

**IMPLEMENTATION OF THE ADOPTION AND SAFE  
FAMILIES ACT OF 1997**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON HUMAN RESOURCES  
OF THE  
COMMITTEE ON WAYS AND MEANS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED EIGHTH CONGRESS

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**IMPLEMENTATION OF THE ADOPTION AND  
SAFE FAMILIES ACT OF 1997**

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**TUESDAY, APRIL 8, 2003**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
SUBCOMMITTEE ON HUMAN RESOURCES,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 3:04 p.m., in room B-318, Rayburn House Office Building, Hon. Wally Herger (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

# ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

## SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE  
April 1, 2003  
No. HR-2

CONTACT: (202) 225-1025

### **Herger Announces Hearing on Implementation of the Adoption and Safe Families Act of 1997**

Congressman Wally Herger (R-CA), Chairman, Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing to examine implementation of the Adoption and Safe Families Act of 1997 (ASFA) (P.L. 105-89). **The hearing will take place on Tuesday, April 8, 2003, in room B-318 of the Rayburn House Office Building, beginning at 3:00 p.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include representatives from the U.S. Department of Health and Human Services (HHS) and other experts in child welfare issues. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

#### **BACKGROUND:**

In response to growing concerns regarding the well-being of children in foster care, Congress in 1997 enacted ASFA. This landmark legislation ensures that the safety and health of children play a paramount role in child welfare decisions, so that children are not returned to unsafe homes. Addressing criticism that children were lingering in foster care for long periods of time, ASFA included provisions to expedite legal proceedings so that children who cannot return home may be placed for adoption or another permanent arrangement quickly. Since 1997, all States have enacted laws to implement ASFA provisions to ensure the safety and health of children in foster care.

The Act also created the Adoption Incentives program under Title IV-E of the Social Security Act to reward States for their efforts to promote permanency of children in foster care. This program provides incentive payments to States equal to \$4,000 for each foster child whose adoption is finalized (over a base level) and \$6,000 for the adoption of a foster child with special needs above the base level. Funds have been appropriated for these incentive payments for each of fiscal years 1999 through 2003. This program is currently authorized through fiscal year 2003. The President's budget for fiscal year 2004 would continue the Adoption Incentives program, while focusing incentives on the adoption of older children.

In announcing the hearing, Chairman Herger stated, "Since the passage of ASFA, States have implemented a number of policies to ensure that child safety is the key consideration in any child welfare decision. The number of children adopted also has increased dramatically, which has resulted in States' collecting millions of dollars in incentive payments that can spur added efforts. This hearing will let us review the effects of the major changes made in 1997 and consider what else needs to be done to better protect children and strengthen families."

**FOCUS OF THE HEARING:**

The hearing will review implementation of the 1997 Adoption and Safe Families Act. The hearing also will review the Adoption Incentives program created under that Act and consider proposals for reauthorization of this program.

**DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

**Please Note:** Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov), along with a fax copy to (202) 225-2610, by the close of business, Tuesday, April 22, 2003. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the Subcommittee on Human Resources in room B-317 Rayburn House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings.

**FORMATTING REQUIREMENTS:**

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov), along with a fax copy to (202) 225-2610, in Word Perfect or MS Word format and **MUST NOT** exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Any statements must include a list of all clients, persons, or organizations on whose behalf the witness appears. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://waysandmeans.house.gov>.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman HERGER. Good afternoon and welcome.

The purpose of today's hearing is twofold: first, to review the implementation of the 1997 Adoption and Safe Families Act (ASFA) (P.L. 105-89), and second, to consider proposals for changes, especially regarding the adoption incentives program that requires reauthorization this year.

The landmark 1997 law has played an important role in improving how we protect our Nation's most vulnerable children.

As implemented by the States, the 1997 law has resulted in numerous changes to ensure that child safety is the key consideration in any child welfare decision. No system is perfect, and we certainly are aware of well-publicized tragedies involving children.

Today we will continue our review of whether the 1997 changes are working as intended, and what other changes might be needed to improve child safety.

The 1997 law addressed criticisms that children were lingering too long in foster care. That legislation included provisions to speed up legal proceedings so children who cannot return home may be placed quickly for adoption or in another permanent arrangement.

Another set of changes now reward States for their efforts to promote the adoption of children from foster care. It is good news that the number of children adopted has increased dramatically since 1997. Because of the adoption incentive program we created, States now receive millions of dollars they can reinvest in activities to promote child welfare. I am pleased to note that President Bush's budget proposes to continue this worthwhile program.

Let me just say that I look forward to working with all our colleagues on both sides of the aisle on this issue. Mr. Cardin, I understand you and several of our colleagues have introduced child welfare legislation, and Mr. Camp and Mrs. Johnson, among others, have worked diligently on this issue in recent years. So, we have a wealth of experience on this Subcommittee.

I look forward to hearing from all of our witnesses today. Without objection, each Member will have the opportunity to submit a written statement and have it included in the record at this point. Mr. Cardin, would you like to make an opening statement?

[The opening statement of Chairman Herger follows:]

**Opening Statement of The Honorable Wally Herger, Chairman, Subcommittee on Human Resources, and a Representative in Congress from the State of California**

Good afternoon. The purpose of today's hearing is twofold: First, to review the implementation of the 1997 Adoption and Safe Families Act; and second, to consider proposals for changes, especially regarding the adoption incentives program that requires reauthorization this year.

The landmark 1997 Adoption and Safe Families Act has played an important role in improving how we protect our Nation's most vulnerable children.

As implemented by the States, the 1997 Act has resulted in numerous changes to ensure that child safety is the key consideration in any child welfare decision. No system is perfect, and we certainly are aware of well-publicized tragedies involving children. Today we will continue our review of whether the 1997 changes are working as intended, and what other changes might be needed to improve child safety.

