find it difficult to meet reunification goals within this timeframe. Although filing of the mandatory termination petition does not take place until the child has been in the foster care system for 15 of the prior 22 months, the decision to terminate parental rights often comes at the twelve-month hearing, if it is determined that sufficient progress has not been made. McWey, et al. (2006) describe cases in which, even *with* the court's recognition of ongoing progress, parents with mental illnesses had their rights terminated because they were unable to meet reunification goals within the requisite timeframe. In

addition, expediting the process towards termination of parental rights may not in itself contribute to accomplishing ASFA goals; many children must wait in care for adoption for up to two years after their parents' rights have been terminated (Lowry 2004).

### *Workforce Challenges*

Because mental health professionals do not routinely ask about parenting status, adults served in the mental health system may not be identified as parents (Nicholson et al. 1993; Nicholson, et al. 2004). Mental health professionals serving the general adult population often report that they do not have the skills or knowledge to work with clients in their specific role as parents. These providers are also concerned about confidentiality issues and possible complications for the treatment relationship if child abuse or neglect is identified and reported (Maybery & Reupert 2006). Servais and Saunders (2007) suggest changes in professional training to increase the quality of services and reduce the stigma involved in pertinent cases.

Child welfare professionals are not necessarily equipped or required to identify and address the mental health needs of their adult clients. At the organizational level, management must support the thoughtful review of all policies and procedures that impinge on the capacity of the workforce to meet the needs of families with parental mental illness. Some training opportunities currently exist (see, e.g., <<http://www.ce4alliance.com/courses/100123>>; guidelines for attorneys, judges, and child welfare agencies proposed by the Youth Law Center in 2000). Expanded training would help workers explore assumptions and potential biases regarding these families and to develop the skills essential to working with them as effectively as possible.

### **Summary**

Our review of the interaction of ASFA implementation with the capacities, needs, and challenges of families with a parent affected by a mental illness has identified four major areas of concern that call for immediate action:

- 1 **Eliminate discrimination against parents with mental illnesses** based on stigma, fear, or lack of information that sometimes leads to renouncing “reasonable efforts” toward family reunification. This will require policy changes, as well as better education and support of personnel in all systems that work with these families.
- 2 **Significantly increase the availability of appropriate, effective services for parents with mental illness and their children** to ensure safety, improve parenting, and promote family integrity. The top levels of government must lead the way to new possibilities of collaboration and integration. Better communication and joint planning are necessary among federal, state, and local child welfare and mental health agencies and within the mental health field, moving from age-based programming to family-centered systems. Responsibility for improving the response to these vulnerable families is not limited to child welfare and mental health agencies, however. A fresh approach to designing systems and services should build on the strengths of families by meeting their needs for safe housing, employment and financial support, medical and mental health care, child care, and other vital resources.
- 3 **Substantially bolster professional training, and develop policy and practice guidelines to enhance practice bearing on parents with mental illness and their children.** Practice improvements should strive to anticipate and prevent instances requiring child welfare intervention, as well as to perfect the response to families once they encounter protective services.
- 4 **Accelerate research addressing families in which a parent has a mental illness to** (a) provide essential descriptive information about the families, their characteristics, experiences, and needs; (b) develop and test promising interventions, and (c) increase our knowledge base with respect to the short-term and long-term outcomes of these approaches. Key players among federal agencies should offer substantial support for this research and promote interdisciplinary and interagency collaboration in pursuit of these goals. Such agencies would include the Substance Abuse and Mental Health Services Administration, the National Institutes of Health, the Administration on Children, Youth, and Families, and the National Institute on Disability and Rehabilitation Research, among others.

## Policy Recommendations

### ■ Policy Recommendation 1

Ensure that a mental health diagnosis is not the sole grounds for limiting the rights of parents in child welfare proceedings. The State of Utah has added statutory language that prevents the court from taking custody strictly on the basis of mental illness, poverty, or the disability of the parent or guardian (see Table 1). Focusing on parents' diagnoses or labels misses the real question of parental functioning and can lead to underestimating or misjudging parental capacity to meet children's needs.

### ■ Policy Recommendation 2

When parents with mental illnesses demonstrate substantial progress toward meeting reunification goals, grant an accommodation (if necessary) of an extended timeline beyond the twelve-month timeframe for permanency hearings established by ASFA and/or the timeframe required for initiating termination of parental rights.

### ■ Policy Recommendation 3

Strengthen provisions for services and supports to parents with disabilities that may be associated with mental illness. Idaho's statutes contain affirmative language that allows a parent with a disability to demonstrate his or her ability and competency to parent with the enabling presence of supports or assistive technologies.

### ■ Policy Recommendation 4

By means of a multidisciplinary process, develop and disseminate guidelines for comprehensive evaluations of parental competence that can be used to forge appropriate service plans for families. Such guidelines should be widely shared with professional organizations, accrediting bodies, and state licensing boards.

### ■ Policy Recommendation 5

Require that the advocacy and legal representation needs of parents with mental illness be served by individuals knowledgeable about the nature of mental illnesses and trained in the search for appropriate services and supports to meet the goals of reunification plans.

### ■ Policy Recommendation 6

Allocate federal and state funds to specialized programs for parents with mental illnesses and their families. Require that program efforts include all

relevant agencies responsible for serving adults, children, and families and address the range of mental health, social service, and legal needs.

### ■ Policy Recommendation 7

Provide incentives for federal and state agencies to address the composite needs of all family members (both children and adults) in a comprehensive and coordinated way.

### ■ Policy Recommendation 8

Require state agencies whose mandates and activities touch the lives of families living with parental mental illness (e.g., mental health, child welfare, public health, education, juvenile justice) to develop interagency protocols aimed at facilitating integrated care for parents and children.

## Recommendations for Improving Practice

### ■ Practice Recommendation 1

Improve training for child welfare, law enforcement, legal, medical, psychiatric, and judicial personnel who make crucial decisions regarding the best interests of children when parents have a mental illnesses.

### ■ Practice Recommendation 2

Increase child welfare service options and enhance the ability to individualize supports for parents with mental illnesses and their families.

### ■ Practice Recommendation 3

Require state mental health authorities: (a) to determine the parenting and family status of all individuals receiving public sector services; (b) to achieve a blending of resources from adult and child mental health funding streams to support families; and (c) to train workers to provide appropriate and efficacious services for families living with parental mental illnesses.

### ■ Practice Recommendation 4

Promote, when appropriate, continuing contact between parents with mental illnesses and their children even after parental rights have been terminated. This practice may contribute to a sense of permanency and continuity, especially for older children.



## Research Recommendations

### ■ Research Recommendation 1

Promote research to study the impact of current policies and routine practices on children and parents when families living with parental mental illness become involved with child welfare.

### ■ Research Recommendation 2

Continue research addressing the effects on children of separation from parents, and of living in foster care or adoptive homes, with a focus on challenges faced by children and parents when a parental mental illness is involved. Seek solid comparative data on outcomes for children placed in foster care vis-à-vis those for children who remain at home with appropriate supervision and support for parents.

### ■ Research Recommendation 3

Continue to build the evidence and knowledge base that will support ever more effective interventions for families living with parental mental illness.

## Footnotes

- 1 In this paper, the phrase “parents with a mental illness” includes any parent who has received a diagnosis of mental illness from a mental health professional, or who is perceived and treated as having a mental health problem by others who either influence or wield power over the family’s relationship to the child welfare system (e.g., child welfare caseworkers, law enforcement personnel, judges, and attorneys). Use of the term “mental illness” does not include persons with a primary diagnosis of substance use disorder or developmental disability, but may encompass parents with co-occurring substance use or medical conditions. Some parents with mental illnesses in the child welfare system may be characterized as having severe disorders. The Substance Abuse and Mental Health Services Administration defines severity as follows: “A diagnosable mental disorder found in persons ages 18 years and older that is so long lasting and severe that it seriously interferes with a person’s ability to take part in major life activities.” (Substance Abuse and Mental Health Services Administration 2008, retrieved on October 7, 2008 from <http://www.oas.samhsa.gov/MentalHealthHP2010/terminology.htm>). Those who come within this definition are likely to need considerable support and individualized services. Another important term is “disability” (discussed below), defined as an impairment that substantially limits one or more major life activities (Disability Info.gov, 2008, retrieved October 6, 2008 from <http://www.disabilityinfo.gov/digov-public/public/DisplayPage.do?parentFolderId=219>). Parents with mental illnesses may or may not be deemed to have a disability, depending on the individual expression of their condition (symptoms, coping skills, course of illness), the unique needs of their children, and the resources and supports that can be brought to bear on their specific situations.

