

Safety and Stability for Foster Children: The Policy Context

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SUMMARY

Even though federal laws have had a major influence on foster care and child welfare policy for more than 40 years, additional reforms are needed to ensure safe and stable families for children in care. This article describes the complex array of policies that shape federal foster care and observes:

- ▶ A number of federal policies addressing issues such as housing, health care, welfare, social security benefits, taxes, and foster care reimbursement to the states, form the federal foster care policy framework.
- ▶ The Adoption and Safe Families Act significantly altered federal foster care policy by instituting key changes such as defining when it is reasonable to pursue family reunification, expediting timelines for making permanency decisions, recognizing kinship care as a permanency option, and

providing incentives to the state for increasing the number of adoptions.

- ▶ Courts play a key and often overlooked role in achieving safety and permanency for children in foster care. Efforts to improve court performance have focused on increasing the responsiveness and capacity of courts.

The article concludes with policy recommendations that are needed to improve the lives of children in foster care, such as increasing investments in children and families, redirecting funding incentives, addressing service gaps, and enhancing accountability.

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The national policy framework that influences the placement, care, and protection of children in foster care, and that helps ensure that these children end up in safe and stable families, continues to evolve after more than four decades of development. The foster care policy framework, as discussed here, includes the complex constellation of federal and state laws, regulations and administrative guidance, and the funding structure that impacts how these policies are implemented. The framework is influenced by how courts and agencies interpret laws and regulations and how grassroots advocates, lawyers, and other key stakeholders see these laws and regulations fitting into larger systemic reforms. In assessing the many pieces of the policy framework and their impact on safe and stable homes for children in foster care, it is especially important to look at the interaction of these various components.

The purpose of this article is to describe the policy framework that shapes foster care, its impact on key decisions about safe and stable homes for children, and the major policy carriers that remain to improving foster care. The article concludes with a discussion of what further policy reforms are needed to keep maltreated children in safe and stable homes.

The Current Policy Framework

Federal law has had a major influence on the foster care and child welfare policy framework for more than 40 years.¹ But there was no federal foster care program until 1961, when the Aid to Families with Dependent Children (AFDC) Foster Care Program was established to care for children who could not safely remain with their families receiving AFDC.² Nearly 20 years then passed before Congress undertook a comprehensive look at the general structure of federal funding for children who were abused and neglected. Congress was responding to both national and state reports documenting the crisis in child welfare systems and the disincentives in federal law to maintain or find new permanent homes for children and to hold states accountable for the care children received.³ Up until that time, there had been only perfunctory case reviews of children in care and little attention to tracking the progress of children. But in 1980, a new framework for

foster care was created with passage of the Adoption Assistance and Child Welfare Act (AACWA). Since then, several pieces of legislation building on this basic framework have been enacted—most notably, the Adoption and Safe Families Act of 1997 (ASFA). (See the Appendix at the end of this article for a chronology of major child welfare legislation.)

Establishing the Principles

The federal policy framework creating foster care, as it is known today, was established through AACWA in 1980.⁴ That act continued federal funding for foster care for children from AFDC-eligible families, with enhanced protections to help ensure that children entered foster care only after “reasonable efforts” to prevent placement were made. The act also required agencies to place foster children in the least restrictive, most familylike setting appropriate to the child’s special needs, to periodically review children’s care and make “reasonable efforts” to reunify children with their families, and to hold dispositional hearings to help move foster children to permanent families in a timely fashion. Children eligible for federal foster care also automatically became eligible for federal adoption assistance payments and for assistance under the Medicaid program. This assistance was particularly significant for children in foster care because it removed fiscal disincentives for state child welfare agencies to move children to adoption and allowed states to continue medical and other assistance for them.

AACWA was preceded by several other child welfare laws, which filled in pieces of the framework. For example, in 1974, the Child Abuse Prevention and Treatment Act required states to mandate reporting of suspected child abuse and neglect cases to child protective service agencies.⁵ In 1978, the Indian Child Welfare Act made it more difficult to remove an Indian child from the birth family and place him or her in foster care.⁶ Other early legislation also reinforced the need to prevent the inappropriate institutionalization of children and to promote less-restrictive placements. For example, the Juvenile Justice and Delinquency Prevention Act of 1974 prohibited the placement of abused and neglected, dependent children and/or status offenders (children charged with offenses that would not be crimes if they were adults) in juvenile

Building on the Past

From the mid-1980s through the 1990s, the federal government took important steps to confront the challenges facing children in foster care. Some of these advances fixed problems caused by earlier policies. Others addressed concerns that had not even been recognized when the earlier legislation was enacted. For example, between 1984 and 1999, child welfare legislation built upon prior foster care policies to place more attention on older youths, services to prevent children from entering or remaining in care unnecessarily, and the unique permanency challenges faced by children of color in foster care.

Older Youths

In 1986, Congress passed the Independent Living Initiative, which offers help to young people aging out of foster care, a group whose needs had been barely recognized up until that time.⁸ In part, congressional attention to the specific needs of teenagers in foster care was prompted by the passage of AACWA. The regular agency reviews of foster care cases required by the act highlighted the unmet needs of older youths, finding that these youths frequently left care without appropriate housing, education, and vocational supports to help them transition into adulthood.

The Independent Living Initiative was gradually expanded, until it was replaced in 1999 by the John H. Chafee Foster Care Independence Program.⁹ The Chafee program was seen as a catalyst for broader policy reforms on behalf of these young people.¹⁰ Funding was increased and, for the first time, a portion of the federal independent living funds could be used for room and board for young people ages 18 to 21 who were leaving foster care. Young people formerly in foster care played an important role in the enactment of the Chafee program and continue to be involved in getting it implemented in the states. (See the article by Massinga and Pecora in this journal issue.)

Preventive Services

Gaps in preventive services also gained attention in the 1990s. Until that time, only limited funding had been provided to support families before they came into contact with the child welfare system; to offer alternatives to placement for families in crisis, when children could be kept safely at home; or to assist with safe

detention or correctional facilities.⁷ At or around the same time, legislation was enacted addressing the rights of children with disabilities. (See the Appendix at the end of this article.)

The principles established by federal law in the mid- to late 1970s and early 1980s still shape the protections offered to children in foster care today. They also encourage states to improve the quality of foster care placements and to provide more appropriate alternatives for children who cannot remain with their families. After AACWA was passed, for example, most states enacted legislation requiring case plans and periodic reviews for children in care, specifying that reasonable efforts had to be made to prevent placements in foster care, and promoting reunification and other permanency options in a timely fashion.

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For the first time in federal law, ASFA made explicit that a child's health and safety must be paramount in decision making....

reunification for children who were placed in foster care. In 1993, in response to claims that the open-ended federal funding for children in foster care actually created an incentive to place children in foster care and keep them there, Congress created the Family Preservation and Support Services Program.¹¹ In addition to offering services to help keep children safely at home and prevent unnecessary foster care placements, the program offered services to assist both children in foster care and those moving to adoptive families.¹² Under the program, states were required to engage the community in a broad-based planning process to determine the right mix of services and supports for children and families. In an attempt to further increase preventive services, the next year Congress authorized the Child Welfare Waiver Demonstration Program, which gave states the flexibility to use existing federal funding streams for prevention.¹³

Race and Ethnicity

Concerns about delays in permanence for children of color, and controversy over transracial adoptions, resulted in passage of the Multiethnic Placement Act (MEPA) in 1994.¹⁴ Until then, debates about national foster care policy had paid relatively little attention to racial discrimination (except regarding American Indian children). MEPA codified federal court interpretations of civil rights laws, which protected children being served by federally assisted child welfare programs from discrimination based on race and national origin. MEPA prohibited agencies that receive federal funding and are involved in foster care or adoptive placements from discriminating in such placements. It prohibited them from categorically denying any person the opportunity to become an adoptive or foster parent “solely” on the basis of race, color, or national origin, and from delaying or denying the placement of a child “solely” on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved. MEPA clarified that in determining a child's best interests, however, agencies may consider the child's cultural, ethnic, or racial background and the capacity of the foster or adoptive parents to meet the needs of a child of this background. In other words,

race, ethnicity, and culture could be a factor, but not the sole factor, in individual placement decisions.

Subsequently, in 1996, Congress repealed several provisions of MEPA when it enacted the Interethnic Adoption Provisions.¹⁵ These amendments prohibited the consideration of race, ethnicity, and culture in determining a child's best interests. They also subjected states and other entities to specific fiscal penalties if they discriminated, and they retained a MEPA provision that allowed individuals to sue states or agencies if they believed they were victims of discrimination. Despite these changes, Congress maintained MEPA's provision requiring child welfare service programs to diligently recruit potential foster and adoptive families that reflected the ethnic and racial diversity of those children needing foster and adoptive homes (although specific funds for this purpose have never been provided).