The 1997 law addressed criticisms that children were lingering too long in foster care. So that legislation included provisions to speed up legal proceedings so children who cannot return home may be placed quickly for adoption or in another permanent arrangement.

Another set of changes now reward States for their efforts to promote the adoption of children from foster care. I'm pleased that the number of children adopted has increased dramatically since 1997. Because of the adoption incentives program we created, States now collect millions of dollars they can reinvest in activities to promote child welfare. I am pleased to note the President's budget proposes to continue this worthwhile program.

Let me just say that I look forward to working with all our colleagues on both sides of the aisle on this issue. Mr. Cardin, I understand you have introduced legislation on this issue. And Mr. Camp and Mrs. Johnson, among others, have worked diligently on this issue in recent years. So we have a wealth of experience on this Subcommittee.

I look forward to hearing from all of our witnesses today.



Mr. CARDIN. Thank you, Mr. Chairman. I want to thank you for holding this hearing.

I think it is very important that we continue to monitor the effectiveness of ASFA. We are talking about America's most vulnerable children, and I think it's important that this Committee take every opportunity we can to evaluate where we are, see what is going well, and where we can make improvements as far as congressional attention.

As you pointed out, the 1997 legislation was enacted on a bipartisan basis. It was a commitment by the Congress to work on providing the resources and attention for children who are abused, children who are in foster care, and children who are in need. It was designed to ensure the safety of the children who come in contact with the child welfare system and to expedite the permanent placement of children living in foster care.

The legislation amended the existing child welfare laws to require that a child's health and safety be the paramount concern, and the children who cannot be returned to their home, we would put a priority on adoption. We offered adoption incentives in the 1997 law.

As you pointed out, the initial statistics are very encouraging. We have seen that adoptions out of the public child welfare systems has nearly doubled since 1995. That is certainly a very encouraging number. We also see that States have exceeded their adoption expectations and have earned more in adoption incentive payments than we had anticipated. That's good news. We should all be pleased that the States are actually outperforming where we thought they would be.

We didn't stop in 1997. We also, as you know, 2 years later followed with the Foster Care Independence Act (P.L. 106-169), which was a bill that came out of this Committee on a very strong, bipartisan basis, and dealt with children aging out of foster care, because we also recognized this was another group of vulnerable children.

So, Mr. Chairman, we have a history on this Committee of working in a bipartisan manner for children who are at risk, children who are abused or neglected, and I think we need to continue that. We need to reauthorize the Adoption Incentive Grant program; we need to get the expertise of the witnesses that are before us today, figuring out what we can continue to do in order to build on our prior record of attention to children who are at risk.

So, I look forward to hearing from the witnesses, starting with Dr. Horn, and I look forward to working with you.

[The opening statement of Mr. Cardin follows:]

**Opening Statement of The Honorable Benjamin Cardin, a Representative in Congress from the State of Maryland**

Mr. Chairman, let me begin by thanking you for calling this hearing to review the implementation on the Adoption and Safe Families Act of 1997 (ASFA) and to review proposals to reauthorize the Adoption Incentives program that was created under the Act.

The 1997 Act was developed in this Committee on a bipartisan basis. It was designed to ensure the safety of children who come into contact with the child welfare system and to expedite permanency for children living in foster care. The legislation amended the existing Federal child welfare law to require that a child's health and safety be of "paramount" concern in any efforts made by the State to preserve or

reunify the child's family. The legislation also included a provision to ensure that necessary legal procedures occur expeditiously, so that children who cannot return home may be placed for adoption or another arrangement quickly. Finally, the 1997 legislation also created the Adoption Incentives program that rewards to States that increase their numbers of adoptions from foster care.

Since the enactment of this legislation, there have been some positive strides for children. For example, the number of adoptions out of the public child welfare system has nearly doubled since 1995. Moreover, States have exceeded adoption expectations and have earned more in adoption incentive payments than anticipated. As a result, more children are being placed in safe, stable and permanent environments at a faster rate.

The 1997 Act was followed up two years later with the Foster Care Independence Act, another bipartisan product from this Committee. The legislation increased funding for services for youths who were "aging out" of foster care and expanded State flexibility to design programs to improve the transition of older foster children from State custody to independent living.

Both the 1997 legislation and the Foster Care Independence Act represent a commitment on the part of Congress to target specific problems in the child welfare system and to provide States with resources to meet the needs of our most vulnerable children.

We should continue to work in the same bipartisan spirit to improve the child welfare system's capacity to respond to children who are abused or neglected, and to place those who are unable to return home into safe, loving, and permanent homes.

As a start, I look forward to working with the Committee and the Administration in developing proposals to reauthorize the Adoption Incentive Grants under this program, and other legislation to promote the safety and well-being of children who come into contact with the child welfare system.

Thank you, Mr. Chairman. I look forward to hearing from our witnesses.

I would like to welcome Judith Schagrin who is the Assistant Director of the Baltimore County Department of Social Services. Ms. Schagrin has been with the Baltimore County Department of Social Services for 20 years, and has served as the Agency's Administrator for the Foster Care and Adoptions Program for the last 5 years. In addition to her work for the County, she also serves as a foster parent to a severely emotionally disturbed adolescent and provides respite care to three emotionally disturbed young boys. We are very pleased to have her with us today to share her experiences with the implementation of the 1997 legislation in Baltimore County.

Mr. CAMP. Mr. Chairman.

Chairman HERGER. Yes.

Mr. CAMP. If I might, just for a second, this legislation, which former Member Barbara Kennelly and I worked very hard on—I agree with much of what the Chairman and Mr. Cardin have said, that it was really brought about when we saw that the way the Social Security Act was being implemented did not really protect children and families. So, we came up with this legislation to do that.

I am looking forward to your testimony, Dr. Horn, about the recommendations that you might have to enhance the Act, which includes the adoption incentives and all part of it. So, I look forward to the testimony and hearing about how, over the last few years, this legislation has worked. Thank you.