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# The Impact of ASFA on Immigrant Children in the Child Welfare System

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**M**ercedes Santiago-Felipe, an immigrant from Guatemala, lived in Grand Island, Nebraska with her two U.S. citizen children. She speaks “a Mayan Indian dialect... and speaks no English and very little Spanish.” She was arrested in March 2001 for slapping her six-year old son. Her children were taken into protective custody... the then Immigration and Naturalization Service (INS) placed a hold on her through the Hall County jail because she was an illegal alien. Misdemeanor charges of abuse ultimately were dismissed. Nebraska’s Foster Care Review Board later “found that the children were inappropriately removed from the home” given that “a ‘slap on the face’ was insufficient evidence to support a finding that [her son] was in imminent danger and that no evidence supported a finding that [her daughter] was at risk. The Review Board noted that “[t]here were no services offered to prevent removal, such as parenting classes, family support worker, or therapy”...

The immigration service deported Santiago-Felipe approximately two months after her arrest... While detained, she received “no legal counsel or legal advice... that she could contest her removal and remain in the United States to seek reunification with her children and that she had valid claims to legal status in the United States”... “Although the children had asked to see Mercedes[,]... [she] had no visitation with them.” Also, despite knowledge of the social workers, the guardian ad litem, and ultimately the judge, that Santiago-Felipe was held next door by immigration officials, the county court proceeded in her absence with hearings to adjudicate the fate of the children...

Santiago-Felipe’s “cousin made a request of state officials to have custody of the children... Social workers did conduct a study of the home of Santiago-Felipe’s brother in Alabama and recommended placement of the children with him, noting that he was “in the country legally, however, his wife [who does not work] applied for her papers in March and has not gotten a reply to date.” A day after receiving notice

that the children might be placed with their uncle in Alabama and his then unauthorized wife, “the guardian ad litem and deputy county attorney motioned ‘the Court for an order... preventing the removal of the minor children from the State of Nebraska’ ”...

In May 2002, “the State filed a motion to terminate Mercedes’ parental rights to her children, alleging as its sole basis for termination of those rights that the children had been in out-of-home placement for 15 or more months of the most recent 22 months.” The next month, the court entered an order terminating Santiago-Felipe’s parental rights, with an added “finding that the children had been abandoned.”

On appeal, the Nebraska Supreme Court determined that “plain error permeate[d] the entire proceedings and that such error denied fundamental fairness to Mercedes”... In the wake of this appellate decision and resolution of immigration issues, and more than three years after her separation from her children, Santiago-Felipe was reunited with her children in Grand Island, Nebraska.<sup>1</sup>

## Introduction

As illustrated in Mercedes' case, inequitable treatment, differences in language and culture, and the workings of immigration law and deportation, all compounded by poverty, can lead to an improper termination of parental rights under the Adoptions and Safe Families Act (ASFA) guidelines, to difficulty in placing children with relatives, and to distressing experiences for children in care (such as lack of visitation). This article will analyze how ASFA's expedited permanency process interacts with aspects of U.S. immigration law to affect decision making for immigrant families, potentially disadvantaging children (for example, by hindering their placement with kin caregivers) and placing an added burden on families in meeting case-plan requirements. We will also discuss how the current surge in immigration law enforcement activities is creating great fears, not without validity, among immigrant communities that the deportation of parents can result in their legal separation from their children. While recommendations limited to ASFA cannot fully address the broader issues we raise about interaction with immigration enforcement, we propose revisions to ASFA as well as improved policies and programs that will increase immigrant families' ability to reunify with their children.

## Who Are Immigrant Families with Children in the United States?

The United States is experiencing a wave of immigration not unlike the prior wave over a century ago. One in four children in the U.S. live in immigrant families, with the majority highly concentrated in six destination states: California, Texas, New York, Florida, Illinois, and New Jersey.<sup>2</sup> However, in the 1990s rapid growth also occurred in other states located in a wide band across the middle of the country, including many of the Rocky Mountain, Midwestern, and Southeastern states.<sup>3</sup> North Carolina, Nebraska, Arkansas, Nevada, and Georgia have experienced more than 200 percent increases in their immigrant population in the past ten years.<sup>4</sup> Integration issues that California and New York have faced for decades are now confronting policymakers and service providers in states with little expertise or experience in providing bilingual/bicultural services. Immigrants moving to these new destination states also tend to be poorer and less educated, to speak English less well, and to be undocumented in larger numbers than immigrants living in the larger destination states.<sup>5</sup>

Unlike the large-scale immigration to the U.S. in

the late 1800s and early 1900s, involving mostly immigrants from Europe, this new wave of immigration that began in 1960-70s is far more diverse, with the largest proportion of children (eighty-eight percent) coming from Latin America, the Caribbean, Asia, and Africa.<sup>6</sup> These new immigrants also do not necessarily share the Judeo-Christian background of earlier immigrant generations, but include Buddhists, Hindus, Muslims, and Sikhs.<sup>7</sup>

Poverty rates are typically higher among children of immigrants than among children of natives. Over a quarter of young children in immigrant families are poor, compared with a fifth for native families.<sup>8</sup> The primary reasons for this higher poverty rate are the lower skills/lower wages of their parents and the relatively low labor force participation among immigrant women.<sup>9</sup> Poverty is also associated with higher food and housing hardship in immigrant families. In 2002, thirty-nine percent of children of immigrants lived in families with one or more food-related problems, compared with twenty-seven percent of children of natives.<sup>10</sup> Children of immigrants were twice as likely as children of natives to live in families paying at least half of their income for rent and mortgage (thirteen percent vs. five percent) and four times as likely to live in crowded housing (twenty-six percent vs. six percent).<sup>11</sup>

Most immigrant families include a mixture of citizens and non-citizens.<sup>12</sup> A "mixed-status family" is one in which family members do not all share the same immigration status. They appear in many permutations, though the most common such family is one with an undocumented parent (or parents) and U.S.-born citizen children.<sup>13</sup> Almost all children of immigrants under age 6 are citizens (ninety-three percent), and most live in mixed-status families, underscoring how difficult it is to differentiate the undocumented immigrant community from the general immigrant population.<sup>14</sup>

## How Many Immigrant Children Are in the Child Welfare System?

There are currently no reliable data about the immigrant population in the child welfare system, but only limited, regional research results.<sup>15</sup> This information is generally not collected on a national, state, or local level. The public child welfare agency is under no mandate to collect data on an immigrant child or family's situation—such as primary language, country of origin, or number of years in the United States—so that these

circumstances are rarely documented with any level of accuracy.<sup>16</sup> For example, child welfare workers will often rely on physical appearance, surname, or ethnicity to surmise a child's or family's country of origin, and an immigrant from Somalia may be categorized as native-born African American, or a Filipino with a Spanish surname may be classified as Hispanic.<sup>17</sup> Immigrant families as well as child welfare staff often fear that reporting immigration status can make a family vulnerable to investigation or deportation.<sup>18</sup>

A preliminary analysis by the National Survey of Child and Adolescent Well-Being (NSCAW), reveals that overall, Latino children represent 18.2 percent of children who come to the attention of child welfare agencies. Approximately 9.6 percent of all children involved with the child welfare system are children of immigrant parents and 2.3 percent of the overall total are immigrants themselves (60.7 percent are Latino; 4.1 percent are African American; 33.7 percent are white; and 1.5 percent are of other races).<sup>19</sup>

While most of the information cited in this article is about Latino, particularly Mexican, families, there are profound differences in the immigrant population throughout the U.S. However, the largest numbers involved with the child welfare system are Latino families. National child welfare statistics do not indicate which of these families has immigration-related issues. Yet interviews with frontline child welfare workers suggest that many Latino cases involve families with mixed immigration status issues.<sup>20</sup> According to testimony given by the Chief Children's Court Attorney of New Mexico to the U.S. House of Representatives Committee on Education and Labor, Subcommittee on Workforce Protection, the New Mexico public child welfare agency has not been able to reliably track citizenship status of parents in its data system and lists only eighteen non-citizen children as being in protective custody; but she estimates that of the 2,300 children in care, "a significant number have at least one parent who is not a U.S. citizen."<sup>21</sup>

One study conducted by the Urban Institute in Texas does look at immigration status of children and families in the child welfare system, by matching birth records and child welfare records. The researchers found that "Latin American immigrant children and Latin American children of immigrants are underrepresented, while Hispanic children of U.S. born parents are over-represented in the Texas child welfare system."<sup>22</sup> This may not be surprising, given the isolation of first-generation families from service providers and systems. Nonetheless, even if the proportion of

first-generation children involved with child welfare is less than that for children of later generations, the total number remains large.