Adoption and Safe Families Act of 1997

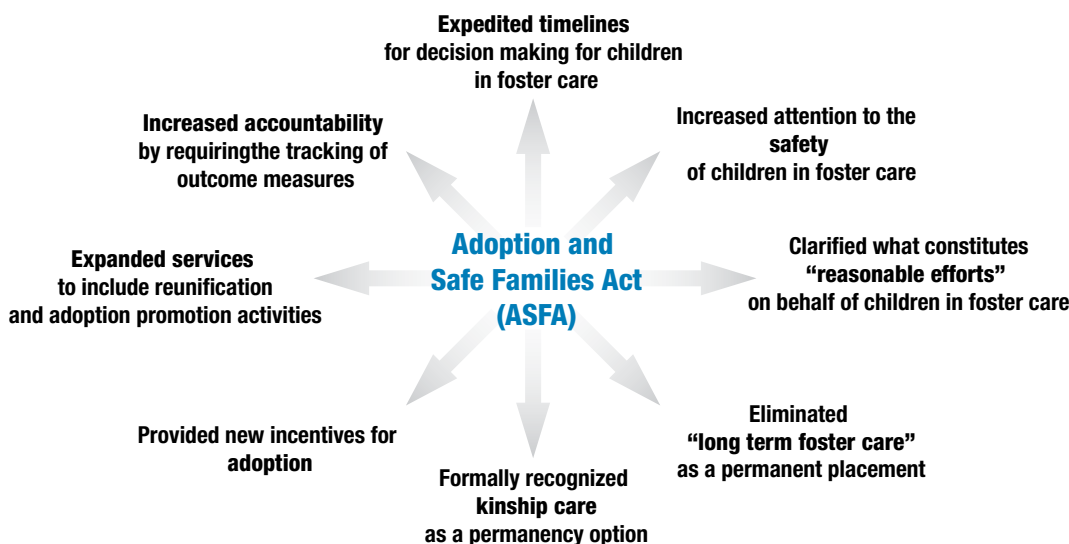
Increased concerns about children languishing in foster care without permanent families, and failed attempts in 1995–96 to block grant federal child welfare programs, prompted Congress to seek better ways to comprehensively address the many problems plaguing child welfare systems. Shortening children's stays in foster care and reducing the number of children waiting to be adopted were Congress's key concerns. The resulting legislation, ASFA, once again highlighted the importance of permanence for children and underscored that foster care should be only a temporary alternative for abused and neglected children.¹⁶ ASFA influenced foster care in several specific ways described further below. (See Figure 1.)

Expedited Timelines for Decision Making

ASFA emphasized that foster care is intended to provide a safe and temporary way station while children prepare for permanent homes. The act required permanency hearings to be held no later than 12 months after a child entered foster care (6 months earlier than was required under the prior law). With certain exceptions, it also required states, for the first time in feder-

Figure 1

Changes in Foster Care Resulting from the Adoption and Safe Families Act of 1997



al law, to initiate termination of parental rights proceedings when a child had been under state responsibility for 15 of the previous 22 months.

The exceptions to this expedited timeline included: 1) when the child was in the care of a relative; 2) when the state agency documented a compelling reason why filing the petition for termination of parental rights was not in the best interests of the child; and 3) when the state agency had not provided to the child’s family, consistent with the time period specified in the case plan, the services the state deemed necessary to safely return the child home. Subsequent ASFA regulations emphasized that these exceptions could be invoked only on a case-by-case basis and that the permanency efforts had to be continued, even when such exceptions were invoked for termination of parental rights.¹⁷ ASFA required the continued scrutiny of permanency plans until the child was in a permanent home.

Attention to Safety

For the first time in federal law, ASFA made explicit that a child’s health and safety must be paramount in decision making about the initial removal of the child

from the home, his or her return home, and the care received in foster care or in another permanent family. Specific provisions to ensure the safety of children in foster care included requiring states to develop standards to protect the health and safety of children in foster care and requiring that states check the criminal records of both foster and adoptive parents as a condition of federal foster care and adoption funding. The law also required that foster parents and other caregivers be given an opportunity to speak at any court hearings involving children in their care. This requirement was specified, in part, to allow caregivers to challenge the quality of services provided by agencies to children in care. In an attempt to comply fully with ASFA requirements and to ensure that children in relative foster care receive the same protection as other children, the regulations clarified that states cannot receive federal reimbursement for children in foster homes until and unless those homes are fully licensed.¹⁸

Clarification of “Reasonable Efforts”

ASFA clarified that nothing in federal law requires a child to remain in or be returned to an unsafe home, and the act included examples of when it might be

“unreasonable” to reunify children with their families.¹⁹ ASFA also specifically required that, when a child cannot be reunified safely with family members, reasonable efforts must be made to place the child in a timely manner in accordance with the child’s permanency plan. The law also sought to expedite permanence by clarifying that such reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with efforts to reunify a child with both parents.

Elimination of Long-Term Foster Care

In ASFA, Congress eliminated the earlier statutory reference to “long-term foster care” as a permanency option for a child. The act specified that appropriate permanent options should include placements with a fit and willing relative, a legal guardian, or in another permanent living arrangement, in addition to safe return home or adoption. Subsequent ASFA regulations underscored the importance of statutory requirements for permanency options beyond long-term foster care.

Formal Recognition of Kinship Care

ASFA explicitly recognized placements with “fit and willing relatives” or legal guardians as acceptable permanency options for children in foster care. As mentioned earlier, it also allowed the state to exempt a child living with a relative from the requirement for initiating termination of parental rights proceedings. In addition, ASFA required a report on kinship care. The report, prepared by the secretary of the U.S. Department of Health and Human Services (DHHS) in consultation with a national Kinship Care Advisory Panel, recognized the importance of relative caregivers in caring for children in foster care and in expediting children’s exit from foster care.²⁰

New Incentives for Adoption

ASFA authorized funding for incentive payments to states to increase the number of adoptions of children in foster care. States that increase their adoptions over an established baseline are eligible for \$4,000 for each child who is adopted from foster care and \$6,000 for each child with special needs who is adopted from foster care, but only for adoptions above the baseline.²¹ More than 230,000 children were adopted from foster care from 1998 to 2002, more than the previous two

years combined.²² To date, every state in the country has received an incentive payment for at least one of the years in which the adoption incentive has been offered. Unfortunately, the dollars that Congress appropriated for the incentive payments have not kept up with the increases in adoptions, and as this article goes to press, changes in the adoption incentive program, which has to be reauthorized, are pending before Congress.²³

Expanded Services

In addition to the family support and family preservation services states were already providing to foster and adoptive parents, as well as birth families, ASFA and accompanying guidance specifically required states to expand their services to two additional categories—time-limited reunification services and adoption promotion activities—and to spend at least 20% of their funds from the newly named Promoting Safe and Stable Families Program on each of these categories.²⁴ At the same time, funding for the overall program was increased only slightly. As a result, many communities perceived the new focus on adoption to undercut the earlier emphasis on family support and prevention, even though funds in each of the categories could be used for services for children in foster care. Unfortunately, until now it has been difficult to know just how these program funds are being used, especially given the overlapping definitions of the four program activities. Beginning in 2003, however, DHHS is required to submit a biennial report that includes funding levels and effectiveness, by program category.²⁵

Increased Emphasis on Accountability

ASFA required DHHS to establish outcome measures to track state performance in protecting children, to issue an annual report on state performance, and to develop a performance-based incentive system to provide federal child welfare, foster care, and adoption-assistance payments. Three annual reports on outcomes have been issued,²⁶ but challenges remain in establishing outcomes that can be measured accurately and in assessing states’ progress in meeting them. For example, some child welfare administrators and researchers have criticized the fact that outcome performance measures are assessed based on point-in-time data that biases the results and could lead to solutions with little real benefit to the children involved. They

maintain that cases must be tracked using comparable data over time to accurately gauge progress.²⁷ Further attention is needed to improve both the outcomes used and the manner for assessing them.

ASFA also prompted DHHS to move forward with an important new initiative for reviewing states' performance: the Child and Family Service Review. In 1994, Congress had mandated a review of states' performance in the delivery of services to children and families who come to the attention of the child welfare system. Under ASFA, it was clarified that the goal of this review process is to assess states' actual outcomes for children and families and to determine states' conformity with federal legal requirements using a more comprehensive, hands-on assessment process than was previously required (see Box 1).

The reviews are to be conducted over three years, with 32 states completed by the end of 2002 and all states completed by March 31, 2004.²⁸ To date, no state has been found in conformity with all outcomes and/or systemic factors, and all are developing program improvement plans.²⁹ A number of states that already have had reviews have maintained the teams and the processes used in the reviews in order to provide ongoing assessments of their child welfare activities.

The Role of the Courts

In the policy framework discussed above, the courts play an important and often overlooked role in helping achieve safety and permanence for children in foster care. The courts are called upon to review the status of children in foster care, hold dispositional hearings, and promote permanent placements. The

Box 1

The Child and Family Service Reviews

The Child and Family Service Reviews, mandated by Congress in 1994, provide a comprehensive look at a state's ability to deliver services that lead to improved outcomes for children and families consistent with federal law. The reviews provide an opportunity to assess state performance broadly with input from a range of stakeholders and enhance states' ability to assist children and families to achieve safety, permanency, and well-being outcomes.

The reviews include a statewide assessment and an in-depth review of up to 50 cases of children in the state's child welfare system. The process includes reading case records and interviewing children and families, caseworkers, foster parents, service providers, and other key stakeholders involved with the children and families. After both parts of the review are complete, the U.S. Department of Health and Human Services determines whether a state has achieved substantial conformity on a series of outcomes and systemic factors. States that are approved will be reviewed again in five years, unless problems are identified earlier. States that are not operating in conformity with federal law are given the opportunity to develop a program improvement

plan (PIP) to address the problem areas. States have up to two years to address problems before any fiscal penalties are imposed. States can get federally supported technical assistance for the development and implementation of PIPs.

A number of the outcomes examined in the reviews specifically address the status of children in foster care. For example, reviews look at the stability of foster care placements and the frequency of children's reentry into foster care. They also assess the continuity of family relationships and connections that are preserved for children in foster care. Specific indicators include the proximity of the foster care placement to the child's home, placement with siblings, visits with parents and siblings, and other ways to preserve family and community connections and relationships. Reviews look at the educational, physical, and mental health needs of children in foster care. They also examine systemic factors that impact children in foster care, such as statewide information systems; case reviews; quality assurance; training; services and community responsiveness; and licensing, recruitment, and retention of foster parents.

Source: 45 CFR 1355.31-37. For more information about the Child and Family Service Reviews, visit the Children's Bureau Web site at <http://www.acf.hhs.gov/programs/cb/cwrp/cfsr.htm>.

nature and quality of the hearings and legal representation of the parties; the timelines; the thoroughness of decisions; and court staffing, technology, and training all profoundly influence whether existing laws are appropriately implemented to meet the individual needs of children and families. Often, the extent of the services a child and family receive and how quickly a child achieves a successful return home or placement in another permanent setting depend most heavily on the courts. Because of the courts' key responsibilities in ensuring safety and permanency for children, policymakers have increasingly recognized the importance of increasing the capacity of child welfare courts to carry out already-established legislative goals. Moreover, individual court decisions and impact litigation intended to bring about broader systemic reforms have played a formative role in the development of national foster care policy.