Chairman HERGER. Thank you, Mr. Cardin, and I thank the gentleman from Michigan, Mr. Camp. I thank both of you for the great work that you have put into this program. It needed a lot of work, and I think we have come a long way. Certainly we have a long way to go. So, I thank everyone.

Before we move on to our testimony, I want to remind our witnesses to limit their oral statements to 5 minutes. However, with-

out objection, all of the written testimony will be made a part of the permanent record.

For our first witness today, we are honored to have with us again the Honorable Wade F. Horn, Ph.D., Assistant Secretary, Administration for Children and Families, U.S. Department of Health and Human Services (HHS). Mr. Secretary.

**STATEMENT OF THE HONORABLE WADE F. HORN, PH.D., ASSISTANT SECRETARY FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Dr. HORN. Thank you, Mr. Chairman, for the opportunity to appear before you and this Committee to discuss the implementation of ASFA.

As many of you know, I'm a clinical child psychologist, and I have devoted my professional career to improving the well-being of children. I have a longstanding interest in child welfare policy and practice, and like all of you, I am committed to improving the delivery of child welfare services throughout the country.

The passage of ASFA represented a landmark in child welfare reform, and while there is evidence of positive change resulting from ASFA, there also are clear indications that the goals of ASFA remain elusive for far too many children and families. Therefore, it is important that we continue to work together to seek improvements in Federal child welfare programs.

The ASFA was significant for several reasons. The Act clearly stated that the goals of the child welfare system were safety, permanency, and well-being, and it removed any ambiguity that safety of children is the paramount concern that must guide all child welfare services. Advancing these goals, ASFA provided numerous tools to States and the Federal Government to bring about systemic reforms regarding safety, permanency, adoption promotion, improved services, and accountability.

Since the passage of ASFA, the Administration for Children and Families has worked diligently to fully implement these reforms. We have worked with the States to bring their laws and policies into compliance with ASFA; we have implemented the new Federal programmatic authorities authorized by ASFA; and we have woven the goals and requirements of ASFA into other ongoing work.

One of the strengths of this legislation is its emphasis on tracking results for children and families. As required by ASFA, HHS consulted with State officials, advocates, researchers, and other experts, and developed a set of national child welfare outcome measures to track State performance. We have issued two reports on State performance thus far, and expect to submit a third report very soon.

We also have continued to work with States to improve information systems and increase the quantity and quality of data that States collect and report. We have, for example, made significant investments in the Statewide Automated Child Welfare Information Systems (SACWIS) resulting in 29 States with comprehensive operational systems, 8 with partially operational systems, and 9 more which have taken steps toward planning or implementing a SACWIS system.

The data shows some positive trends and results, most notably in the area of adoption. The number of children adopted from foster care grew from 31,000 in 1997 to 50,000 in 2001.

Finally, our new system for monitoring child welfare services, the Child and Family Services Review (CFSR), is the cornerstone of our efforts to review State performance and ensure compliance with key provisions of the law, including requirements of ASFA. It also is our means to partner with the States in identifying areas that need improvement. The CFSR began in 2001 and, to date, we have reviewed 32 States, with plans to complete all reviews by March 2004.

This Administration's commitment to support the goals and build on the legacy of ASFA is reflected in our 2003 budget request, as well as the President's 2004 budget request and legislative proposals. We were pleased to be able to work with this Committee and other Members of Congress to pass legislation reauthorizing and increasing the funding level for the Promoting Safe and Stable Families program, along with the authorization and first time funding of the President's proposal to provide education and training vouchers for youth who age out of foster care. Our fiscal year 2003 appropriations provided almost \$405 million for Promoting Safe and Stable Families, and included funding for nearly \$42 million to support educational vouchers for youth aging out of foster care. The President's 2004 budget request would go a step further and fully fund the Promoting Safe and Stable Families program at \$505 million, and the educational vouchers program at \$60 million.

Now I would like to briefly turn to two critical policy changes that we have also proposed. As part of our 2004 budget, we have put forward legislative changes guided in part by what we've learned from ASFA. Specifically, we are proposing to reauthorize and better target the Adoption Incentives program originally created by ASFA. By providing a fiscal incentive, and by shining a bright light on State performance in adoption, this program has made a substantial contribution to increasing the number of children adopted over the past 5 years.

However, when we analyzed the adoption data, we have learned that while the overall number of children being adopted has grown dramatically, older children in foster care still face excessively long waits for adoption and, in many cases, are never adopted. Therefore, we are proposing to amend this program so that it continues to recognize and reward overall increases in the number of adoptions, but provide a special focus on the adoption needs of children age 9 and older.

Finally, I would like to briefly mention another proposal we have put forward to strengthen the child welfare system, a new State child welfare program option that would give States the opportunity to receive their Title IV-E foster care funds as a flexible, fixed allotment that can be used to support a range of child welfare services. We believe that this option will provide a powerful new means for States to structure their child welfare programs in a way that supports the goals of safety, timely permanency, and enhanced well-being for children and families, while relieving States of unnecessary administrative burdens.

The ASFA and other recent changes in the law have made a meaningful and positive impact on the delivery of child welfare services. The work of assuring safety, permanency, and well-being for every child who comes to the attention of a child welfare agency or court in this country remains a challenging task. I look forward to working with this Committee in ways to continuously strive to better the outcomes for all of these children.

I would be pleased to answer any questions that you might have. [The prepared statement of Dr. Horn follows:]

**Statement of The Honorable Wade F. Horn, Ph.D., Assistant Secretary for Children and Families, U.S. Department of Health and Human Services**

Thank you for the opportunity to appear before you to discuss the implementation of the Adoption and Safe Families Act of 1997 and the impact of this critical legislation on child welfare. Within this context, I also am pleased to be able to present information on the Administration's proposal to reauthorize the Adoption Incentive Program, one of the innovative and extremely successful changes made by the Adoption and Safe Families Act.