The 2006 national child welfare statistics indicate that approximately 80,000 or 28 percent of all child welfare cases involve Hispanic families.<sup>23</sup> In addition, immigrant children in the child welfare system may also include temporary care arrangements for unaccompanied children in exceptional circumstances such as trafficked children or children separated from deported parents against their will after immigration raids.<sup>24</sup> In Texas, New Mexico, Arizona, and California, Latinos/Hispanics have a large presence in the foster care population. In April 2008, Hispanics represented 47.9 percent of all children in care in California.<sup>25</sup>

Interviews with social workers suggest that immigrant families often enter the public child welfare system for reasons not very different from those pertaining to the native population—poverty, domestic violence, substance abuse, mental and physical health problems.<sup>26</sup> However, a study of the Texas child welfare system by the Urban Institute found that the share of Latin American immigrant child in out-of-home care who were removed for sexual abuse is three times as high as the share of children of natives removed for sexual abuse, which suggests the need for greater research.<sup>27</sup> While the researchers had insufficient information to explain this difference, they hypothesize that it could be because only the most serious cases of abuse in immigrant communities are reported to or substantiated by the Child Protection Services (CPS) agency, or because of unaccompanied children or commercial exploitation of children in major cities. However, even when the reasons for child welfare intervention are the same as for other ethnicities, child welfare agency social workers often consider cases involving immigrant children to be the most time consuming and challenging because the issues they raise are unfamiliar for workers who have little state or federal guidance.<sup>28</sup> The immigrant demographics of Texas may not apply elsewhere, and more research is needed to fill out the national picture.

### **Key Issues that Affect Decision Making, Outcomes for Children, and Immigrant Families' Compliance with ASFA**

The ASFA legislation shortened the timeframe for having a permanency hearing from 18 months to 12 months and imposed a strict timetable so that child welfare agencies were required to file termination of

parental rights (TPR) petitions for children who had been in care for 15 of the previous 22 months. Exceptions were made for situations in which children were placed with relatives, or there were compelling reasons why TPR was not in the child's best interest, or the family had not received services that were part of the case plan.<sup>29</sup> The Mercedes Santiago-Felipe case discussed above illustrates how bias and discrimination, incarceration and deportation proceedings, language barriers, lack of services, and relative placements can complicate child welfare cases.

### ■ Incarceration, deportation, and child welfare

The passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, 110 stat. 3009.546 (1996) (codified as amended in scattered sections of U.S.C.) increased the ease with which immigrants, including legal permanent residents, could be deported.<sup>30</sup> The restructuring of immigration enforcement after September 11th through the creation of the Department of Homeland Security also made deportation easier, and the total number of deportations increased by more than 400 percent from 1995 to 2005.<sup>31</sup> A January 2009 report by the Department of Homeland Security indicates that 180,466 alien parents of children with U.S. citizenship were removed between fiscal years 1998 and 2007.<sup>32</sup> Approximately 63,000 of these removals involved criminal violations, while the rest involved individuals present without authorization, previous removals, or attempted entry without proper documentation.<sup>33</sup> The U.S. is among the few countries that do not consider family ties as an issue in deportation proceedings.<sup>34</sup> The fact that an undocumented parent may have U.S. citizen children is not pertinent to deportation determinations. As such, a permanency hearing may occur while the parent is incarcerated and awaiting such a determination.<sup>35</sup> If a child remains in care for 15 months, then a TPR petition could be filed. In addition, anecdotal evidence suggests that a growing number of local governments are collaborating with Immigration and Customs Enforcement (ICE) through 287(g) programs that deputize local police departments to enforce immigration laws, and that this practice has led to increased placements of children in foster care.<sup>36</sup> ICE and child welfare agencies do not gather information on how many immigrant children enter the system as a result of their parents' deportation.<sup>37</sup> This intersection of criminal justice, child welfare,

and immigration law is often overlooked by public policy researchers. Advocates argue that the "silo" approach of isolating these issues and a lack of integration of the three systems punish immigrant families. The lack of data collection is a major problem for advocates who are seeing the trend intensify but cannot prove its scale. Advocates describe nightmare scenarios in which immigrant parents must complete a mandatory minimum drug sentence, then come under an ICE detainer, making it virtually impossible for them to complete the requirements of dependency court and thus to regain custody of their children before deportation.<sup>38</sup>

### ■ Language barriers

Throughout the system, at all levels from child welfare workers to attorneys, not enough interpretation/translation services or bilingual/bicultural staff are available.<sup>39</sup> This is especially problematic for states witnessing new growth in immigrant populations, which often have fewer such resources to serve newcomers' children.<sup>40</sup> Effective communication is the cornerstone of good child welfare practice, and without linguistically and culturally appropriate services, the result can be trouble with family supports, erroneous psychosocial assessments, or a lack of family engagement.<sup>41</sup> In a study of Hispanic clients involved with the child welfare system in New York City, the ability to speak Spanish was cited as equally important to both workers and clients in establishing a working alliance, engaging the family, and communicating with the family's network when searching for alternate caregivers.<sup>42</sup> Language differences not only lead to fears of not being able to accurately convey one's concerns, but can also prompt clients to question the information they receive from the child welfare agency. Immigrant families are at a disadvantage in meeting case plan requirements within the prescribed time period when bilingual resources are not available or adequate.

### ■ Relative placement

Finding family members for relative placements depends heavily on a thorough assessment and a clear understanding of the population served.<sup>43</sup> A bilingual/bicultural social worker or a community-based agency under contract with the child welfare agency can be instrumental to this process, since information is often lost when using translation services.<sup>44</sup> Another problem is agency lack of experience in placing a child with relatives not living in the United States.<sup>45</sup> As in

the Mercedes Santiago-Felipe case, a problem with the immigration status of someone in the household of a potential relative placement is a very common obstacle cited by frontline workers.<sup>46</sup> The Vericker/Kuehn study found that in Texas children of immigrants were far less likely to be placed with relatives than children of native-born Latinos (eight percent vs. twenty-eight percent).<sup>47</sup> The authors hypothesize that the difference is owing to a lack of available recipient families within the U.S.; the immigration status of families, which hampers their becoming licensed foster caregivers; and the generally older age of immigrant children entering care in Texas (since older children and teens are more likely to go into non-relative foster care, group care, or other institutional care settings).<sup>48</sup> Existing research and federal law have generally supported giving preference to relative care when a child must be placed outside the home, under the premise that a child will fare better than with strangers. Non-relative placements may be particularly upsetting for an immigrant child, who is new to the country, may not speak English, and may have a different cultural background from that of the caregiver.

## Recommendations

Given the complexity of cases involving immigrant families, the limited availability of bilingual services, and the obstacles to prompt placement of children with relative caregivers, the requirements of ASFA create a risk of bad decisions and outcomes for children or inappropriate termination of parental rights among immigrant families. Clearly, the underlying challenges that immigration enforcement poses for family stability cannot be resolved through modifications to ASFA. Nonetheless, improvements to ASFA could enhance the quality of decision making for at least some of the most vulnerable children.

ASFA timelines should be reviewed and exceptions allowed in the event of complicated immigration cases. Immigrant families face many situations that call for exceptions: providing international relative searches, conducting thorough assessments with bilingual/bicultural staff, or working with the family on issues involving immigration court and deportation proceedings. There is a need to consider specific provisions in federal legislation to address parents incarcerated due to immigration status and the impact on timelines and reunification services. Key issues include exceptions to TPR and other timelines where immigration-status dealings and background checks on rel-

atives are in play. These exceptions should clearly require demonstrating that they are in the best interests of the child toward achieving a timely yet optimal permanent plan. These changes can be crafted to ensure that ASFA's legislative intent is achieved in such special circumstances, understanding that the system unintentionally works against this intent in many instances.

Peer-to-peer education on how to provide child welfare services to immigrant families should be provided. Improving services to immigrant families is evolving, and the best method of education is to build upon the experience of public child welfare agencies in such places as New York, California, and Illinois, with their long history of outreach and service development, and to share their knowledge with communities in other states now facing a growing immigrant population. One possibility is for the federal Administration for Children's Services to set a priority to fund and facilitate national peer-to-peer exchanges for greater utilization of the regional training centers.

Finally, the federal government should begin working with county child welfare and immigration policy leaders to develop guidelines for states in pursuing best practices where child welfare interacts with the immigrant population. These recommendations must be based on the international principle of "best interest of the child" and integrated with the federal child welfare mandates of safety, permanency, and well-being.