Increasing the Capacity of the Courts

AACWA envisioned a major role for the courts in reviewing the status of children in foster care, holding dispositional hearings, and promoting permanent placements, but it provided no funds directly to the courts. Recognizing the importance of enhancing the capacity of the courts to help support both safety and permanence for children in foster care, various initiatives followed.

After AACWA was passed, the National Council of Juvenile and Family Court Judges established the Permanency Planning for Children Project, which conducted extensive training on the act and helped establish permanency planning task forces in many states.³⁰ Then in 1993, for the first time, Congress provided targeted funding for court improvements as a set-aside in the Family Preservation and Support Services Program, which has continued to the present.³¹ In the Court Improvement Program, funds are specifically intended to help courts conduct assessments of their effectiveness in implementing federal child welfare statutes and improving the handling of the cases of children involved in foster care and adoption. Funding of \$5 million was provided for the first year and \$10 million a year for subsequent years; additional discretionary funds were subsequently provided.³² Currently, all 50 states, the District of Columbia, and the Commonwealth of Puerto Rico participate in the Court Improvement Program.³³



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In a number of states, the funds for courts have stimulated important activities that have made courts more responsive to children who enter foster care and need services and permanent placements.³⁴ For example, in Colorado, the Court Improvement Program has focused on the implementation and evaluation of the Expedited Permanency Planning Program, which requires that permanency planning hearings for children under six years of age be held within six months of placement. Colorado achieved statewide implementation in 2001 and has found that the program's approach toward expedited permanency has had a beneficial effect on permanency not only for targeted children under age six but for older children as well. In the District of Columbia, funds from the Court Improvement Program were used to complete a child protection mediation program for child abuse cases. The program has since been expanded to include neglect cases, and courts presently assign half of all cases to mediation. Also, in Cook County, Illinois, a Parent Education Program was created to inform parents involved in the dependency system about court procedures.

Other efforts to improve the courts are also underway. For example, with funding from the Child Victims Act, 25 model courts have been established to improve the handling of abuse and neglect cases.³⁵ The Strengthening Abuse and Neglect Courts Act included provisions to strengthen courts' ability to

track cases and to address the backlogs of children in care, although it has been a struggle to get these provisions funded.³⁶ Finally, the passage of ASFA reinforced the idea that, if the goals of ASFA are to be realized for children in foster care, courts and child welfare agencies must collaborate more closely. ASFA leaves to the courts the final determination of when it is or is not reasonable to provide preventive and reunification services to families and whether and when termination of parental rights is in the best interest of the child. Similarly, in order for states to qualify for ASFA adoption incentive payments, courts must act to finalize adoptions so that the adoptions can be counted in a state's consideration for ASFA's adoption incentive payments.

Impact of Court Decisions and Reform Litigation

Federal and state case law has helped define the boundaries of the rights of children in foster care, as well as those of their birth parents, foster parents, and relative caregivers. Legal advocates have also relied upon the courts to enumerate the specific responsibilities of the state agencies that oversee children in foster care and, increasingly, to maintain continuing judicial and administrative oversight over state child welfare agencies that have systematically failed to meet these children's needs. Although some of these legal challenges have clarified roles and strengthened the obligations of states, others have not.

Parental Rights

Recent statutory and administrative emphasis on expediting permanence for children in foster care must be understood in the context of a constitutional framework that was largely designed to protect the rights of parents. Decisions about the circumstances under which children may be removed from their parents and placed in state-supervised foster care raise constitutional as well as policy questions. The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive life, liberty, or property without due process of law."³⁷ The Supreme Court has long established that the Due Process Clause provides "heightened protection" against government interference with certain fundamental rights and liberty interests,³⁸ the oldest of which is the fundamental liberty interest of parents "in the care, custody, and control of their children."³⁹

Parental rights are not absolute, however. The Supreme Court has held that a state may interfere with parental and other fundamental rights, but only when there is a "compelling government interest" in doing so.⁴⁰ The court has defined a sufficiently compelling interest to include state intervention to prevent serious harm to children.⁴¹ Although the specific procedures for a child's removal and foster care placement have been left largely to the states, federal law requires certain protections for those children who are eligible for federally funded foster care and related services.⁴² As the court recently explained, "so long as a parent adequately cares for his or her children (i.e. is fit), there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of those children."⁴³

System Reform

Over the past 20 years, legal advocates in many states have used litigation in the form of class-action suits and other legal challenges against child welfare agencies to try to bring about more systemic changes for children in foster care. Such litigation has often resulted in highly specific court remedies and, in some cases, ongoing judicial oversight of the agencies administering the court orders. Class-action litigation has challenged almost every aspect of foster care and the child welfare system generally,⁴⁴ including:

- the grounds for a child's removal and placement in foster care,⁴⁵
- the state's failure to assign workers to foster care cases in a timely manner,⁴⁶
- the state's failure to develop and implement a level-of-care assessment for appropriate foster care placements,⁴⁷
- the state's use of race as a criteria in placement,⁴⁸
- the state's failure to provide adequate services to children and families in foster care,
- the length of time children spend in care,⁴⁹
- visitation procedures for children in foster care, including appropriate visitation with siblings⁵⁰ and biological parents,⁵¹ and

The need to track the health status of children in foster care is another challenge that has yet to be comprehensively addressed in national policy efforts.

- the state's failure to address the needs of special populations of children in care, including children living with kin,⁵² children with disabilities in foster care,⁵³ children in institutional foster care,⁵⁴ undocumented children in foster care,⁵⁵ young children in group foster care,⁵⁶ and children entering foster care from families where there has been domestic violence.⁵⁷

Most of the class-action lawsuits have ended in consent decrees, which the attorneys for the children and/or families must then implement together with the state or local child welfare agency staff. It is also increasingly common to bring in a special master or an expert panel to assist with the reforms. While in some states such decrees have helped generate increased resources for reforms and prompted important progress for children, class-action litigation is not without controversy. Some critics argue that the often long-drawn-out legal actions unnecessarily deplete resources for foster care systems that are already in short supply, resulting in even poorer service delivery to children in foster care. They also contend that community leaders and child welfare experts must be brought in to the litigation process early, and that litigation must be used in concert with other advocacy strategies (such as education of birth and foster parents, and agency training) to effectively achieve broader systemic reforms.⁵⁸

Impact of Other Policy Areas on Foster Care

Given the fact that the foster care system often serves as a last resort for families struggling to meet their children's basic and special needs, it is not surprising that changes in policy areas other than child welfare can have a significant impact on foster care and the children and families the foster care system serves. For example, welfare policy, policies affecting immigrant children, and policies concerning access to health care all have a major influence on the foster care system. A reduction in Medicaid funding could bring about changes in eligibility or benefits that could directly result in more children going into foster care or could impact the

services available to those in care. Other policies affecting foster children include those concerning substance abuse, mental health, domestic violence, housing, and taxation.

Welfare Policy

The welfare reform legislation passed in 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA),⁵⁹ has had a mixed effect on the policy framework for foster care. On the positive side, it offered the promise of new funds that could be leveraged to keep children out of foster care. Under a new program, Temporary Assistance for Needy Families (TANF), federal funds can be used for any activities consistent with the program's broad purposes. As a result, a number of states have reported using TANF funds for activities traditionally considered to be child welfare services, such as home visiting programs and other parenting support and prevention programs designed to keep children out of foster care. A number of states have used TANF funds to support kinship care families, so that the children they are raising can stay with them and out of foster care. (See the article by Geen in this journal issue.)

Under the new law, states also are allowed to use TANF dollars for activities previously funded by the Emergency Assistance program, which include foster care as well as a range of crisis intervention services to prevent children from entering care. Unfortunately, some states that have used TANF funds for foster care and other child welfare services have used the funds to replace rather than to expand state child welfare expenditures. This situation has raised concerns about the impact on families and foster care should TANF funds in these states suddenly have to be diverted to assist with growing TANF caseloads.

At the same time changes in the welfare law increased the flexibility of TANF funds and made them more available for child welfare services, these changes also intensified the fiscal pressures already on foster care. For example, the law limited the pool of children in foster

care eligible for federal assistance by basing future eligibility for the federal foster care program on the TANF income and resource rules in place on July 16, 1996, without adjusting for inflation or taking into account future expansions in TANF eligibility requirements.⁶⁰ This provision limits federal assistance for foster care to children from very poor families, and states are finding that they have to increase their own contributions to foster care for children who would previously have been eligible for federally reimbursed foster care.

The enactment of TANF also raised concerns that more and more children might need foster care as alternative supports declined and that, without TANF available to support reunification efforts, children would remain in foster care longer. But little is yet known about the interaction between TANF and child welfare. Although initial reports from the states raise red flags, the real impact remains to be seen, as more families lose benefits due to lifetime limits on TANF eligibility, economic conditions worsen, and pressures on families increase.⁶¹

Policies Affecting Immigrant Children

PRWORA also substantially restricted the access of many immigrant families to a range of federal public benefits, including federally funded foster care, adoption assistance, and independent living services.⁶² Only citizen and “qualified” immigrant children (generally those entering the country prior to August 1996, when the legislation was passed) are now eligible for federal foster care benefits. Although state and local funds may still be used to cover the cost of foster care for those immigrant children who no longer qualify for federal assistance, there is concern that the new limitations have had a chilling effect on immigrant children in foster care and that parents and extended family members may be more reluctant to approach state agencies for help when a child’s safety is threatened.⁶³ Also, advocates are concerned about the quality of services available to immigrant children already in foster care. In some instances, language barriers and cultural differences make communication between immigrant families and their foster care caseworkers challenging. For example, a needs assessment of one community’s immigrant families involved in child welfare found that immigrant families were denied access to translators and to basic benefits based on their

immigration status, resulting in longer stays in foster care for immigrant children.⁶⁴

Health Care Policy

The health care needs of children in foster care have been well documented over the years.⁶⁵ Children whose foster care is federally reimbursed have been automatically eligible for Medicaid since 1980, and since ASFA, all children in foster care must be provided with health insurance, either through Medicaid or through a state-funded Medicaid replacement program.