As many of you know, I am a clinical child psychologist by training, and I have devoted my professional career to improving the well-being of children. I have a longstanding interest in child welfare policy and practice and, like you, I am committed to improving the delivery of child welfare services throughout the country.

It is particularly appropriate that this Subcommittee is taking a look at the implementation of the Adoption and Safe Families Act (ASFA), because passage of ASFA represented a landmark in child welfare reform. It set clear goals that helped to sweep away ambiguity and false dichotomies about the mission of child welfare services; it required as a condition of receiving program funds changes in State laws and policies, which in turn drove changes in front-line practice; it increased our national emphasis on results and reaffirmed the importance of accurate data collection and reporting to track results; it expanded resources for services; and it focused specific attention on promoting adoption.

I appreciate the opportunity to discuss our work in implementing ASFA and some of the results we have seen since its implementation. While there is evidence of positive change resulting from ASFA, there also are clear indications that the goals of ASFA remain illusive for too many children and families. Therefore, it is important that we continue to work together to seek improvements in Federal child welfare programs.

The Federal Legal Framework for Child Welfare

To understand the importance of ASFA, it is useful to place it in the context of the history of Federal policy development in child welfare. Much of the legal framework for today's child welfare services system was established by the Adoption and Child Welfare Act of 1980. This law laid out important principles and requirements to protect the rights of both children and families. Among the key provisions were requirements that States make reasonable efforts (1) to prevent the unnecessary removal of children from their homes and, (2) for children who are placed in foster care, to reunify children with their families when possible. The law also required individualized case planning for children in foster care and required periodic administrative reviews as well as a dispositional hearing before a court within 18 months of placement and every 12 months thereafter.

While the 1980 law made vital contributions to the reform of child welfare policy and practice, as time passed, concerns remained that:

- too often children's safety was not the primary concern;
- inadequate attention was being paid to services that could prevent abuse and neglect or resolve problems before they became a crisis;
- efforts to reunify children went on for too long or were undertaken in instances that were clearly not "reasonable";
- children were remaining in foster care for too long without a decision being made about a permanent placement; and,
- too little attention was being paid to the need to find adoptive families for thousands of children who were waiting for a permanent, loving home.

In response to these and other concerns, the 1990's brought a number of important reforms to Federal law, but the most significant and wide-reaching reforms were embodied in the Adoption and Safe Families Act of 1997.

### The Importance of the Adoption and Safe Families Act

The Adoption and Safe Families Act, or “ASFA,” was significant for several reasons. First, it clearly stated that the goals of the child welfare system are safety, permanency and well-being. The law removed any ambiguity that safety of children is the paramount concern that must guide all child welfare services. It also made clear that to address the developmental and emotional needs of children in foster care, decisions about permanency need to be made in a timely manner. Foster care needs to be regarded as a temporary setting, not a place for children to grow up. In advancing these goals, ASFA provided numerous tools to States and the Federal Government to bring about systemic reforms regarding safety, permanency, promotion of adoption, improved services and accountability.

- **Reforms in Safety**—The law reaffirmed the importance of making reasonable efforts to preserve and reunify families, but emphasized the need to ensure children’s safety in all such decisions. It also clarified that there are instances in which States are not required to make efforts to keep children with their parents, such as cases in which a parent has been convicted of murdering another child, a parent has had his or her rights to another child terminated involuntarily, or a court has found that the child has been subjected to aggravated circumstances as defined in State law (such as abandonment, torture or chronic abuse).
- The law also required States to conduct criminal background checks of prospective foster and adoptive parents (unless the State Governor or legislature explicitly opts out of the requirement).
- **Reforms in Permanency**—The law also required significant systemic reforms to ensure decisions are made about children’s permanency in a timely manner. Permanency hearings are now required to be held no later than 12 months after a child enters care, six months earlier than had previously been required. In addition, for children who cannot be returned home safely, a requirement was added that States make reasonable efforts to find an adoptive home or other permanent living arrangement. The law further clarified that States could use concurrent planning, whereby they simultaneously work toward reunification and seek out potential adoptive parents or families in the event the child cannot be safely reunified.
- For children who have been in foster care for 15 of the previous 22 months, the law required States to initiate proceedings to terminate parental rights, except in specified circumstances such as when the child is being cared for by a relative, the State agency has documented a compelling reason not to file the requisite petition, or the State agency has not provided the services deemed necessary to return the child safely to the home.
- **Promotion of Adoption**—In addition, ASFA created the first performance-based incentive in child welfare, the Adoption Incentive Program. This legislation authorized the payment of adoption incentive funds to States that are successful in increasing the number of children who are adopted from the public foster care system. The amount of the payments to States is based on increases in the number of children adopted from the foster care system in a year, relative to a baseline number. I’ll speak more about this provision later in my statement.
- Other adoption improvements included removing interjurisdictional barriers and improving access to health care for adopted children.
- **Services to Children and Families**—The law recognized the importance of timely and quality services to families, including adoptive families. It expanded and extended the program previously known as Family Preservation and Family Support Services, and required funds to be spent in four categories of services: family support services that strengthen families and alleviate crises before they become serious; family preservation services that prevent the need to remove children from home; time-limited family reunification services to facilitate the safe return of children in foster care, when appropriate; and adoption promotion and support services.
- **Emphasis on Accountability and Innovation**—In addition to requiring States and the Federal Government to track the number of adoptions each year under the Adoption Incentive Program, the law required the Department of Health and Human Services, in consultation with State officials and other child welfare experts, to develop child welfare outcome measures and to prepare an annual report showing each State’s progress.
- Finally, recognizing that greater innovation is needed to achieve positive outcomes for children and families in the child welfare system, ASFA expanded the number of demonstration projects that the Secretary may award, and gave the Secretary the discretion to extend projects beyond their originally approved pe-

riod. This authority enables States to test new approaches to child welfare services delivery and financing, while requiring a rigorous evaluation and cost-neutrality.