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# Sometimes Good Intentions Yield Bad Results

## *ASFA's Effect on Incarcerated Parents and Their Children*

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*W*e made the most of each visit that we had. My mom was very special about trying to give time to each little child...I couldn't even begin to express to you in words how fulfilling that was to my soul to give my mother a hug...If I hadn't been able to do that, I would have felt very empty then, as a child, and maybe as well now. Because I didn't have that permanent separation...I understand the strength of a family. When it's hard times, you stick together. And that was just a hard time."—**Malcolm, 17**

*"When I was five, my mother's parental rights were terminated. I wasn't even allowed to be by her in the courtroom. But I just knew from her expression, her tears, begging the judge, what had happened... They picked me up and just took me away. Me screaming and yelling, 'Mommy, I'm sorry, I won't be bad again.' All the system saw was a drug addicted mother... They wanted to protect little Ahmad... There are mothers out there that are abusive to their kids, so the system has to step in and do something about that. That's understood. But when there's a mother struggling with an addiction, struggling with herself, but is not abusive towards her kids, then the system has to help better that situation. Help the mother as well as the child... What would have helped me most is compassion for my mom."*—**Ahmad, 21**

Children of incarcerated parents have become the focus of ever-increasing attention, from community-based programs to three State of the Union addresses by then-President George W. Bush.<sup>2</sup> The reasons for this growing attention are myriad, being political, economic, environmental, and logistical in nature. In essence, the number of children whose lives suffer the impact of parental incarceration has reached the point that all public systems are affected. "The imprisonment of [over] three-quarters of a million parents disrupts parent-child relationships, alters the networks of familial support, and places new burdens on governmental services such as schools, foster care, adoption agencies, and youth-serving organizations."<sup>3</sup> As a result of this explosion in the number of

children with parents behind bars, new policies and practices are emerging at all levels. Yet they are developing without clear guidance from the federal agencies responsible for providing services to the most vulnerable children and families. Unfortunately, states vary widely in their response to conflicting federal mandates, creating child protective systems whose policies appear arbitrary and often fail to promote the goals of well-being, permanence, and safety. This paper will examine the effects of conflicting mandates contained in the Adoption and Safe Families Act and provide federal policymakers with recommendations to guide state and local child welfare agencies in meeting the needs of families affected by incarceration.

## The Data

The United States leads the world in rates of incarceration.<sup>4</sup> More than 1.5 million people were confined in federal and state prisons in 2007, and the number of parent inmates totaled 809,800 adults with 1,706,600 children under 18,<sup>5</sup> making the United States the world's leader in the rate of incarceration.<sup>6</sup> The number of children with an incarcerated parent has increased by almost 80 percent since 1991, and the number of children with a mother in prison has more than doubled during that time.<sup>7</sup> It is noteworthy that the annual survey of prisoners is a national one-day count, which does not take into account the number of prisoners released the day prior to or the number of prisoners confined the day following the count. As a result, the number of children upon whom parental incarceration has had an impact is estimated to be significantly higher. Nevertheless, on that single day, the United States had 2.3 percent of all children in this country with a parent in prison.

The best available estimate is that the number of children in foster care with an incarcerated parent is between 29,000 and 51,000.<sup>8</sup> Neither criminal justice nor foster care agencies typically keep these statistics. According to the 2008 Bureau of Justice Report, 3 percent of children with an incarcerated parent (the estimated total of 51,000) are believed to be in foster care, with another 9 percent in the care of friends or relatives who are not a parent or a grandparent.<sup>9</sup> These data likely underestimate the real percentage because they do not distinguish between formal or informal foster care placements. The Adoption and Foster Care Analysis and Reporting System (AFCARS), administered by the U.S. Department of Health and Human Services for fiscal year 2003, cites the 29,000 figure, suggesting that more than 6 percent of children in foster care have been removed because of parental incarceration.<sup>10</sup> Again, this is almost certainly a conservative estimate since AFCARS records only removals of children into foster care as a direct result of incarceration, missing other children who may have entered foster care for other reasons and who have a parent in prison.<sup>11</sup> Thirty-eight percent of children of incarcerated parents will reach 18 before their parents are released.<sup>12</sup>

We have more extensive information about parents in prison. According to 2008 Bureau of Justice data, the majority of prisoners reported having minor children, 22 percent of whom were 4 years old or younger.<sup>13</sup> While 56 percent of incarcerated mothers

and 39 percent of incarcerated fathers maintain at least weekly contact with their children through letters or phone-calls,<sup>14</sup> far fewer have visits. Among state prisoners, approximately 58 percent of mothers and 59 percent of fathers report never having face-to-face visits.<sup>15</sup>

Of course, the contributing factors behind prison sentences are also important. Poverty, substance abuse, and a history of having been a victim of physical or sexual abuse are common to the experience of incarcerated parents. Nearly 36 percent of women in state prisons were receiving public assistance before arrest, compared to 10 percent of men. About 30 percent of these women had incomes of less than \$600 per month prior to arrest, compared to 16 percent of men; 52 percent of these women and 54 percent of the men were employed prior to arrest.<sup>16</sup> Female prisoners are more likely than male prisoners to report histories of physical or sexual abuse.<sup>17</sup>

Because these families lack material resources and are frequently without relatives who will assume care of their children, the arrest of a parent often leads to foster care placement. Available data support this connection between foster care placement and the criminal justice involvement of parents. One recent study determined that children whose parents become involved in the criminal justice system have an above-average likelihood of entering foster care.<sup>18</sup> Looking at data from the past two decades, another study found that higher rates of female incarceration correlate with increased numbers of foster care cases.<sup>19</sup>

Just as this tidal wave of confining parents to prison was occurring, the Adoption and Safe Families Act<sup>20</sup> (ASFA) limited the timeframes for reunification and accelerating the termination of parental rights. This resulting "perfect storm" has had a devastating impact on far too many children in this country. Greater emphasis on termination of parental rights has increased the number of children who are legal orphans with no permanent family. Although the purpose of ASFA was to reduce the number of children in foster care awaiting permanent homes, statistics since 1997, the year in which ASFA was enacted, suggest that it has had the opposite effect. The percentage of children in foster care whose parents' rights have been terminated and who are awaiting adoption has risen from 10.7 percent in fiscal year 1998 (60,000 of a total 559,000 children in care) to 17 percent in fiscal year 2007 (84,000 of 496,000).<sup>21</sup> Due to the tension between the timeframes driving the termination of parental rights and the average length of prison sentences, children of incarcerated parents are more

likely to become legal orphans than other children in foster care.

Clearly, children and families of color suffer the ongoing effects of this “storm” to a disproportionate degree. More than four in ten fathers and more than half of all mothers in state or federal prison are black. Children of color comprise the majority of all children between ages 5 and 14 with an incarcerated parent. Black children are 7.5 times more likely to have a parent in prison than white children.<sup>22</sup> While 2.3 percent of all children in the U.S. have a parent in state or federal prison, the corresponding figure for black children is almost 7 percent; fewer than 1 percent of white children have a parent in prison.<sup>23</sup> This means that at any given time, one out of every fourteen black children has at least one parent in prison. The corresponding figure for white children is fewer than one out of one-hundred.<sup>24</sup>

## Federal Child Welfare Legislation

The federal government has created legal mandates with inherent, unresolved conflicts, resulting in confusions among state child welfare agencies that profoundly affect families involved in the criminal justice system. The most significant conflict surrounds the requirement to use undefined reasonable efforts to reunify families and the seemingly unyielding timeline for legally severing the parent/child relationship.

In 1980, Congress passed the Adoption Assistance and Child Welfare Act<sup>25</sup> to refocus state child welfare agencies on keeping or moving children out of foster care and reuniting them with their families. Ensuing regulations urged that all reasonable efforts should be made to assist parents to overcome barriers to reunification, but failed to provide guidance as to the precise nature or desired scope of these efforts. States were left to define reasonable efforts for themselves.

The lack of clarity around the federally mandated “reasonable efforts” requirement often created inconsistency and confusion in the field and in family court. In practice, judges would “rubber stamp assertions by social service agencies” that reasonable efforts had been made.<sup>26</sup> Because of the vague federal requirement, a child or parent’s attorney’s call for agencies to provide “reasonable efforts” would often be met with derision and even dissent. As the number of children in foster care continued to grow, a federal response was inevitable.

ASFA provided a response to the burgeoning number of children in foster care in the form of a new

timeframe by which reasonable efforts should cease. Rather than clarifying the scope and extent of reasonable efforts ASFA imposed strict timelines for the provision of reunification efforts. With the goal of reducing children in foster care and average length of stay, ASFA sought to accelerate the process of moving children toward permanency, with a particular emphasis on adoption. Two critical components of ASFA are that (1) states must finalize a permanency plan for each child within twelve months after entry into care, and (2) states must seek termination of parental rights (TPR) once a child has been in foster care for 15 of the most recent 22 months (“15/22 mandate”).<sup>27</sup> These very rigid timeframes have a particularly devastating effect on families with an incarcerated parent, as will be discussed in detail below.