Unfortunately, eligibility for health insurance coverage alone is not sufficient to address the health care problems facing children in foster care. A number of enrollment and service barriers that impact all families applying for health insurance under Medicaid may be especially problematic for foster families. These barriers include the difficulty in finding health care providers who will accept Medicaid (due to the program’s low payment rates, burdensome administration requirements, and inefficient payment systems) and ensuring continuity of care, especially when foster children are moved frequently from one neighborhood or community to another. A recent study in three large states found that children in foster care had less continuous Medicaid coverage than children receiving Supplemental Security Income (SSI) benefits or adoption assistance.⁶⁶ Moreover, the study found that children in foster care were more likely than other children receiving Medicaid to have a mental health or substance abuse condition, making their lack of access to health care particularly detrimental.

Another significant problem for children in foster care has been their inability to retain Medicaid when they leave care, thus leaving their physical and mental health needs unmet. The three-state study mentioned above found that between one-third and one-half of children lost Medicaid coverage when they left foster care. Most likely they were left with no health insurance. Although children who leave foster care to return home have no guarantee of continuing Medicaid eligibility, federal Medicaid regulations require that children who have been categorically eligible for Medicaid (as are most children in foster care) cannot be cut off until a determination is made that they are not eligible for Medicaid under other eligibility guidelines.⁶⁷ States also have

the option of providing 12 months of continuous coverage to children enrolled in Medicaid to ensure better continuity of care. In states that choose that option, children in foster care would be eligible for the full 12-month period, even if they were to leave foster care before the 12 months ran out.⁶⁸ Some children who leave care may also be eligible for the State Children's Health Insurance Program (SCHIP).⁶⁹ In addition, the Foster Care Independence Act of 1999 allows states to extend Medicaid to youths ages 18 to 21 who are transitioning from foster care.⁷⁰ As of the end of 2002, however, only eight states had taken advantage of this option.⁷¹

The need to track the health status of children in foster care is another challenge that has yet to be comprehensively addressed in national policy efforts. Although federal law does specify that a foster child's case plan must include the health records of the child, there is currently no requirement that the information be shared with foster parents or other care providers who are responsible for the daily supervision of children in foster care. Nevertheless, some states have developed progressive ways to track the health care of children in foster care (such as through the use of electronic "health passports"), and others are making creative use of funds from Medicaid and SCHIP to expand assistance to vulnerable children in foster care and their families.⁷²

Attention to the special health and other needs of children with disabilities in foster care also continues to be a problem. In 1996, after Congress cut back SSI for children and others with disabilities, the cost of care for large numbers of foster children in some states shifted from the federal SSI program to state foster care budgets. There also have been court challenges to some state laws that allow states that receive SSI for children in foster care to reimburse themselves for the current costs of foster care for these children. In February 2003, however, the U.S. Supreme Court ruled that a state was allowed to use children's SSI benefits to reimburse itself, noting that this allowance increased the likelihood that states would identify children as SSI eligible, pursue SSI for them, and act as representative payees for them when others were not available to play that role.⁷³

Policies on Substance Abuse, Mental Health, and Domestic Violence

Children whose parents abuse drugs and alcohol are almost three times more likely to be neglected than children whose parents do not.⁷⁴ An estimated 40% to 80% of children in foster care are from families with substance abuse problems.⁷⁵ It is estimated that nationally, 1 in every 10 children and adolescents suffers from mental illness severe enough to cause some level of impairment; yet, in any given year, only 1 in every 5 children receives mental health services.⁷⁶ Studies have demonstrated that children in foster care have higher rates of emotional problems than children with similar backgrounds who are not in foster care.⁷⁷ Domestic violence is also a serious problem for children in foster care and their families. It is estimated that child maltreatment and domestic violence co-occur in an estimated 30% to 60% of families where there is some additional form of family violence.⁷⁸

Although more attention has been paid to the problems of substance abuse, mental health, and domestic violence over the past several years,⁷⁹ targeted legislative initiatives have not been enacted, leaving many states without appropriate screening and assessments, comprehensive treatment, and training for foster care workers and others. Without appropriate services and treatment, children are more likely to be placed in foster care and to stay there for longer periods. The lack of services and treatment stalls permanency decisions in those cases when judges are reluctant to pursue termination of parental rights without such help being offered first. For example, in one recent study, two-thirds of the states reported that the lack of appropriate services provided to the parent soon after the child entered care, particularly substance abuse treatment, was a significant barrier to prompt permanency decisions.⁸⁰ In some situations, children are returned home without the proper identification of substance abuse, mental health, or domestic violence problems. When these problems reoccur, children are often returned to foster care.

Currently, there are no federal laws that specifically address links between child welfare and substance abuse, mental health, and/or domestic violence problems, although several laws have been proposed.⁸¹ Nevertheless, a handful of states have used the waiver authority

available under the Child Welfare Demonstration Waiver Program to respond more creatively to these problems.⁸² Delaware,⁸³ Illinois,⁸⁴ and several other states are addressing the need for substance abuse treatment. Connecticut and Washington are using waivers to expand treatment options and better coordinate services for youths in foster care with mental health problems.⁸⁵ Though not using the waiver, Arizona and Maryland have passed legislation that increases resources for substance abuse and child welfare agencies to jointly seek comprehensive treatment for parents whose substance abuse is a barrier to preserving or reunifying their families. In six communities across the country, federally supported pilot activities designed to strengthen the link between child welfare agencies, domestic violence organizations, and the courts are underway, encouraging these systems to focus together on helping both child and adult victims of domestic violence and child abuse when these problems co-occur.⁸⁶

Housing Policy

In response to the growing recognition of the link between housing problems and children in the child welfare system, the Family Unification Program was created in 1990 to provide special accommodation, on a small scale, to meet the housing needs of children at risk of placement in foster care due to homelessness or other housing problems.⁸⁷ Under the program, a small number of Section 8 vouchers are set aside to allow local housing authorities and child welfare agencies to offer housing assistance to those families whose children are at risk of placement in foster care or are preparing to return to their families from foster care, and for youths aging out of foster care.⁸⁸ Unfortunately, however, the Section 8 vouchers that are currently set aside for the program are not nearly enough to serve the growing numbers of families in need.⁸⁹

Federal Tax Policy

Federal tax policy also impacts the foster care system, as foster parents, relative caregivers, and adoptive parents may be eligible for tax exemptions, deductions, or credits that could help to stretch their incomes. For example, some caregivers will be able to claim the children in their care as dependents, provided their relationship to the child, their living arrangements, and the amount they have contributed to the child's support make them eligible.⁹⁰ In addition, tax legislation

enacted in 2001 enables some caregivers to qualify for the earned income tax credit (EITC), which provides a tax refund to low-income workers, including those who earn too little to pay income taxes.⁹¹ The 2001 tax legislation also expanded the child tax credit—which provides a \$600 credit for each of a taxpayer's qualifying children, including “eligible foster children”—and made a portion of the credit refundable for families with incomes over \$10,000.⁹² An additional \$400 credit was added in 2003.⁹³ Finally, the 2001 legislation expanded the adoption tax credit to provide extra financial support to offset certain expenses that foster and other families may incur in adopting children.⁹⁴

Recommendations for Future Policy Reform

The impetus for the reforms in the foster care and the child welfare policy framework has been consistent over the years, with major policy changes being driven by the same four concerns: children languishing in care, child safety, the adequacy of services, and system accountability (see Box 2). Despite improvements, child welfare systems across the country are still in crisis, and barriers to reform remain. Why are more than 550,000 children currently in foster care? Why has there been so little progress in getting children and families the help they need? What are the barriers to real reform for these children? It is difficult to talk about reform of foster care without addressing reform of the broader child welfare system. Foster care is a key piece, but just one of many pieces, in the continuum of services and supports that must be in place as communities work to find safe and stable families for maltreated children.

Eliminating Child Poverty

Any serious effort to strengthen the policy framework for child welfare and foster care first must acknowledge the overriding importance of eliminating child poverty. Poor children are more likely than higher-income children to be reported as abused and neglected. Because of the enormous stresses on their families, families' difficulties in obtaining appropriate services such as health care and housing, and families' increased interaction with public systems, these children are more likely to come to the attention of the child welfare system. Poor children are also disproportionately children of color, who are overrepresented in the child welfare

Box 2

The Impetus for Reform

- **Children Who Languish in Care.** When the Adoptions Assistance and Child Welfare Act (AACWA) was enacted in 1980, policymakers made frequent reference to evidence that children who remained in care for at least 18 months were likely to remain there for long periods. Policymakers also noted the harms that occur to children when they are denied the stability and sense of permanence that they need. Similarly, as the Adoption and Safe Families Act (ASFA) was being considered in 1997, policymakers voiced great concern about the more than 100,000 children lingering in foster care without permanent homes and the need to expedite permanency decisions on their behalf. At the same time, others criticized the implementation of certain aspects of the earlier law, particularly the “reasonable efforts” provision, which they asserted was hampering efforts to place children in permanent homes.
- **Concerns about Safety.** In enacting AACWA, Congress required that “reasonable efforts” be made to prevent unnecessary foster care placements and to reunify families. In emphasizing “reasonable” efforts, the act maintained that children could nevertheless be removed from their homes immediately—without the prior provision of preventive services, if necessary—to protect them from dangerous situations. Policymakers did not want to put children in situations that would compromise their safety. ASFA codified this policy when it stated for the first time in federal law that a child’s health and safety are paramount in any decision made about his or her care and provided examples of when efforts to prevent placements or reunify families might be “unreasonable.”
- **Inadequate Services.** Congress has chosen to maintain the original federal design of the foster care system, whereby the bulk of funds are designated for out-of-home-care (and only for eligible poor children). But Congress has made significantly fewer investments in services to keep children safe and to prevent them from unnecessarily entering foster care; in giving children and their families the help they need while children are in foster care; or in offering post-permanency supports to children who are returned home, adopted, or placed permanently with kin. Similarly, there have been no significant investments in the range of specialized services, such as substance abuse or mental health treatment, that many families in the child welfare system need in order to ensure safe, permanent homes for their children.
- **Need for Accountability.** Both AACWA and ASFA created or maintained basic protections for children, such as requirements that states develop individual case plans, conduct periodic reviews of the care individual children receive, and place children in the least restrictive, most familylike setting appropriate to their needs. Both acts also required states to collect the data necessary to track children in care and to maintain some additional mechanisms for monitoring the care children receive. In addition, Child and Family Service Reviews (see Box 1) provide new opportunities to monitor state agency compliance with federal legal protections for children in foster care.