#### Implementation of ASFA

Since the passage of ASFA, the Administration for Children and Families has worked diligently to fully implement its reforms. We have worked with the States to bring their laws and policies into compliance with ASFA; we have implemented the new Federal programmatic authorities authorized by ASFA, such as the Adoption Incentive Program, the Promoting Safe and Stable Families Program, and the expanded child welfare waiver demonstration authority; and we have woven the goals and requirements of ASFA into other ongoing work.

As a result of these efforts and the commitment of States to better the lives of these vulnerable children, we have seen several indications that ASFA is having an impact on children and their families. I would like to discuss some hopeful signs of change, based on an analysis of national data from the Adoption and Foster Care Analysis and Reporting System (AFCARS).

#### Changes in Outcomes

One of the strengths of ASFA is its emphasis on tracking results for children and families. As required by ASFA, the Department consulted with State officials, advocates, researchers and other experts and developed a set of national child welfare outcome measures to track State performance. We have issued two annual reports on State performance on these outcome measures and expect to be able to submit a third report very soon. While these reports show some areas of progress, they also point to areas that deserve more attention.

We also have continued to work with States to improve information systems and increase the quantity and quality of data that States collect and report. We have, for example, made significant investments in Statewide Automated Child Welfare Information Systems (SACWIS). Spurred by Congress' approval of enhanced funding from FY 1994–FY 1997 and through ongoing financial support and technical assistance, 29 States now have operational systems that are comprehensive and capable of supporting both improved case management and required data reporting. An additional 8 States have systems that are partially operational and 9 more have taken steps toward planning or implementing SACWIS.

In addition to making strides toward developing the infrastructure needed to track performance—the development of measures, modernized information systems and improved data reporting—we are also seeing some positive trends in results, most notably in the area of adoption. The number of children adopted from the foster care system grew from 31,000 in FY 1997 to 50,000 in FY 2001. We expect that the final number of adoptions for FY 2002 will exceed last year's impressive results.

We are committed to continuing to track results and will use this information to shape our ongoing efforts to improve child outcomes focused on safety, permanency and well-being.

#### Child and Family Services Reviews

Our new system for monitoring child welfare services, the Child and Family Services (CFS) Reviews, is the cornerstone of our efforts to review State performance and ensure compliance with key provisions of law, including many requirements of ASFA. It also is our means to partner with the States in identifying areas that need improvement and in working with them to bring about those improvements. I would like to take a few moments to describe the reviews and what we are learning from them.

The CFS reviews began in FY 2001 and to date we have reviewed 32 States. We will complete the first round of reviews for all 50 States, the District of Columbia, and Puerto Rico by the end of March 2004.

This is the most comprehensive and far-reaching Federal review of State child welfare services ever conducted. The review covers all areas of child welfare services, from child protection and family preservation, to adoption and positive youth development. The review requires that State child welfare agencies, in collaboration with a range of other State and local representatives, engage in an intense self-examination of their practices and analyze detailed data profiles that the Federal Government provides from our national data bases on child welfare. We follow the self assessment phase of the review with an intense onsite review—in which we pair teams of Federal and State staff to review cases and interview children, parents, and foster parents—to identify areas of strength in State child welfare programs and areas that require improvement. This joint approach to reviewing States has

had the effect of not only engaging States in identifying their own strengths and weaknesses, but in building the commitment of States to make needed improvements and strengthen their capacity to self-monitor between Federal reviews.

When weaknesses are identified, States enter into Program Improvement Plans to address any of the areas where we find deficiencies. Through a network of National Resource Centers, we provide technical assistance to help States develop and implement their Program Improvement Plans.

We hold the States accountable for achieving the provisions of their Program Improvement Plans but, in order to assist them in making needed improvements, we suspend Federal penalties while a State is implementing its plan. If a State fails to carry out the provisions of its Program Improvement Plan or fails to achieve its goals, we will begin withholding applicable penalties.

Among the most significant findings of the CFSR across the 32 States are the following:

- States are performing slightly better on safety outcomes for children than on permanency and well-being. In fact, the timely achievement of permanency outcomes, especially adoption, for children in foster care is one of the weakest areas of State performance.
- All State Program Improvement Plans will need to include provisions to strengthen the quality of front-line practice in such areas as conducting needs assessments of children and families and developing effective case plans.
- Most of the States will need to make significant improvements in their judicial processes for monitoring children in foster care, such as assuring timely court hearings and increasing their attention to timely termination of parental rights, where appropriate.
- The reviews point to a strong correlation between frequent caseworker visits with children and positive findings in other areas, such as timely permanency achievement and indicators of child well-being.

#### Commitment to Continued Improvement of the Child Welfare System

This Administration's commitment to support these goals and to build on the legacy of ASFA is reflected in the legislative accomplishments we have been able to achieve thus far and in the budget and new proposals we have put forward for FY 2004. We are proud of the progress made to date in providing more resources to States to support children, youth and families. We were pleased to be able to work with this Committee and other Members of Congress to pass legislation in the last Congress reauthorizing and increasing the funding level for the Promoting Safe and Stable Families Program, which funds family support, family preservation, time-limited reunification and adoption promotion and support services and also provides funding for the Court Improvement Program. And we are appreciative of the authorization and first-time funding of the President's proposal to provide education and training vouchers for youth who "age out" of foster care. This program will offer youth a chance to complete their education, thereby improving their prospects to become truly independent and self-sufficient adults.

Our FY 2003 appropriations provided almost \$405 million for the Promoting Safe and Stable Families Program, \$29 million over the FY 2002 level, and included additional funding of nearly \$42 million to support educational vouchers for youth aging out of foster care. The President's FY 2004 request would go a step further and fully fund the Promoting Safe and Stable Families Program at \$505 million and the educational vouchers program at \$60 million. I hope that you will join us in supporting these targeted, but important investments, as well as critical policy changes to adoption incentives and foster care that I would like to turn to briefly.