It should be stressed that families subject to the 15/22 mandate are typically not those in which a parent has been incarcerated for a crime of violence against a child. Those situations are covered by another provision of ASFA, which mandates the filing of a termination petition against a parent who has committed, attempted, or been involved in commission of murder or voluntary manslaughter of another child of the parent, or who has “committed a felony assault that has resulted in serious bodily injury” to a child of the parent.<sup>28</sup> Thus, the 15/22 mandate will typically be applied against parents who do not fall into the category of having committed serious acts of physical abuse against their children. This is the majority of children, as a relatively low percentage of children involved in the child welfare system are victims of physical abuse. For example, one recent national survey found that only 16 percent of the children found to have been maltreated by parents were victims of physical abuse; the majority (64 percent) were victims of neglect.<sup>29</sup> Thus, an analysis of the 15/22 mandate primarily involves parents who have not committed acts of serious physical abuse against their children.

Overall, the 15/22 mandate has seriously limited the discretion available to child welfare professionals in deciding which parents and children qualify for reunification efforts. Intended as a default provision, the presumption is that reasonable efforts will be time-limited, and children will move expeditiously toward termination of parental rights and adoption. There are only three exceptions to this 15/22 mandate. Families could be exempted from the mandated timeframe—and states not required to file for TPR—when (1) the child is living with a relative caregiver, (2) there are “compelling reasons” why filing for termination of

parental rights is not in the child's best interest, or (3) the state concedes its failure to make necessary efforts to reunify the family. If a child welfare professional feels that one of these exceptions to the 15/22 mandate should be invoked, he or she must provide justifying documentation. Because federal audits of state child welfare agencies focus on how quickly children are moved out of foster care, there is an incentive for child welfare workers to err on the side of termination. Therefore, ASFA's implementation in the field and federal audits create a disincentive for workers to do meaningful, individualized case-planning.

Another potential disincentive for child welfare workers to invoke the ASFA exceptions to the 15/22 mandate is the cumbersome process mandated to justify their decisions. Child welfare workers must make a detailed record of why they invoke the exceptions, and therefore the burden for determining why the exceptions may be appropriate lies with the already overworked caseworker. Perhaps most significant, practitioners tell of agency workers who are not trained on the ASFA exceptions, let alone how they are to be implemented. The exceptions are not widely understood as a helpful tool for workers to use when appropriate.<sup>30</sup> Yet anecdotal evidence suggests training on this issue has not made much difference in the field. A decade after ASFA's enactment, workers and practitioners still confuse the 15/22 mandate and its exceptions with the substantive grounds for termination of parental rights. For example, many child welfare workers (and even some lawyers) believe that the mere fact that a child has been in foster care for 15 months is itself a ground for terminating parental rights, rather than a basis for requiring the *filing* of a petition to determine *whether* parental rights should be terminated. If ASFA exceptions are ever to be employed as they should be, the statute must be rewritten to give workers clear directions—without losing ground in federal audits or otherwise penalizing their decisions—for invoking the ASFA exceptions in appropriate circumstances.

In 1999 DHHS published advisory guidelines to states on how to implement reasonable efforts.<sup>31</sup> The guidelines provided that “[s]tate agency policies or regulations should clearly define the agency’s obligations to make reasonable efforts to reunify the family.”<sup>32</sup> Since the guidelines were only advisory, there may be a wide variation among states as to specifics of definition and implementation of reasonable efforts and timelines.

In view of ASFA's strict time limits and the role

reasonable efforts plays in a decision to forever terminate parental rights, it is imperative to more clearly define the child welfare agency's obligations to provide such efforts to families. Nowhere is this more important than with regard to the unique service needs of families with children in foster care who have an incarcerated parent. It is critical that child welfare professionals be trained to recognize and respond to these unique needs and be given discretion, in appropriate cases, to continue serving these families beyond the short ASFA timeframe. Agencies must develop fitting, effective services for these families.

### The Impact of Parental Incarceration on Families, Including Families with Children in Foster Care

Reunification services are necessary to address serious detrimental effects of parental incarceration upon children and families. Researchers examining the developmental impacts of parental incarceration rely on child development research on bonding and attachment, separation anxiety and post-traumatic stress.<sup>33</sup> Child development is an ongoing process in which biological factors interact with experience to create the both neurological and behavioral underpinnings. Some stress is compatible with normal child development, but toxic stress “can damage developing brain architecture and create a short fuse for the body’s stress response systems that leads to lifelong problems in learning, behavior, and both physical and mental health.”<sup>34</sup>

While research has yet to show a direct causal connection, parental incarceration is considered an “adverse childhood experience” (ACE) of the type that significantly increases the likelihood of long-term negative outcomes for children, such as drug addiction, obesity, or their own experiences with incarceration.<sup>35</sup> What distinguishes parental incarceration from other ACEs is the combination of trauma and shame or stigma.<sup>36</sup> A recent study found that parental incarceration is correlated with children’s involvement in anti-social behavior, mental health issues, drug use, school problems, and unemployment.<sup>37</sup> Other studies found strong evidence that affected children are prone to depression, difficulty in sleeping or concentrating,<sup>38</sup> academic or disciplinary problems at school,<sup>39, 40</sup> aggression or withdrawal, delinquency, increased risk of abuse or neglect, distrust of authority, and disruption of development.<sup>41</sup> Another research study found that one in five foster children whose parents had been recently arrested exhibited aggression, attention

problems, and disruptive behaviors—a ratio twice that of the general population.<sup>42</sup>

Strong parent/child attachments are the most crucial building blocks toward reducing delinquency among children of incarcerated parents<sup>43</sup> and mediating the effects of parental incarceration.<sup>44</sup> Thus many programs work to strengthen this bond<sup>45</sup> improving children's capacity for trusting, affectionate relationships and their long-term outcomes.<sup>46</sup> Conversely, when that building block is removed, children suffer short- and long-term consequences as described above.<sup>47</sup> Therefore the single most important factor to ameliorate the harmful impacts of parental incarceration is the parent/child relationship itself.

Yet many barriers to reunification stem from state laws and policies that attempt to interpret ASFA requirements. As noted, the 15/22 mandate puts children of incarcerated parents at especially high risk of permanently losing their parents. In addition, states have enacted statutes that make termination of the rights of incarcerated parents more likely. A recent study found that a majority of states include parental incarceration as a factor to be considered in terminating parental rights, and many of these statutes were enacted as a result of ASFA.<sup>48</sup> In addition some states include parental incarceration as a basis for suspending reasonable reunification efforts. Perhaps not surprisingly, the study found that between ASFA's passage in 1997 and 2002, termination proceedings of incarcerated parents more than doubled.<sup>49</sup>

Several factors create a sense of urgency for incarcerated parents of children in foster care. First, with average sentences running fifteen months or more, time is not on the side of parent and child. The scarce data available<sup>50</sup> suggest that many children go into foster care prior to the period of incarceration. Thus under ASFA time limits, even parents with shorter-than-average sentences have little time in which to fulfill mandates necessary to reunify.

The ASFA timeframe poses related challenges. Typically, prisons are built in remote areas, far from where agencies are located or children reside. Distance becomes a major obstacle; the logistics for caseworkers to make mandated visits are daunting, often involving overnight stays and time away from court and other responsibilities. Without a relationship with the parent, a caseworker lacks a real ability to replace a name with a face and a life story. This circumstance hampers caseworkers in trying to build relationships with parents and to provide a foundation for determining the best interests of the child; it also makes TPR more likely.

Prison visiting policies present another challenge. Limited visiting hours, restrictive telephone policies, lengthy security procedures, and sometimes disrespectful corrections staff are all barriers to successful visiting.<sup>51</sup> Some agency staff are not aware of mandates to provide children visits to incarcerated parents, and other caseworkers refuse to arrange them. In many states, visiting areas are not geared to accommodate children, and can discourage or even forbid parental contact.