Sources: Maas, H., and Engler, R. *Children in need of parents*. New York: Columbia University Press, 1959; Goldstein, J., Freud, A., and Solnit, A. *Before the best interest of the child*. New York: The Free Press, 1979; *Congressional Record*, 96th Cong., 2nd Sess., 1980. Vol. 126, pt. 2, S6942; and U.S. House of Representatives, Committee on Ways and Means. *Social Services and Child Welfare Amendments of 1979*. 96th Cong., 1st Sess., 1979. H. Rep. 136.

system and are more likely to stay in the child welfare system for long periods. Advocates, providers, and policymakers must pursue reforms that will eliminate child poverty and provide all children the health care, early childhood experiences, educational opportunities, and safe homes that they need to grow and thrive. Achiev-

ing these goals will have a major impact on the challenges facing the child welfare system and the children and families it serves.

With the elimination of child poverty as an overarching goal, the driving force behind any future policy reforms

“One size fits all” is too frequently the solution, despite a policy framework that encourages more individualized services.

in child welfare must be to establish a policy framework that will support a child-centered, family-focused, community-based approach to keeping children safe and in permanent families. Within such a framework, several additional policy reforms in the broader child welfare system could have a positive impact on the future of foster care, as discussed below.

Redirecting Funding Incentives and Increasing Funding Levels

Major alterations in current funding patterns are needed to support important reforms such as enhanced safety and permanence for children. Although federal and state dollars are generally available to keep children in foster care, the dollars often are not there to support children safely within their own families and prevent foster care placements, to serve children in foster care and their families, or to move children into permanent placements in a timely fashion. Consequently, as noted by the Urban Institute, which regularly reviews child welfare spending, “The federal system is not in alignment with the goals of protecting children and providing stable, permanent placements.”⁹⁵

The federal foster care program provides open-ended funding for the room and board of certain eligible children in foster care, but only very limited funding for the development of alternative services for abused and neglected children and their families, both before a child must be placed in foster care or after a child returns home following placement. As a result, out-of-home care is often the easiest option for workers besieged with large caseloads and few other resources. Moreover, because funding under the federal foster care program is generally restricted to room and board, it is often difficult to give even those children placed in foster care the services and treatment they need.

According to a recent Urban Institute report, almost three times more funds were spent on maintenance payments and other services for children in out-of-home placements than were spent on other services to children and families served by child welfare in the home in 2000.⁹⁶ At the federal level, at least \$5.2 billion was spent on out-of-home placements, whereas

only \$1.8 billion was spent on preventive and other services. State funding followed a similar pattern.

Though there is agreement about the significance of this barrier, there has not been agreement as to how to adequately address it. Proposals have ranged from converting the federal foster care program to a block grant and merging it with other federal child protection programs to allowing open-ended federal funding for a wide range of alternative services for vulnerable children and families. Under the Child Welfare Demonstration Waiver Program, Congress gave states the opportunity to use their foster care dollars more flexibly, and Congress expanded this flexibility even further under ASFA. Nevertheless, states generally have not opted for waivers for these purposes, in part because of complex federal requirements for evaluations and a mandate that the initiatives be cost-neutral.

Further efforts are needed to redirect the funding incentives within foster care. The lack of sufficient funding at both the federal and state levels for ongoing services for children at risk of entering foster care, those in foster care, or those preparing to leave foster care makes it impossible for states to fully comply with the expedited timelines required by ASFA. Changes must involve both increased resources for states and Indian tribal organizations and increased flexibility. Any new funding patterns must accomplish at least three goals:

- Expanded services to keep children safely at home, to facilitate more timely decisions about reunification or other permanent placements, and to prevent children from returning to foster care after they are returned to their families, adopted, or placed permanently with kin.
- Expanded permanency options for children in care through federal support for subsidized guardianship programs and enhanced adoption assistance payments.
- Eligibility for federal foster care funding and related services based on children’s risk of abuse or neglect rather than their parents’ financial status.



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Improving the Quality of Care for Children and Families

In too many states, neither the child welfare agencies nor the courts have the trained staff, skills, or resources necessary to make decisions about the care and treatment that is appropriate to meet the individual needs of children and their families. A recent General Accounting Office report on the implementation of ASFA found that judges and other court staff were in short supply, training was not available, and judges were somewhat reluctant to move forward as quickly as required under the law. In particular, the lack of appropriate substance abuse treatment programs was identified as a barrier to meeting the ASFA timelines for parents.⁹⁷

Some of the biggest service gaps are in the areas of treatment and services for the substance abuse, mental health, and domestic violence problems that so often bring children to the attention of the foster care system and keep them there. These gaps exist because of both the lack of funding for specialized services and the lack

of coordination among child-serving systems. They are exacerbated by the failure of agencies to engage families and communities as partners in their mission to protect children. In one national survey, about one-third of state agency administrators cited the lack of resources as a barrier to meeting ASFA's time frames.⁹⁸ The lack of substance abuse treatment for parents and the fact that child welfare agencies were dependent on outside agencies for needed services were noted as particular problems. Often, families are not asked what they need or are not treated as partners in helping to keep their children safe. Caseloads are overwhelming, procedural timelines are tight, and families' needs are complex. "One size fits all" is too frequently the solution, despite a policy framework that encourages more individualized services.

Services and supports needed to find adoptive families for children in foster care and to ensure that adoptions are permanent are also lacking. With ASFA's new emphasis on termination of parental rights, there is

serious concern that many more children may end up as “legal orphans.” For example, as of September 30, 2000, some 131,000 children in foster care were waiting to be adopted; 75,000 of these children had had their parental rights terminated and had waited an average of almost two years for adoption.⁹⁹ Once children are adopted, there is continuing concern that they will bounce back into foster care without adequate postadoption services to ensure that their needs are met. Although some states, such as Illinois, have comprehensive services in place to address these barriers, many others do not.¹⁰⁰

Expanded opportunities are needed to improve the quality and appropriateness of the services and the care that children and families receive. This improvement will require attention to the preparation and quality of staff, as well as new approaches and resources for getting children and families what they need. At a minimum, specific changes to promote improvements in this area should include the following:

- ▮ Expanded eligibility for federal foster care training dollars for staff in private child welfare agencies, courts, and related service agencies that assist children and families who come to the attention of the child welfare system.
- ▮ Expanded training for foster parents and other caregivers so that they understand their roles in preparing children for permanent families, whether they will help children return home, care for them permanently, or assist in finding other permanent caregivers for them.
- ▮ Fiscal incentives for states to develop and implement successful strategies for improving the recruitment and retention of staff.
- ▮ Support for joint agency initiatives to develop and implement screening and assessment methods and comprehensive services and treatment for families who come to the attention of the child welfare system and who are struggling with substance abuse, mental health problems, or domestic violence.
- ▮ Approaches designed to engage families and communities in partnerships with child welfare

agencies to develop support networks for children in communities.

Increasing Accountability for Children and Families

The child welfare system has had to struggle with the constant tension between state discretion, federal accountability, and the need for enforcement of basic protections for children. AACWA included numerous protections for children, but beginning in 1989, Congress imposed a series of moratoriums prohibiting DHHS from imposing penalties for noncompliance with the protections and other provisions in the law. This followed a period of dissatisfaction on all fronts with the quality of the reviews being conducted.

It was not until 1994 that Congress mandated the development of a new system to review states’ conformity with the child welfare protections and other requirements in federal law,¹⁰¹ but the new system was not implemented in the states until 2001. Between 1989 and 2001, no regular program monitoring took place to ensure that states were appropriately caring for children. In 2001, however, the new system of Child and Family Service Reviews, with its unique comprehensiveness, inclusiveness, and corrective-action requirements, got underway. This system has potential to increase states’ accountability in ensuring the safety and permanence of children in the child welfare system, but it is not clear that states will have the resources or broad buy-in from the community for real change to occur.

A lack of public will continues to hamper efforts to improve the care of these most vulnerable children and families. Front-page headlines of horrors done to children do little to maintain public confidence in the child welfare system. Policymakers are hesitant to “put money into a black hole” or to take the political risks that may accompany true reform. Members of the broader public brush their hands, shake their heads, and decide to leave the mess to child protective services agencies. The lack of public outrage and demand for appropriate care for these children is also likely reinforced by the community’s broader lack of attention to the needs of the families in the system, who are disproportionately families of color, poor, female-headed, and often suffering from numerous complex problems. Even when members of the community want to step forward, they are not clear how they can help.

Increased accountability is needed. It should build on the Child and Family Service Reviews and give states incentives to increase protections for children; improve services and supports for children and families, including those children in foster care; and promptly provide permanent families for children through reunification, adoption, or permanent placements with kinship caregivers. Specific changes should include:

- Funding for Program Improvement Grants to states that are committed to achieving the goals in their Program Improvement Plans and are engaging parents; foster and adoptive parents; advocates; and representatives of the courts, multiple service agencies, and other stakeholders in their program improvement efforts.
- A requirement that states document the steps they are taking with increased funds to improve outcomes for children; enhance the recruitment, retention, and training of staff; alter their service-delivery strategies to partner with families and engage communities in new ways; and address the disproportionate placement of children of color in foster care.
- Incentives for states to develop improved administrative data systems to track the movement of children in and out of care. Such systems will help states monitor children in care over time and know more about

who the children are, how long they are staying, what help they are getting, and what they really need to move on to permanent settings without returning to foster care.