#### Child Welfare Legislative Enhancement

As part of the FY 2004 budget we also have put forward legislative changes guided in part by what we have learned from ASFA. Specifically, we are proposing to reauthorize and better target the Adoption Incentive Program that was originally created by ASFA. By providing a fiscal incentive and by shining a bright light on State performance in adoption, this program has made a substantial contribution to increasing the number of children adopted over the past five years.

However, as we have analyzed adoption data, we have learned that while the overall number of children being adopted has grown dramatically, older children in foster care still face excessively long waits for adoption and, in many cases, are never adopted. This is clearly a problem that warrants our attention.

In fact, data from AFCARS show that by age 9, the probability that a child will continue to wait in foster care exceeds the probability that the child will be adopted.

Furthermore, the number of children in this older age group is growing, now representing almost half of the children waiting to be adopted nationally.

To ensure that the adoption incentive focuses on these hard-to-place children, the President proposes that the Adoption Incentive Program be amended so that it continues to recognize and reward overall increases in the number of adoptions, but also provides a special focus on the adoption needs of children age 9 and older. Under this new proposal, adoption incentives would be awarded using two independent baselines: one for the total number of children adopted from the public foster care system; and the other for children age nine and older adopted from the public foster care system. Similar to current law, once a State reaches the baseline for the total number of adoptions for the year, it would become eligible to receive a \$4,000 incentive payment for each additional child adopted from the public child welfare system. Additionally, we would establish a separate baseline for the number of children age 9 and older who are adopted. Once the State reaches this new baseline for a year, it would receive a \$6,000 payment for each additional child, age 9 and above, adopted from the public child welfare system.

Awarding the incentive funds in this way will provide a special focus on the adoption needs of older children, while maintaining the goal of increasing adoptions for all waiting children. We look forward to working with you to reauthorize this critical program.

Finally, I would like to take this opportunity to briefly mention another proposal to strengthen child welfare systems in the President's FY 2004 budget. We are proposing a new Child Welfare Program Option that would give States the opportunity to receive their Title IV-E foster care funds as a flexible, fixed allotment that can be used to support a range of child welfare services. We believe that this option will offer a powerful new means for States to structure their child welfare services program in a way that supports the goals of safety, timely permanency and enhanced well-being for children and families, while relieving them of administrative burdens. Given the continuing problems faced by States in managing their child welfare programs, we all must think about more creative ways to strengthen these programs. This alternative financing option responds to suggestions made by many States to provide them with more flexibility to address the needs of these vulnerable children and families. I look forward to having the opportunity to discuss this proposal with you more fully in a future hearing.

#### Conclusion

The Adoption and Safe Families Act and other recent changes in Federal law have had a meaningful and positive impact on the delivery of child welfare services. In particular, changes in law and philosophy have helped thousands more children find the love and security of an adoptive family. But the work of assuring the safety, permanence and well-being of every child who comes to the attention of a child welfare agency or court in this country remains a tremendously challenging task. We are committed to working with the States, Members of Congress, community and faith-based organizations, and concerned citizens to continuously strive for better outcomes for all of these children.

I would be pleased to answer any questions you may have.

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Chairman HERGER. Thank you, Dr. Horn. Now we will turn to questions. I would like to remind the Members that they each have 5 minutes for witness questions. The gentleman from Michigan, Mr. Camp, to inquire.

Mr. CAMP. Thank you. Dr. Horn, I notice in your testimony you talk about the dramatic increase in adoptions from 1997 to 2001. Is there any one factor that you can attribute to this increase, any policy in the Adoption or Safe Families Act, or set of policies that are being implemented by the States that you might attribute this to?

Dr. HORN. I think there are at least two very significant policy changes in the 1997 law. The first was a clear focus on moving children quickly to adoption, as opposed to allowing children to live out their childhood in the foster care system. I think that that clear

message in the ASFA legislation has been taken to heart by the States and they, in fact, are placing more focus on adoption.

In addition to that, I do think the Adoption Incentives Program has been very helpful in providing a fiscal incentive for States to move children quickly towards adoption. I don't think there is any question in any objective observer's mind that the creation of the Adoption Incentives Program has had a significant impact on moving children who have had their parental rights terminated toward finalized adoption.

Mr. CAMP. Thank you. I also want to talk about this incentive award. Arguments might be made that this would distract, if you focus on older children, that that might distract from special needs children, for example. Could you just discuss that a little bit?

Dr. HORN. Sure. First of all, it is important that we recognize that the term "special needs" in the context of the Title IV-E Adoption Assistance Program is a term of art. It is not restricted to the sort of common definition of special needs to mean children with disabilities. It has a much broader definition.

One of the things that we noticed when we looked at the adoption data over the last 5 years is that, while it is true that the total number of adoptions increased over the last 5 years, the percentage or proportion of those adoptions that were children with special needs has stayed relatively constant over time at about 75 percent. So, there does not seem to be any specific incentive for moving children with special needs towards adoption independent of the incentive to move children in general towards adoption.

However, there is one group of children that it does not appear have moved in the same way toward adoption in the same proportion as other children, and that is older children. Our data shows that once a child reaches age 8 or 9, the odds of them staying in foster care, as opposed to being adopted out of foster care, becomes greater. In fact, what we see is that the proportion of children who are 9 years old or older that are free for adoption has grown over the last 5 years, from about 38 percent to about 46 percent.

So, what we would like to do is continue to have an incentive to move the broad base of children into adoption from the public welfare system through a continuing financial incentive to increase the number of adoptions, while at the same time creating a separate incentive for moving children who are older toward adoption as well.

Mr. CAMP. Thank you. One last question. You mentioned in your testimony about the 1997 law removing the ambiguity about the safety of children being the most important thing. States have implemented a number of policies to ensure that child safety is a key consideration. Can you comment on the effect of these new laws or policies and their effect on child safety?