Moreover, incarcerated parents often have insufficient access to parenting, substance abuse, or educational programs acceptable to child welfare agencies. Being transferred to a facility with such programs may cause a parent to lose privileges, such as placement in desirable housing units or access to programs, which are allocated by seniority. Finally, incarcerated parents encounter procedural difficulties: judge's orders to be produced for court might be sent to the wrong facility if a parent has been moved; corrections staff sometimes fail to make arrangements for a parent to be in court; or parents with both criminal and family cases may have conflicting court appearance dates.<sup>52</sup>

For children in foster care with an incarcerated parent, the 15/22 exceptions are critical to avoiding permanent and sometimes injudicious dissolution of the family. If a child is not in the care of a relative, the family's only recourse is the "compelling reason" exception, but to marshal such an exception to filing a termination of parental rights petition, a caseworker has to document each compelling reason to convince a judge or a supervisor why the filing is not in a child's best interest. A child and her or his incarcerated parent who do not have regular, meaningful contact with the caseworker are unlikely to be considered for such an exception. These children are often unnecessarily separated forever from their parents in spite of ASFA's intent to encourage timely reunifications in the best interests of the child. Legal and policy contradictions have resulted in a growing number of victims caught in the eye of this storm.

## Conclusion and Recommendations

*We offer the following recommendations to begin to address the problems identified in this paper:*

- 1 **Amend ASFA to create an exception to the 15/22 mandate for incarcerated parents and their children.** While attempting to achieve permanency for children in foster care is generally a laudable goal, the rigid ASFA timeframes are ill-suited to the unique needs of families of incarcerated parents. The timeframes are unrealistically short, and inflexibility does not encourage child welfare professionals to use discretion in providing extended services to such families as appropriate. The exception would apply in cases where the incarcerated parent continues to occupy a place of importance in the child's life, and it would be in the child's best interests to continue reasonable reunification efforts beyond the 15/22 month threshold. Several states (Colorado, Nebraska, New Mexico, and New York) have enacted or proposed such exceptions in their implementation of ASFA, which could be used as models for a federal amendment.<sup>53</sup>
- 2 **Amend ASFA to mandate that child welfare agencies provide specialized services for incarcerated parents and their families.** These might include special transportation services to facilitate visitation, therapeutic services for children to address unique needs, and enhanced funding to enable foster parents to pay for collect phone-calls from parents in prison. Congress might also offer funding to states for demonstration projects toward services designed for the special needs of families of incarcerated parents.
- 3 **Promulgate regulations requiring collaboration between child welfare and criminal justice agencies.** DHHS should encourage state child welfare and criminal justice agencies to collaborate on policies and protocols that assist incarcerated parents to maintain contact with their children. The goals should be to:
  - ▷ Address barriers to visitation and parent/child relationships: telephone costs, mail access, visitation eligibility, friendly visitation space, easing of rules prohibiting contact, improved treatment of visiting children.
  - ▷ Identify cross-agency training needs: better understanding of the impact of incarceration on children, families, and communities, age-appropriate

interactions, coordination of community resources.

- ▷ Develop program/activities that support familial relationships: use of telephone conferencing to permit incarcerated parents to participate in parent/teacher conferences; use of videoconferencing to allow "virtual" visitation when parents are more than 100 miles from their families; development of "books on tape" programs; establishment of "family days" to provide longer visitation hours or family activities; creation of children's areas in visitation rooms.
  - ▷ Remove interagency barriers to collaborating in the joint provision of services to incarcerated parents and their children in foster care, kinship care or the community (e.g., cross-training; common manuals of resources and services).
- 4 **Promulgate regulations regarding permanency options.** DHHS should direct states to offer more funding and make wider use of permanency options appropriate for children of incarcerated parents. These include subsidized guardianship, kinship care, and court-enforceable open adoptions. Building on the Fostering Connections to Success and Increasing Adoptions Act (H.R. 6893), DHHS should require states to prioritize children of incarcerated parents in foster care who are living with grandparents or other relative guardians and to expedite subsidized guardianship and corresponding payments to these families.
  - 5 **Require family-focused re-entry services.** Federal agencies, either individually or through interagency approaches, should require reunification and/or case planning as part of any federal grant involving re-entry services where children will reside with the parent after the term of incarceration.
  - 6 **Fund family visiting centers in prisons.** Congress and DHHS should provide funding to states to develop family visiting centers in prisons and programs that facilitate visitation.
  - 7 **Require the collection of data.** Congress and DHHS should require collection and tracking of comprehensive data about incarcerated parents and their children.

**8 Require federal agencies to establish an interagency task force.**

Congress should convene a task force comprised of federal and state departments of corrections, child welfare agencies, and the courts to recommend, in a report to Congress, improvements to interagency coordination of services for children of incarcerated parents or, more generally, re-entry issues affecting families, children, and communities. The goals should be to:

- ▷ Identify methods to improve collaboration and coordination of programs and activities.
- ▷ Identify areas of responsibility so that improved cooperation would increase program effectiveness or efficiency.
- ▷ Develop innovative interagency or intergovernmental programs, activities or procedures to improve outcomes for children of incarcerated parents and their families.
- ▷ Develop better communication methods to enhance interagency program effectiveness.
- ▷ Identify areas of needed research to be coordinated across agencies.
- ▷ Identify cross-agency funding priorities and protocols (e.g., Serious and Violent Offender Re-entry Initiative, Work Opportunity Tax Credits, Prison Inmate Placement Program, etc.<sup>54</sup>).

**9 Fund parental substance abuse treatment.** Congress should increase funding for comprehensive family and community-based substance abuse treatment programs to divert parents from prison.

**10 Fund alternatives to incarceration.** Congress should increase funding for alternative-to-incarceration programs to keep parents in the community and close to their children. Congress should also support the Family Unity Demonstration Project Act<sup>55</sup> and similar state efforts.

**11 Promulgate regulations regarding identification of and notice to relatives.** On the strength of the Fostering Connections to Success and Increasing Adoptions Act, DHHS should require state agencies to identify and provide notice to all grandparents and other adult relatives of a child of an incarcerated parent immediately after the child is removed from his or her home.

## Footnotes

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- 6 Sentencing Project. (2006). New Incarceration Figures: Thirty-Three Consecutive Years of Growth. [Retrieved from [www.sentencingproject.org/Admin/Documents/publications/inc\\_newfigures.pdf](http://www.sentencingproject.org/Admin/Documents/publications/inc_newfigures.pdf)].
- 7 Parents in Prison, at 1-2, and 13, app. tbl.1.
- 8 Parents in Prison, combining data from p. 2, tbl. 2 and p. 5, tbl. 8 (51,000); Patricia E. Allard and Lynn D. Lu, *Rebuilding Families, Reclaiming Lives: State Obligations to Children in Foster Care and Their Incarcerated Parents*, Brennan Center for Justice, (2006) at 4 and 41, n.9 (citing National Data Archive on Child Abuse and Neglect, Cornell University, *Adoption and Foster Care Analysis and Reporting System (AFCARS) 2003 (2005)*, [NDACAN Dataset #118—FC2003v1] (29,000).
- 9 Parents in Prison, combining data from p. 2, tbl. 2 and p. 5, tbl. 8 (51,000).
- 10 National Data Archive on Child Abuse and Neglect, Cornell University, *Adoption and Foster Care Analysis and Reporting System (AFCARS) 2003 (2005)*, [NDACAN Dataset #118—FC2003v1], cited in Patricia E. Allard and Lynn D. Lu, *Rebuilding Families, Reclaiming Lives: State Obligations to Children in Foster Care and Their Incarcerated Parents*, Brennan Center for Justice (2006) at 41, n. 9.
- 11 For a full discussion of why AFCARS data are incomplete, see Patricia E. Allard and Lynn D. Lu, *Rebuilding Families, Reclaiming Lives: State Obligations to Children in Foster Care and Their Incarcerated Parents*, Brennan Center for Justice (2006) at 41, n. 10.



- 12 Parents in Prison, at 3.
- 13 *Id.* at 3, tbls.3 and 5. This survey found that 62 percent of women in state prison were parents of minor children, compared to 51 percent of men. *Id.* at 3, tbl. 5.
- 14 *Id.* at 6, tbl. 10 (state prisoners only).
- 15 *Id.* at 18, app. tbl.10. The corresponding statistic in federal prison is 45 percent for both men and women. *Id.*
- 16 *Id.* at 17, app. tbl. 9.
- 17 *Id.* at 19, app. tbl. 12; Women In Prison Project, Correctional Association of New York, Women in Prison Fact Sheet (March 2008).
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- 22 Parents in Prison, at 2.
- 23 Parents in Prison, at 2, tbl. 2.
- 24 *Id.*
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- 27 42 U.S.C. Section 675(5)(E).
- 28 42 U.S.C. Section 675(5)(E).
- 29 U.S. Department of Health and Human Services, Administration for Children & Families, Administration on Children, Youth, and Families, *Child Maltreatment 2006*, at 42, tbl. 3-6. The survey also found that an additional 8.8 percent were victims of sexual abuse. *Id.*
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- 53 Some argue that this exception should be geared to the age of the child. There is no basis for this argument in the child development research or the research on children of incarcerated parents; it appears to spring directly from biases regarding infants versus adolescents. The parent/child relationship should only be severed under the most extreme circumstances (see *Santosky v. Kramer*, 455 U.S. 745 [1982]), which should not include yet another subjective timeframe based on age of the child, length of sentence, or other potentially biased factors.
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## Conclusion

### *Building Upon the Child Welfare Reform Efforts of the Adoption and Safe Families Act (ASFA)*

Over the past twelve years, mandates for children’s safety and permanency under the federal Adoption and Safe Families Act (ASFA) have dramatically altered how most child welfare systems operate. The Center for the Study of Social Policy and the Urban Institute commissioned a series of papers, “Intentions and Results: A Look Back at the Adoption and Safe Families Act,” to examine ASFA’s impact on children, families, and child welfare system performance. Overall, most of the authors conclude that ASFA has accomplished much; however, these papers also identify areas where child welfare jurisdictions fall short and fail to ensure that every child grows up in a safe and supportive family. Specifically, while many children who enter foster care eventually are reunified with their families, adopted by another family, or otherwise linked to an alternative permanent living arrangement, certain populations of children have not uniformly achieved these outcomes. Many jurisdictions struggle to adequately and appropriately work with families who face complex issues related to substance abuse, mental health, incarceration, or undocumented immigration status.