- External review bodies in the states, such as foster care review boards, child protection review committees, and courts, to report regularly to DHHS about barriers to safety and permanence that they see facing children in foster care and the child welfare system and to recommend solutions for addressing the barriers.

In its efforts to address specific concerns facing children in the child welfare system, Congress has repeatedly failed to fully understand the complexity of the system and the external and internal services and supports needed to fully realize its intended goals for children and families. A policy framework has been established, but significant gaps remain in services and funding levels and in balancing fiscal incentives. As we look forward to improving the quality of life for children and ensuring them safe and stable families, we must constantly assess what we are doing and what we still need to do to overcome the barriers to reform and to implement real change.

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ENDNOTES

1. For a detailed discussion of early child welfare policy, see Allen, M., and Knitzer, J. Child welfare: Examining the policy framework. In *Child welfare: Current dilemmas, future directions*. B.G. McGowan and W. Meezan, eds. Itasca, IL: F.E. Peacock Publishers, Inc., 1983.
2. *Aid to Families with Dependent Children-Foster Care Program of 1961*, Public Law 87-31, 75 Stat. 75 (1961).
3. See, for example, Knitzer, J., Allen, M., and McGowan, B. *Children without homes: An examination of public responsibility to children in out-of-home care*. Washington, DC: Children's Defense Fund, 1978; and Vasal, S. *Foster care in five states: A synthesis and analysis of studies from Arizona, California, Iowa, Massachusetts and Vermont*. Washington, DC: U.S. Department of Health, Education and Welfare, Office of Human Development, 1976.
4. *Adoption Assistance and Child Welfare Act*, Public Law 96-272, 94 Stat. 500 (1980), codified as amended, 42 USCA § 670 et seq.
5. *Child Abuse Prevention and Treatment Act*, Public Law 93-247, 88 Stat. 4 (1974), codified as amended, 42 USCA § 5101 et seq.
6. *Indian Child Welfare Act*, Public Law 95-608, 92 Stat. 3069 (1978), codified as amended, 25 USCA § 1901 et seq.
7. *Juvenile Justice and Delinquency Prevention Act*, Public Law 93-415, 88 Stat. 1109 (1974), codified as amended, 42 USCA § 5601 note.
8. The federal Independent Living Initiative was approved as part of the much larger *Consolidated Omnibus Budget Reconciliation Act of 1985*, Public Law 99-272 § 12307(a), 100 Stat. 82, 294 (1986), codified as amended, 42 USC 677 note.
9. *Foster Care Independence Act*, Public Law 106-169, 113 Stat. 1822 (1999), 42 USCA § 677 note.
10. Allen, M., and Nixon, R. The Foster Care Independence Act and John H. Chafee Foster Care Independence Program: New catalysts for reform for young people aging out of foster care. *Clearinghouse Review: Journal of Poverty Law and Policy* (2000) 34:197-216.
11. *Family Preservation and Support Services Act*, enacted as part of the Omnibus Reconciliation Act, Public Law 103-66, 107 Stat. 312 Part I § 13711 (1993), codified as amended, 42 USCA § 629 et seq.
12. The program's definition of "family support services" included "services to promote the safety and well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families)." "Family preservation services" were defined as "service programs designed to help children, where safe and appropriate, return to families from which they have been removed; or to be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be safe and appropriate for a child, in some other planned, permanent living arrangement." See note 11, 629a (a)(1), (2).
13. The Child Welfare Waiver Demonstration Program was approved as part of the *Social Security Amendments of 1994*, Public Law 103-432, and was amended in 1997 to allow up to 10 states per year to conduct programs in each of Fiscal Years 1998 to 2002 in Public Law 105-89 codified as 42 USC § 1320 a-g. As this article went to press, this program was awaiting reauthorization.
14. *Multicultural Placement Act*, enacted as part of the *Improving America's Schools Act*, Public Law 103-382, 108 Stat. 4056 (1994), codified as amended, 42 USCA § 602, 1320A-2.
15. The Inter-Ethnic Adoption Provisions were approved as part of the *Small Business Job Protection Act*, Public Law 104-188 § 1808, 110 Stat. 1904 (1996), codified as 42 USCA § 671 (a)(18).
16. *Adoption and Safe Families Act*, Public Law 105-89, 111 Stat. 2115, codified as 42 USCA § 1305 note.
17. 45 CFR § 1356.21 (d).
18. 45 CFR § 1356.71 (g).
19. Although it defers to the discretion of judges in individual cases, ASFA includes specific examples of situations where it might be "unreasonable" to reunify children with their families and encourages states to outline additional examples in state law. The situations specified in ASFA in which reasonable efforts are not required (but not prohibited) include a court determining that a parent has committed murder or voluntary manslaughter of another of his or her children or a felony assault that resulted in serious bodily injury to his or her child; a parent subjecting the child to aggravated circumstances as defined in state law; and the parental rights to a sibling of the child having been involuntarily terminated.
20. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. *The report to the Congress on kinship foster care*. Washington, DC: DHHS, June 2000. Available online at <http://aspe.hhs.gov/hsp/kinr2c00/full.pdf>.
21. ASFA provides bonuses to states only for adoptions that represent an increase over the number of adoptions achieved in a previous established base period. The previous number used to calculate the increase is called the baseline. DHHS calculates the individual baseline for each state by averaging each state's number of finalized adoptions of children in foster care for 1995, 1996, and 1997. The baselines calculated for states in Fiscal Year 2001 can be found at www.acf.dhhs.gov/programs/cb/dis/adoptbase.htm.
22. *Fostering Results*. Nation doubles adoptions from foster care. Press Release. Children and Family Research Center at the School of Social Work, University of Illinois at Urbana-Champaign, October 2003. The full study is available online at <http://cfrcwww.social.uiuc.edu/>.
23. H.R. 3182, the Adoption Promotion Act of 2003, was passed in the House of Representatives on October 8, 2003, and sent to the Senate. S. 1686 (an identical bill) and S. 1439 have been introduced in the Senate.
24. 45 CFR § 1357.15 (s); U.S. Department of Health and Human Services, Administration for Children, Youth and Families, Children's Bureau. Program Instruction, Log No. ACYF-PI-CB-98-03. Washington, DC: DHHS, ACYF, Children's Bureau. March 5, 1998. Available online at <http://www.acf.hhs.gov/programs/cb/laws/pi/pi9803.htm>.
25. This provision was added in the *Promoting Safe and Stable Families Amendment of 2001*, Public Law 107-133, 115 Stat. 2413 (2001), 42 USCA § 629h (c).
26. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. *Child welfare outcomes 1998: Annual report*. Washington, DC: DHHS, September

- 2000; and U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. *Child welfare outcomes 1999: Annual report*. Washington, DC: DHHS, February 2002. The most recent report is U.S. Department of Health and Human Services, Administration for Children, Youth and Families, Children's Bureau. *Child welfare outcomes 2000: Annual report*. Washington, DC: DHHS, 2003. Available online at <http://www.acf.dhhs.gov/programs/cb>.
27. See, for example, Courtney, M., Needell, B., and Wolczyn, F. National standards in the child and family service reviews: Time to improve on a good idea. Paper prepared for the Joint Center for Poverty Research Meeting on Child Welfare Services Research and its Policy Implications. Washington, DC. March 20–21, 2003.
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 30. Edwards, L.P. Improving implementation of the federal Adoption Assistance and Child Welfare Act of 1980. In *Resource guidelines: Improving court practice in child abuse and neglect cases*. Reno, NV: National Council of Juvenile and Family Court Judges, 1995, Appendix C.
 31. 42 USCA § 629h, 629f (b)(2). See note 11.
 32. In 2001, additional discretionary funding for the Promoting Safe and Stable Families Program (the renamed Family Preservation and Support Services Program) was authorized, specifying that 3.3% of any increased funds would be set aside for the Court Improvement Program. For Fiscal Years 2002 and 2003 combined, this meant an additional \$3.3 million for the program. See note 25.
 33. The American Bar Association's National Child Resource Center on Legal and Judicial Issues has prepared annual reports on the progress of participating state courts since 1998. See Lancour, R., and Rauber, D.B. *Court improvement progress report 2002*. Washington, DC: American Bar Association Center on Children and the Law, 2002.
 34. See note 33, Lancour and Rauber, pp. 92–126.
 35. The U.S. Department of Justice administers the model courts with technical assistance from the Permanency Planning Department of the National Council of Juvenile and Family Court Judges. See Anonymous. Status report 2002: A snapshot of the Child Victims Act model courts project. Reno, NV: National Council of Juvenile and Family Court Judges, Permanency Planning for Children Department, 2003.
 36. *Strengthening Abuse and Neglect Courts Act of 2000*, Public Law 106-314, 114 Stat. 1266. SANCA authorizes \$10 million for grants to improve data collection systems, \$10 million to reduce the backlog of children waiting to be adopted, and an additional \$5 million to expand Court Appointed Special Advocates (CASA) programs in underserved areas. In Fiscal Year 2002, a total of \$2 million was appropriated for all three activities; no funds were appropriated for Fiscal Year 2003. The report is available online at <http://thomas.loc.gov/cgi-bin/cpquery/T?report=hr278&dbname=cp107>.
 37. US Const, Amend XIV, § 1.
 38. *Washington v. Glucksberg*, 521 US 702 (1997); see also *Reno v. Flores*, 507 US 292 (1993).
 39. *Meyer v. Nebraska*, 262 US 390 (1923); see also *Pierce v. Society of Sisters*, 268 US 510 (1925).
 40. *Prince v. Massachusetts*, 321 US 158 (1944).
 41. See note 41, *Prince v. Massachusetts*.
 42. 42 USCA § 622(b), 671(a).
 43. *Troxel v. Granville*, 530 US 57 (2000).
 44. *Angela R. v. Clinton*, 999 F2d 320 (8th Cir. 1993).
 45. *Ana R. v. New York Department of Social Services*, 90 CIV-3863 (SD NY, filed June 7, 1990).
 46. *Suter v. Artist M.*, 503 US 347 (1992).
 47. *Bohler v. Anderson*, 987660 (San Francisco Superior Court, filed June 24, 1997).
 48. *Committee to End Racism in Michigan's Child Care System v. Mansour*, 85 CV 7438 DT (E.D. Mich., filed September 23, 1985).
 49. *Children A-F v. Chiles*, 90-2416 CIV (SD Fla., filed October 1990).
 50. *Aristotle P. v. McDonald*, 721 F Supp. 1002 (ND Ill. 1989).
 51. *Bates v. McDonald*, 901 F2d 1424 (7th Cir. 1990).
 52. *Budreau v. Hennepin County Welfare Board*, #94-15706 (Minn. D Ct, 4th District, filed October 6, 1994).
 53. *E.F. v. Scaffidi*, 851 F Supp. 249 (SD Miss. 1994).
 54. *Emily J. v. Weicker*, #393CV1944 (filed October 25, 1993).
 55. *Jane Doe v. Towey*, 94-1696-CIV-Ferguson (SD Fla. 1994).
 56. *Jones-Mason v. Anderson*, #982959 (Cal. App. Department Superior Court, filed December 4, 1996).
 57. *Nicholson v. Williams*, 203 F Supp. 2d 153 (2002).
 58. Borgersen, E., Shapiro, S., and Stangler, G.L. A case-study in court-ordered child welfare reform. *Journal of Dispute Resolution* (1997) 2:189–214.
 59. *Personal Responsibility and Work Opportunity Reconciliation Act*, Public Law 104-193, 110 Stat. 2105, codified as amended in scattered sections of 42 USCA.
 60. Most states have expanded their TANF eligibility requirements since 1996. Some have adjusted their earnings disregards; most have increased the TANF resource limits above what they were in AFDC; and most also have increased their vehicle asset levels. However, these more generous levels cannot be used to determine eligibility for federal foster care because PRWORA (see note 59) based eligibility on AFDC rules in place on July 16, 1996.
 61. For a discussion of the impact of the TANF changes on child welfare, see Hutson, R.Q. *Red flags: Research raises concerns about the impact of "welfare reform" on child maltreatment*. Washington, DC: Center for Law and Social Policy, 2001, and Stoltzfus, E. *Child welfare and TANF implementation: Recent findings*. Washington, DC: Congressional Research Service, 2002.
 62. Fortunately, other federal programs that provide services to families, such as service programs under Title IV-B of the Social Security Act, are not considered benefit programs, and eligibility was not similarly affected.
 63. See Matthews, M. New guidance on immigrant foster children's eligibility for federal benefits. *Youth Law News* (January/February 1999)