Dr. HORN. Clearly, ASFA had an impact on State laws, and we have worked with the States over the last 5 years to ensure that the requirements of ASFA now are reflected in State law.

When we look at outcomes for children, however, it is clear that we are seeing better outcomes in terms of adoptions, but it is less clear that we are seeing better outcomes in terms of safety and/or permanency. Now, the good news is things are not getting worse in terms of safety or permanency, but the data does not give us

reason to believe that we have seen substantial increases in those areas. We think that we, the Federal Government and the States, need to do a better job in this area in translating changes in law into improved practice that results in better outcomes for children in this area.

What we intend to do is continue to work with the States as our partners in this arena in order to make sure that those changes in State law actually translate into better safety outcomes for kids.

Mr. CAMP. Thank you. Thank you very much.

Chairman HERGER. Thank you. The gentleman from Maryland, the Ranking Member, Mr. Cardin, to inquire.

Mr. CARDIN. Thank you, Mr. Chairman. Dr. Horn, let me just ask you one question of clarification. In regard to the bonuses on adoption, whether it's the under nine or over nine, what is the Administration's position as to base year or baseline on judging the performance of a State? I'm not sure where you've come down on that.

Dr. HORN. In terms of the incentive for increasing the total number of adoptions, we would keep the base year the way it is under current law, which as I'm sure you will recall is an average of fiscal years 1995, 1996, and 1997. That baseline goes up, in fact, if adoptions go up in a given year, so we want to continue to provide incentives for more adoptions in subsequent years. Under our proposal, we would suggest that 2003 be the base year for the adoption of older children.

Mr. CARDIN. Thank you for that clarification. The U.S. General Accounting Office (GAO) released a report entitled "Child Welfare: HHS Could Play a Greater Role in Helping Child Welfare Agencies Recruit and Retain Staff." The report points out what I think many of us know, that as a result of low salaries, high caseloads and insufficient training, we've had a very large turnover of caseworkers dealing with children in our child welfare system. The GAO concluded that the turnover negatively affects the relationship in dealing with the children because there is not the relationship that develops that can be very helpful in dealing with the problem.

I'm interested as to whether you concur in that, as to whether you think we should be playing a more aggressive role in regards to the qualifications and the problems facing caseworkers.

Dr. HORN. As a clinical psychologist who has worked both in the child welfare system and interacted with it for much of my professional career, I can tell you that to have the best outcome for kids, you need a well-qualified, experienced, and well-trained professional workforce. So, I concur with the ideas reflected within the GAO report, that we need to work aggressively to try to ensure that we have a high degree of professionalism, experience, and well-trained workers within the child welfare system.

It is an area that HHS has devoted, and will continue to devote, discretionary funds in order to accomplish that goal. Also within the context of the increased funding that we have requested for the Promoting Safe and Stable Families program, those moneys could also be used to enhance the professional development of caseworkers in the child welfare system. So, yes, I agree with the fundamental thrust of the GAO report.

Mr. CARDIN. I appreciate the fact that the Administration has put the extra money in their budget. Congress hasn't been as generous in prior years. We haven't funded up to the authorized levels. The fact that the Administration is supporting an extra \$200 million is no guarantee that Congress, in fact, will make those dollars available. If his is any indication, it probably will not.

May I suggest that you may want to support making that mandatory funding rather than discretionary funding, to make sure the promises that we're making are actually kept by the Congress.

Dr. HORN. As you know, the President's fiscal year 2004 budget has asked for that entire \$200 million in additional money to be appropriated. We're quite serious about that, and we will look forward to working with the Congress to ensure that all of that money is, in fact, appropriated this year. So, we are not backing away from that \$200 million increase. We would like that whole increase, and we hope that the Congress will appropriate those moneys.

Mr. CARDIN. I look forward to working with you in that regard. I would just tell you, you wouldn't have to spend as much time if it was mandatory rather than discretionary. You could then use your lobbying of Congress to do different things and wouldn't have to spend the time worrying about the money. Wouldn't that be a little bit easier for you?

[Laughter.]

I'm trying to help you.

Dr. HORN. It's nice to know you are sympathetic to my over-scheduled day.

Mr. CARDIN. Thank you, Mr. Chairman.

Chairman HERGER. Thank you. Now the gentlelady from Connecticut, Mrs. Johnson, to inquire.

Mrs. JOHNSON. Thank you, Mr. Chairman, and welcome, Dr. Horn. It's a pleasure to have you.

In preceding bills, we enabled the States, or actually encouraged the States, to seek waivers, to be able to use their foster care placement funds more flexibly. Indeed, in my State we had tremendous success with a consortium of child caring facilities using that waiver, to be able to move the child from home to an institutional setting, to residential treatment facilities, and back out to maybe a trial permanent placement. There's a lot of gradations along, but we were able to use that waiver to manage our money far more flexibly in regard to that child's well-being to both minimize the time the child was separated from the family, maximize the positive re-entry experience of the child into their family and community, or accelerate and improve the chances of a permanent placement being successful.

What have you learned from those waiver programs, and how many of the States that did them would like to make that flexibility permanent across the board, and would your proposed legislation allow a State to move to that kind of flexibility as a total statewide policy as opposed to a waived project?

Dr. HORN. As you know, I work for a Secretary who is very supportive of flexibility, and certainly in the area of child welfare, we think there needs to be greater flexibility. We were supportive of the provision within the bill, H.R. 4, that extended and, in fact, ex-

panded the waiver demonstration authority in the child welfare area.

One of the things we have learned in the past is that States do have an interest in being able to spend Title IV–E foster care funds more flexibly than under current law. One of the reasons that we put forward our proposal to provide States the option to use Title IV–E foster care funds more flexibly is so that State spending isn't limited to foster care maintenance payments and administrative costs associated with children in foster care who have already been abused and neglected. We feel that our option allows States flexibility to construct a more rational system.