This paper summarizes the key conclusions of papers in the series and provides a next-stage agenda for child welfare reform work in this crucial area.

#### Learning based on a decade of ASFA Implementation

ASFA created a profound shift in the legal framework and operations of child welfare systems of all states and counties. Specific contributions of ASFA identified by the authors in this series include:

- ▷ Clarity that foster care is a short-term solution to familial problems when a child’s safety is threatened rather than a long-term solution to a child’s ultimate well-being;
- ▷ Requirements that courts and child welfare systems follow clear deadlines and review processes to determine whether a child should return home or find permanency through another option;
- ▷ Unprecedented legal recognition that placement with a relative is an acceptable permanency option for a child and that public systems should help relatives to care for their kin; and
- ▷ A significant increase in the number of children leaving the foster care system through guardianship and adoptions.

### Important areas of unfinished business raised by the papers are discussed below:

- 1 ASFA has increased exits from the foster care system through adoption and guardianship, yet many youth exit foster care through emancipation and many without connections to a family.

Papers in this series highlight the importance of ASFA's focus on moving children to permanent families more quickly. Based on the understanding that a "child's sense of time" requires cases to be resolved as fast as possible and that children should not languish in foster care, ASFA created timelines to promote quicker decision-making regarding reunifying a child with his/her family or finding another permanent home. Since ASFA's inception, there has been a significant increase in adoption and guardianship for children in the foster care system.

However, the permanency results for older youth have not been as positive. Older youth remain in foster care for long periods of time, and as they age their chances of achieving permanency through adoption or guardianship diminish. It is troubling that the number of youth who have "emancipated" (i.e., have left foster care when they reach majority age, either 18 or 21) has increased since ASFA was passed. Some authors point out that the greater emphasis on termination of parental rights (TPR) without a permanent family identified beforehand may lead to a larger number of youth being rendered legal orphans and that a portion of these youth never find another permanent family, emancipating from the system with no legal family connections.

- 2 ASFA acknowledged the need to support birth families to prevent removal if possible and to reunify quickly and safely with their children, but did not fully address what must happen to make this a reality for many children.

ASFA requires "reasonable efforts" to prevent removal of children and support family reunification but adequate investments in community-based services and supports for struggling families are missing. Several papers, including the testimonials of parents, describe confusion over what services should be made available to families and what constellation and quality of services constitute "reasonable efforts." Many families with varying needs are referred to a similar set of services (anger management, parenting classes, and psychological evaluation) without adaptation for their unique needs or assessment of the impact of these services on behavioral change. Further, as many authors discussed, there is a dearth of immediate, meaningful services for families in need of housing support, substance abuse, and mental health treatment, and other services to stabilize families, especially those living in poverty.

The ASFA timeline prevents some families from being reunified. Several authors suggest that the ASFA timelines requiring a decision to be made regarding TPR if a child has been in foster care 15 of the last 22 months<sup>1</sup> do not adequately account for the needs and situations of many families. The ASFA timeframes are particularly problematic for families with complex mental health and substance abuse issues, for incarcerated parents, and for immigrant families. The decisions to terminate parental rights are difficult ones, which require child welfare systems and the courts to understand the nuances and intricacies of the rights, desires, and needs of the parents and children in individual families. As authors and parents point out in this series, this decision making is complicated by the relative lack of effective and accessible

services for families with complex needs. This lack of service provision can qualify as a “compelling reason” for the state not to move toward TPR in accord with strict ASFA timeframes. Interestingly, the authors presented differing views about the use of “compelling reasons”: one opinion is that states are broadly using this exception for not moving quickly enough to TPR and permanency, while others suggest that “compelling reasons” are not being used enough to accommodate the individual needs, circumstances, and desires of families.

**3 ASFA recognized, but did not sufficiently support, relative placement options.**

In addition to adoption and reunification, ASFA included placement with relatives, legal guardians, or another planned permanent-living arrangements as appropriate permanency options for children who cannot be reunified with their parents. While the intention was to create a means of uniformly ensuring safety of children, some provisions of ASFA created challenges for a child to be placed with a fit and willing relative. Specifically, ASFA regulations require that relative foster homes be licensed in the same way as foster homes for children in non-relative placements, with only limited case-specific exceptions. Recent federal legislation, the 2008 Fostering Connections to Success and Increasing Adoptions Act (FCSIAA), makes this requirement a bit less restrictive by allowing states to waive non-safety-related licensing standards for relative homes on a case-by-case basis.

ASFA provides financial incentives for states to place children with adoptive families, but no similar incentive for supporting children in exiting foster care for permanent legal guardianship (including relative/kinship guardianship). In addition to the incentive to states, adoption subsidy programs through many states provide significant support to caregivers to adopt rather than become permanent legal guardians. Authors note that these provisions have disproportionately affected children of color whose relatives are willing to become legal guardians, but not adoptive parents, to their kin and who may need sufficient subsidy and support to adequately care for these children. Again, in 2008 the FSCIAA changed this provision by supporting states in providing financial subsidies to kinship legal guardianship placement as long as certain conditions have been met.<sup>2</sup>

**4 ASFA revealed a need for improved collaboration, supports, and services from other public systems such as mental health, housing, income support, and criminal justice systems.**

Many families who require child welfare intervention are already involved with or need the help of other human services systems. However, ASFA primarily addresses the operations of the child welfare system and does not provide specific guidance or mandates to ensure that services and supports of other public systems are provided in a timely and accessible manner to children and families. As a result, there has not been sufficient attention at either the federal or state levels to strategies that ensure cross-system collaboration.

Services to families with multiple issues and needs (e.g. substance abuse, mental health, domestic violence, incarceration) are often insufficient and infrequently coordinated. Some authors suggest that ASFA’s requirement of timelier decision making resulted in the development of special programs for some parents in some localities, such as family drug courts or substance abuse programs for mothers involved with child welfare systems. However, the availability of these programs and other services is not widespread, and access to programs informed by research is particularly lacking across the nation.

Data systems for families who are involved with multiple public institutions are disconnected so that leaders and workers in the field do not routinely know the full extent of the need for services and service coordination. ASFA provided much focus on the data needs of child welfare systems, but the next step will require that states and localities have the ability to track families across social service systems. Specifically, authors note the need to collect data on families involved with the child welfare system and criminal justice, mental health, and substance abuse systems. Further, cross-system collaboration is necessary to design solutions to ensure the coordination and delivery of multiple services and supports that many families need.

**5 Infrastructure improvements continue to be needed in the child welfare systems in order to better support children and families.**

The child welfare workforce requires strengthening. The work of child welfare is challenging and requires highly skilled, trained, and supervised case workers who are adequately paid and supported. Currently, child welfare systems struggle to hire enough workers, train them sufficiently, and retain them. Authors also point to the inadequate number of available bilingual workers; the lack of training and understanding among workers about mental illness and substance abuse issues; the inconsistent training on the ASFA “compelling reasons” exceptions; and the need for greater worker competency in addressing the needs of culturally, ethnically, and racially diverse families.