- 20(1):1–3, for a discussion of the impact on immigrant children. Available online at <http://www.youthlaw.org/immfc99.pdf>.
64. Earner, I., Weeks M., and Thompson, K. *Invisible walls: Immigrants in the New York City child welfare system*. New York: National Resource Center for Foster Care and Permanency Planning, March 2001.
 65. See, for example, Simms, M.D., and Halfon, N. The health care needs of children in foster care: A research agenda. *Child Welfare* (1994) 73(5):505–24.
 66. See Rosenbach, M. *Children in foster care: Challenges in meeting their health care needs through Medicaid*. Princeton, NJ: Mathematica Policy Research, Inc., 2001.
 67. 42 CFR 435.930.
 68. 42 CFR 435.201.
 69. See *Healthy ties: The grandparent's and other relative caregiver's guide to health insurance for children*. Washington, DC: Children's Defense Fund, 2001, for a discussion of state Medicaid and SCHIP eligibility requirements.
 70. 42 USCA § 1396a(a)(10)(A)(ii); § 1396d.
 71. English, A., Morreale, M.C., and Larsen, J. Access to health care for youth leaving foster care: Medicaid and SCHIP. *Journal of Adolescent Health* (2003) 32(6 Suppl):53–69.
 72. Woolverton, M. *Meeting the health care needs of children in the foster care system: Strategies for implementation*. Washington, DC: Georgetown University Child Development Center, 2002; McCarthy, J. *Meeting the health care needs of children in the foster care system: Summary of state and community efforts*. Washington, DC: Georgetown University Child Development Center, 2002.
 73. *Washington State Department of Social and Health Services v. Kefauver*, 537 US 371 (2003).
 74. Jaudes, P., and Voohis, J. Association of drug and child abuse. *Child Abuse and Neglect* (1995) 19(9):1065–75.
 75. Young, N.K., and Gardner, S.L. *Responding to alcohol and other drug problems in child welfare: Weaving together practice and policy*. Washington, DC: Child Welfare League of America Press, 1988.
 76. U.S. Department of Health and Human Services, Office of the Surgeon General. *Report of the surgeon general's conference on children's mental health: A national action agenda*. Washington, DC: DHHS, January 2001.
 77. See English, A., and Grasso, K. The Foster Care Independence Act of 1999: Enhancing youth access to health care. *Clearinghouse Review* (July–August 2000) 34:218–23; and McCarthy, J. *Meeting the health care needs of children in the foster care system: Summary of state and community efforts*. Washington, DC: Georgetown University Child Development Center, September 2002, pp. 1–2.
 78. Edelson, J.L. The overlap between child maltreatment and woman battering. *Violence Against Women* (February 1999) 5(2):134–35. In addition, two states, Massachusetts and Oregon, reviewed a sample of their child welfare caseloads and found domestic violence present in 43% to 48% of the identified cases. See Allen, M., and Larson, J. *Healing the whole family: A look at family care programs*. Washington, DC: Children's Defense Fund, 1998.
 79. See, for example, note 76, DHHS, Office of the Surgeon General; note 78, Allen and Larson; McCarthy, J., Meyers, J., and Jackson, V. *Exploring the opportunity for collaboration between child mental health and child welfare service systems*. Washington, DC: National Technical Assistance Center for Children's Mental Health, Georgetown University Child Development Center, 2001; Christian, S., and Edwards, K. *Linking child welfare and substance abuse treatment: A guide for legislators*. Washington, DC: National Conference of State Legislatures, August 2000; and see earlier journal issue on domestic violence and children, *The Future of Children* (Winter 1999) 9(3).
 80. U.S. General Accounting Office. *Foster care: Recent legislation helps states focus on finding permanent homes for children but long-standing barriers remain*. GAO Report No. 02-585. Washington, DC: GAO, June 2002.
 81. For example, the Child Protection and Alcohol Drug Partnership Act, which has been introduced in the 106th, 107th, and 108th Congresses, would provide funds to state child protection and alcohol and drug treatment agencies to jointly address the comprehensive needs of children and families that come to the attention of the child welfare system. The proposed legislation would allow funds to be used to increase comprehensive treatment approaches, improve substance abuse screening and assessment, expand after care, and enhance training. The act is S.614 in the 108th Congress.
 82. See note 79, Christian and Edwards.
 83. Under a three-year waiver granted in 1996, Delaware used federal foster care dollars to bring substance abuse treatment specialists into its child welfare agency to assure that appropriate treatment is provided to families when children first enter care. The goal of the effort is to reduce the duration of out-of-home placements for children of substance-abusing parents. See note 13.
 84. Illinois, using a federal waiver awarded in 1999, provides “recovery coaches” for parents with substance abuse problems who have children in foster care. These coaches help parents complete treatment, avoid relapse, and negotiate the various treatment and service systems. See note 13.
 85. See note 79, McCarthy, et al., pp. 35–36.
 86. The comprehensive approach in the pilot activities was first outlined in *Effective intervention in domestic violence and child maltreatment cases: Guidelines for policy and practice*. Reno, NV: National Council of Juvenile and Family Court Judges, 1999. The Keeping Children and Families Safe Act of 2003, Sec. 401(C), enacted in 2003, provides for demonstration funds for services and training for children who witness domestic violence and those who work with them.
 87. The Section 8 Family Unification Program is authorized by the U.S. Housing Act of 1937, as amended by section 553 of the *Cranston-Gonzalez National Affordable Housing Act of 1990*, Public Law 101-625, 104 Stat. 4128, codified as 42 USCA § 1401 et seq.
 88. In 2000, Congress expanded eligibility for the Family Unification Program to include youths aging out of foster care at age 18. See 42 USCA § 1437f(x).
 89. No new Section 8 vouchers were set aside for the Family Unification program in 2002 or 2003. However, the U.S. Conference of Mayors, in its 2001 survey on the status of hunger and homelessness in 27 major cities, found that about three-quarters of the cities reported an increase in requests for shelter by homeless families. The survey noted that requests for housing increased overall by 22%, although more than half of the requests remained unmet in 2001. Every city interviewed for that survey reported that it expected the number of housing requests to grow in 2002. See U.S. Conference of Mayors. *The status of hunger and homelessness in America's cities in 2001*. Washington, DC: U.S. Conference of Mayors, 2001.
 90. The Casey Family Programs' National Center on Resource Family Support has useful materials available to help foster parents and other resource families better understand how they can maximize