Practice and policy don’t adequately focus on the well-being of children in the child welfare system. While ASFA highlights the mission of the child welfare system to promote the safety, permanence, and well-being for the children under its care, much greater attention, in both the law and its implementation, has focused on the two goals of child protection and permanence. Once children are removed from unsafe or high-risk situations, the law and the resources that accompanied the law do not provide a clear framework of expectations regarding the system’s obligations related to the developmental and emotional needs of children. Specifically, workers are often ill-equipped to address the trauma of abuse or neglect, the impact of removal and multiple placements, the issues of attachment and separation anxiety, and other needs of children involved in the child welfare system. Additionally, although child well-being is the responsibility of multiple systems, including education, juvenile justice, mental health, etc., children involved in foster care frequently experience inadequate services coordination and delivery due to a lack of role clarification, conflicting case plans, and inadequate teaming and practice by interdisciplinary/interagency professionals.

*Building on the Unfinished Work of ASFA*

The goals of ASFA are as valuable and relevant today as they were when ASFA was passed in 1997. The new Fostering Connections to Success Act (FSCIAA) continues to support the goals of safety, permanency, and well-being of children by providing much-needed support for relatives interested in caring for children; requiring coordination of health care and education for children in foster care; supporting sibling placement; and funding tribes to administer child welfare systems that serve their members. Further, the field is recognizing the need to ensure that older youth for whom a permanent legal family cannot be found have strong connections with caring adults. In the past, older youth who failed to achieve permanency with their families have not seen strong concerted efforts to find them other families. The Fostering Connections Act doubles

adoption incentives for older child adoptions and adoptions of children with special needs. Youth who have been in foster care also can access some additional supports through Chafee legislation for assistance with education, employment, and medical insurance.

Laudably, most child welfare reform efforts focus on ensuring that all children are safe, healthy, and connected to families and that families are able to adequately and safely care for their children. The Center for the Study of Social Policy has written and continues to write much about how public systems and communities can achieve these goals for all children and families and for specific groups who may experience overrepresentation or disparate treatment.<sup>3</sup> Each paper in this series contains specific and detailed recommendations to improve outcomes for children and families and improve child welfare practice. Rather than present a summary of these recommendations or reiterate recommendations previously made by CSSP in other documents, this paper sets forth a more limited set of policy, research, and practice changes identified by the authors as essential to a comprehensive agenda for action. In moving forward, this agenda should include:

- ▷ **Providing a national focus and support for community-based prevention and early intervention services to families.** Child welfare systems are currently funded and operate to support families who have come to their attention due to child abuse and neglect. However, each of the authors emphasized how critical it is to collaborate with communities to provide adequate supports for families before they reach the circumstances that contribute to child maltreatment. We know that the greatest number of children who enter the foster care system is infants—often having very young parents—and thus, specific attention and interventions should support these families. Additionally, the vast majority of families involved in child protection live in poverty or are among the working poor. A range of supports must be available and coordinated to help struggling families to remain intact, including safe and stable housing, health care, economic stability, child care, and quality mental health and substance abuse treatment. Child welfare systems alone cannot achieve the goals of safety, permanency, and well-being without attending to these pressing needs of families and collaborating with other systems that have the resources and expertise to provide these supports.
- ▷ **Increasing efforts and supports to keep families together, or if separated, to reunify them quickly.** Although obvious, it is important to affirm that families should be provided with appropriate and timely services to help them resolve issues that led to their involvement with the child protection system. As many of the families involved with the child welfare system are low income, significant investment in services to support these families must occur, and systems must have the flexibility to tailor these services to support the unique needs of individual families.

Stronger guidance to the states should be provided in order to ensure that “reasonable efforts” to prevent removal or support family reunification are uniformly and fairly made available to families. For example, the federal government has already issued guidelines for measuring the quality and timeliness of substance abuse treatment, which could be used to assess “reasonable efforts.” Further, “aggravated circumstances” that allow child welfare agencies to bypass providing reasonable efforts should be more thoroughly examined to eliminate uneven and unfair application.

Finally, to be successful, families must understand the interventions and planning by the State and accompanying court proceedings. Based on the testimonial of parents and youth, it is apparent that many did not understand their case plan or court proceedings. In addition to access to strong legal advocates with adequate resources and specialized training, families could benefit from programs such as the Family Navigators or Peer Advocates that help guide them through their experience with the child protection system.

- ▷ **Developing and supporting specialized treatment, especially for families challenged by substance abuse, mental illness, or incarceration.** Many parents and youth involved in child welfare systems are struggling with significant, often debilitating, substance abuse and/or mental health problems. Other families are often separated due to parental incarceration. First, better data must be collected on families involved in multiple systems so that a fuller understanding of the number and needs of families is attained. Second, successful reunification of families and treatment of parents in the child welfare system rests on the field's knowledge and effective delivery of programs designed to meet the unique needs of families. While a body of knowledge about such programs accrues, greater investment in promising programs is required so that a broader array of effective and culturally appropriate programs is available to parents and children. Finally, child welfare jurisdictions must be supported in forming meaningful collaborations with substance abuse, mental health, and criminal justice agencies to ensure that these programs are readily accessible to families involved in the child welfare system; case workers and courts understand and can support the program's treatment modalities; and outcome data can be collected, analyzed, and shared so that programs can be evaluated for effectiveness.
- ▷ **Reassessing the ASFA timelines so that parents are provided adequate opportunity and support to change and reunify their families and that children do not languish in foster care.** Several authors made recommendations on allowing for exceptions to the ASFA timelines due to the needs of parents. Examples include providing exceptions in complicated immigration cases, in cases where a parent with a mental illness is making substantial progress, and in cases where an incarcerated parent has a strong relationship with the child. Currently, systems struggle with wanting to use a standard to determine at what point parental rights should be terminated, but having the flexibility to account for the unique circumstances of families. The current construct of ASFA does not provide sufficient flexibility so that child welfare workers and judges can apply a more nuanced approach to accommodate the unique situation of a family while keeping the short- and long-term needs of a child paramount.
- ▷ **Analyzing current child welfare legislation and practices for fairness towards the unique needs of immigrant families and children.** The issues faced by immigrant families involved in the child welfare system have increased and changed since the implementation of ASFA. Continued analysis is needed to determine how the child welfare system can provide appropriate services and supports to immigrant families, coordinate responses with the interventions of immigration agencies and deportation decisions and timelines, and work with families where parents may be undocumented residents and their children are legal citizens.



- ▷ **Committing to widely available and effective post-permanency supports for children and youth in both adoptive and legal guardianship placements.** Post-adoption services remain underfunded and poorly designed despite the fact that twice as many children receive federally supported adoption subsidies than receive federally supported foster care. Children in foster care, some of whom will later be adopted or enter into permanent legal guardianships, have high rates of behavior problems that often continue after adoption. As systems focus on finding permanent homes for older youth who have been in foster care for long periods of time, post-permanency supports will be even more critical to supporting the long-term stability of the placements and addressing the needs of youth who were once in care. Currently states bear the sole burden for funding post-permanency supports. Federal funding is needed to ensure that post-permanency supports are widely available and accessible to families.

These individual reform efforts will be insufficient without an accompanied focus on improving the infrastructure of the child welfare system. A highly qualified and productive workforce is critical to effective work with families. Child welfare agencies must be able to hire quality workers and supervisors, train them adequately and regularly, and pay them sufficiently well.

Ultimately, reform efforts should result in improved outcomes for children, youth, and their families. As is evident from the testimonials offered in this series, youth and parents are often-ignored experts on which policies, practices, and supports are helpful and those which are not. Their voices and insights must be routinely solicited and incorporated into any agenda for reform.

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## Footnotes

- 1 States are required under ASFA to file for TPR if a child has been in out-of-home placement 15 out of the most recent 22 months with limited exceptions. Courts are also required to conduct a permanency hearing after 12 months of out-of-home placement to determine a permanent plan for the child, whether it is return home, filing of termination of parental rights and adoption, legal guardianship, or other appropriate plan. See Golden and Macomber, *The Adoption and Safe Families Act Framework Paper*, for a more detailed examination of state variation in adapting these ASFA provisions.
- 2 Specifically, children must have been cared for by this relative provider for six consecutive months and must be eligible for federal foster care payments in the home of the relative.
- 3 See [www.cssp.org](http://www.cssp.org) for publications, including Frank Farrow, *Building Community Partnerships for Child Protection: Getting from Here to There*, Center for the Study of Social Policy for the Executive Session on New Paradigms for Child Protective Services, March 4, 1997; *Child Welfare Summit: Looking to the Future: An Examination of the State of Child Welfare and Recommendations for Action*, Center for the Study of Social Policy and its Center for Community Partnerships in Child Welfare, April 2003; *Lesson Learned from the Field—For the Field: A cross-site reflection on 10 years of partnership*, Center for the Study of Social Policy/Center for Community Partnerships in Child Welfare, December 2005; *Protecting Children by Strengthening Families—A Guidebook for Early Childhood Programs*, Center for the Study of Social Policy.



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