- their tax benefits. See, for example, O'Connor, M.A. *Federal tax benefits for foster and adoptive parents and kinship caregivers*. Washington, DC: Casey Family Programs, National Center for Resource Family Support, 2001. Effective 2004, these materials can be accessed through Casey Family Programs at <http://www.casey.org>.
91. In 2001, the Economic Growth and Tax Reconciliation Act broadened eligibility for the EITC to include certain relative caregivers and foster families caring for children placed with them for a certain period of time by an authorized child welfare agency. Beginning in tax year 2002, a foster child must have lived in the family's home for more than six months, rather than one year as was previously required. See the *Economic Growth and Tax Reconciliation Act*, Public Law 107-16, 115 Stat. 38 (2001), codified as 26 USCA § 32(c)(3)(A) and (B)(iii).
 92. See the *Economic Growth and Tax Reconciliation Act*, Public Law 107-16, 115 Stat. 38 (2001), codified as 26 USCA § 24.
 93. See the *Jobs and Growth Tax Relief Reconciliation Act of 2003*, Public Law 108-27 § 107 (May 28, 2003), to be codified at 26 USC § 6429 (2003).
 94. The law increased the adoption tax credit to \$10,000 per eligible child for children whose adoptions were finalized in 2002, including children with special needs, and also raised the income-eligibility limits for families. Beginning in 2003, families who adopt children with special needs will receive an added advantage. If they are otherwise eligible, they can benefit from the full adoption tax credit, regardless of whether their expenses meet the previously established definition of "qualified expenses." This change should help increase the benefit of the credit for families who have some tax liability but have had difficulty benefitting from it in the past. See the *Economic Growth and Tax Reconciliation Act*, 26 USCA § 23.
 95. Bess, R., Leos-Urbel, J., and Geen, R. *The cost of protecting vulnerable children II: What has changed since 1996?* Occasional Paper No. 46. Washington, DC: Urban Institute, 2001, p. 29.
 96. Bess, R., Andrews, C., Jantz, A., et al. *The costs of protecting vulnerable children III: What factors affect states' fiscal decisions?* Occasional Paper No. 61. Washington, DC: Urban Institute, 2003.
 97. Other long-standing barriers identified in the report included difficulties in recruiting adoptive families for children with special needs and obstacles to expediting decision making in certain cases. U.S. General Accounting Office. *Foster care: Recent legislation helps states focus on finding permanent homes for children, but long-standing barriers remain*. GAO Report No. 02-585. Washington, DC: GAO, June 2002, pp. 4, 36, 42.
 98. U.S. Department of Health and Human Services, Administration for Children and Families. *National survey of child and adolescent well-being*. Washington, DC: DHHS, June 2001. This survey is based on a national longitudinal study of children in the child welfare system at risk for abuse and neglect.
 99. U.S. Department of Health and Human Services, Administration for Children and Families. *AFCARS interim estimates for FY 2000 as of August 2002*. Washington, DC: DHHS, August 2002. Available online at www.acf.hhs.gov/programs/cb/publications/afcars/report7.pdf.
 100. See Barth, R., Gibbs, D., and Siebenaler, K. *Assessing the field of post-adoption service: Family needs, program models, and evaluation issues*. U.S. Department of Health and Human Services ASPE Report. April 10, 2001. Available online at <http://aspe.hhs.gov/hsp/PASS/lit-rev-01.htm>, and Freundlich, M., and Wright, L. *Post permanency services*. Washington, DC: Casey Family Programs, 2003. Available online at http://www.casey.org/cnc/documents/post_permanency_services.pdf.
 101. *Social Security Amendments of 1994*, 42 USC § 1122.

Appendix

Chronology of Major Legislation Impacting Child Welfare

Legislation	Provisions Impacting Child Welfare
Social Security Act, Title IV-B, 1935	Provided federal funding to states for a broad range of preventive and protective child welfare services for abused and neglected children. Authorized grants to states for training and for research and demonstration programs on behalf of abused and neglected children. But the focus was broad, and funds dedicated to achieving these general goals were very limited. (Referred to as the Child Welfare Services Program, Part 1 of Title IV-B.)
Aid to Families with Dependent Children (AFDC)-Foster Care Program, 1961	Established the first federal foster care program under Title IV-A of the Social Security Act, providing federal funds to states to care for children in families receiving Aid to Families with Dependent Children (AFDC) who could no longer remain safely in their family homes. (In 1980, this program was transferred to a new Title IV-E of the Social Security Act.)
Juvenile Delinquency and Prevention Act, 1974	Prohibited the placement of abused and neglected children and status offenders (children charged with offenses that would not be crimes if the children were adults) in juvenile or correctional facilities.
Child Abuse Prevention and Treatment Act, 1974	Provided limited funding to states to prevent, identify, and treat child abuse and neglect and required states to mandate reporting of suspected abuse and neglect to child protective services agencies.
Title XX of the Social Security Act, 1975	Provided funds to the states for a wide range of social services for low-income individuals, including child abuse and neglect prevention and treatment, and foster care and adoption services. (Became the Social Services Block Grant in 1981.)
Developmentally Disabled Assistance Bill of Rights, 1975	Required states to establish a Protection and Advocacy System to protect the rights of developmentally disabled persons, including children. Required enforcement of specific protections for developmentally disabled persons, including access to appropriate treatment, services, and rehabilitation in the least restrictive setting. Also required case plans and periodic reviews, as would later be required for all foster care children under AACWA (see below).
Education for All Handicapped Children Act, 1975	Afforded the right to a free, appropriate, public education in the least restrictive educational environment possible to all children with disabilities, including abused and neglected children in out-of-home placements. Extended to children in foster care the right to allow surrogate parents to advocate on their behalf in defining their individualized education plans. (Became the Individuals with Disabilities Education Act.)
Indian Child Welfare Act, 1978	Addressed the appropriateness and quality of foster care placements and made it more difficult to remove Indian children from their birth families and place them in foster care. Strengthened tribal governments' role in determining the custody of Indian children by specifying that preference should be given to placements with extended family, then to Indian foster homes. The act was intended to eliminate the risk of Indian children being removed from their families due to cultural biases, to increase the likelihood of placements within tribes, and to involve tribal courts, whenever necessary, in determining an appropriate placement. Like AACWA that followed it, the act spelled out priorities for the placement of children, requiring that a child be placed first with a member of his or her family or extended family; second in a home approved by the tribe; third in an Indian foster home; or fourth in an institution for children approved by the tribe or operated by an Indian organization.

Legislation

Provisions Impacting Child Welfare

Adoption Assistance and Child Welfare Act, 1980 (AACWA)

Established the federal Foster Care and Adoption Assistance Programs in a new Title IV-E of the Social Security Act. Continued federal funding for foster care for children from AFDC-eligible families, but with enhanced protections to ensure that children entered foster care only after “reasonable efforts” to prevent placement were made. Provided funds to establish programs and procedural reforms in order to serve children in their own homes, prevent out-of-home placement, facilitate family reunification following placement, and help pay adoption expenses for children with special needs. Required foster care placement in the least restrictive, most familylike setting appropriate to a child’s special needs. Required periodic reviews of care, “reasonable efforts” to reunify children with families, and dispositional hearings to help move children to permanent families in a timely fashion. Children eligible for federal foster care were made automatically eligible for federal adoption assistance payments and for assistance under Medicaid. (This assistance was particularly significant for children in foster care because it removed fiscal disincentives for state child welfare agencies to move children to adoption.)

Independent Living Program, 1986

Established under Title IV-E of the Social Security Act to assist youths aging out of the foster care system. Provided grants to states to fund a range of independent living services for children age 16 and older to ease the transition from foster care to living on their own.

Family Preservation and Support Services Program, 1993

Established under Part 2 of Title IV-B of the Social Security Act, providing funds to the states for family support and planning and services to help communities build a system of services to assist vulnerable children and families. In addition to preventing unnecessary foster care placements, such services were intended to assist both children in foster care and those moving to adoptive families. The new law required states to engage the community in a broad-based planning process to determine the right mix of services and supports for children and families. Subsequently, under ASFA, the name of the program was changed to Promoting Safe and Stable Families to reflect an enhanced focus on permanency, primarily through adoption.

Multiethnic Placement Act, 1994 (MEPA)

Prohibited agencies that receive federal funding and are involved in foster care or adoptive placements from discriminating in such placements. Prohibited them from categorically denying to any person the opportunity to become an adoptive or foster parent “solely” on the basis of race, color, or national origin and from delaying or denying the placement of a child “solely” on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

Child Welfare Demonstration Waiver Program, 1994

Permitted up to 10 states to use Title IV-B and IV-E funds to alter traditional ways of financing child welfare services to support new policy and practice approaches, provided that the new activities were consistent with the purposes of the programs, maintained current legal protections, and did not cost more than was projected to be spent under the traditional programs.

Inter-Ethnic Adoption Provisions, 1996

Amended MEPA to eliminate the permissible consideration of race, ethnicity, and culture in making foster or adoptive placements and to reaffirm the prohibition against delaying or denying placement on the basis of a child’s or prospective parent’s race, color, or national origin. Imposed new financial penalties on public and private agencies for violations of the antidiscrimination requirement.

Personal Responsibility and Work Opportunity Reconciliation Act, 1996 (PRWORA)

Replaced the AFDC program with Temporary Assistance for Needy Families (TANF), a state-administered block grant to provide time-limited income assistance to needy families. The law limited eligibility to Title IV-E assistance to those children who would have been eligible for AFDC as of July 16, 1996.

Legislation

Provisions Impacting Child Welfare

Adoption and Safe Families Act, 1997 (ASFA)

Required that a child's safety be the paramount consideration in any decision a state makes regarding a child in the child welfare system. Established new timelines for moving children into permanent homes, either by safely returning them home or by terminating parental rights and moving them into adoptive or other permanent placements. Increased examples of situations where "reasonable efforts" might not be required. Reauthorized the Family Preservation and Support Program, changing its name to the Promoting Safe and Stable Families Program.

Foster Care Independence Act, 1999

Established the John H. Chafee Foster Care Independence Program to offer new services and supports to children aging out of foster care and to increase state accountability for their outcomes. Included a requirement that foster parents be adequately prepared to care for the older children placed with them. Increased funding levels for independent living activities and, for the first time in federal law, specified that a portion of these funds could be used for room and board for young people ages 18 to 21 who were leaving foster care. Gave states the option of providing Medicaid coverage to young people between the ages of 18 and 21 who were in foster care on their 18th birthdays. Increased the amount of assets a young person in foster care could have in order to have continued eligibility for Title IV-E funding.