Mrs. JOHNSON. It just seems to me that you could be much more aggressive at this point. We have a lot of experience with this. Maybe we're going to hear about this in the next panel, but I would like to hear about some of the States who had enormous success with this. What was the difference between those States who had success and those States who tried it and didn't have success? Are there some criteria we can draw from that?

Frankly, we have got to get away from setting driving funding, because that's not in the child's interest. The money ought to be following the abused child until the child is settled in a permanent and healthy placement. So, if you can, I would like you to come back in the future with a few of the most successful State waiver programs, and what can be learned. It's nice to give States flexibility, but some who don't want to be bothered with that level of integration and communication around the child, as opposed to around the agency and their program, I think need a push. So, I don't think waivers are enough any more.

Now, I'm not an expert, so I understand that I'm saying this from limited information. That's why I would like to see the results of those waivers more concretely, to see whether we shouldn't be learning from those waivers to go beyond flexibility to push people into more integrated systems of care.

I see the light is turning yellow, so let me state my second question. We know that 80 percent of families in which there is abuse and neglect also have an adult with a substance abuse problem. Are we aggressively targeting that? Are we saying we know this, we've known this for over a decade, and you must identify that abuse problem, and the adult abuser must be in a substance abuse treatment plan?

I am very pleased that the President has brought more money into the system, but what imperative are we putting on States to go after this problem?

Dr. HORN. One of the things we did recently was team up with Substance Abuse and Mental Health Services Administration, particularly the Center for Substance Abuse Treatment, and created a new national resource center that is dedicated to working with this issue of substance abuse within the context of the child welfare system. So, we hope that that new national resource center will help to drive innovative practice all across the country. You're exactly right, substance abuse is the driver for so many of the cases that come in contact with the child welfare system. Frankly, we need to do a better job.

As you noted, the President has asked for additional resources, \$600 million over 3 years, for substance abuse treatment in the form of vouchers that could be integrated into the child welfare system to provide greater access for those families where substance abuse is an issue.

Mrs. JOHNSON. Thank you.

Chairman HERGER. Thank you. Dr. Horn, in our next panel, one of our witnesses made a statement that I would like you to comment on, if you would. Ms. Schagrin, in her testimony on page 2, says, with respect to the inflexibility of the Title IV–E program, one proposal is to block grant Federal funds in exchange for offering States greater flexibility in their expenditures. “Dismantling Federal oversight and accountability is simply a tragic abdication of responsibility for our Nation’s most helpless children . . .” Would you care to comment on that statement?

Dr. HORN. What it suggests to me is that we have to do a better job of communicating what is actually in our proposal, because that does not reflect our proposal at all.

First of all, it is not a block grant. It allows States the option to provide themselves with the ability to spend their Title IV–E foster care dollars more flexibly. More fundamentally, the statement that somehow we are dismantling protections is incorrect. Our proposal specifically says that we will maintain all of the child protections contained within current law for States that choose this option.

In fact, we believe that in the States that elect this option, you will actually see an enhanced oversight of those protections—and here’s why. Right now, a lot of the protections are contained within the Title IV–E foster care legislation. The way that we review Title IV–E foster care cases is we draw a sample of kids in foster care who are Title IV–E eligible. That is only about 42 or 43 percent of the cases. So, when we draw our sample and look at the protections for those cases, we are not drawing the sample from the universe of everybody in foster care, but only from those who are in Title IV–E foster care, about 42 or 43 percent of the cases.

What we propose is that, if the States elect this option, they no longer have a Title IV–E foster care program in the way that we currently think about it, but all the protections would still apply. The oversight would then be done within the CFSR.

When we draw the samples to review at the case level in the CFSR, we don’t draw just from the Title IV–E cases, the 43 percent of the cases that are eligible. We draw from the entire universe of cases, which would provide us with the opportunity to ensure the protections are in place, not just for the kids who are in Title IV–E, but for all the kids in care, whether they are Title IV–E eligible or not. So, we actually believe that our proposal for States who choose this option would enhance the ability for us to provide oversight for all children in care, not just those children who are Title IV–E eligible.

Chairman HERGER. Thank you very much for your testimony, Dr. Horn. At this point I would like to invite our next panel to please have a seat at the table. On today’s panel we will hear from Cornelia Ashby, Director, Education, Workforce, and Income Security Issues at GAO; the Honorable Dave Heaton, a Representative in the Iowa House of Representatives, on behalf of the National

Conference of State Legislatures (NCSL); Robin Arnold-Williams, Executive Director, Utah Department of Human Services, on behalf of the American Public Human Services Association (APHSA). To introduce the next witness, I turn to the gentleman from Maryland, Mr. Cardin.

Mr. CARDIN. Thank you. It is my pleasure to welcome Judith Schagrin to our Committee, who is the Assistant Director of the Baltimore County Department of Social Services, which you have already mentioned so prominently in asking a question.

Ms. Schagrin has been at the Baltimore County Department of Social Services for 20 years and has served as the Agency's Administrator for Foster Care and Adoption Programs for the last 5 years. In addition to her work with the county, she also serves as a foster parent to a severely emotionally disturbed adolescent and provides respite care for three emotionally disturbed young boys. We are very pleased to have her with us today, and I thank her for being here.

Chairman HERGER. Thank you. We also have with us S. Truett Cathy, Founder of WinShape Center, Inc. That's a very attractive tie you have on, Mr. Cathy. We have Mark Hardin, Director of the National Child Welfare Resource Center on Legal and Judicial Issues, and Director of Child Welfare, Center on Children and the Law, American Bar Association (ABA), and Jennifer Miller, Senior Consultant at Cornerstone Consulting Group. We will now hear from our witnesses. Ms. Ashby, please.

**STATEMENT OF CORNELIA M. ASHBY, DIRECTOR FOR EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, U.S. GENERAL ACCOUNTING OFFICE**

Ms. ASHBY. Mr. Chairman and Members of the Subcommittee, thank you for inviting me here today to discuss the implementation of ASFA.

My testimony will address four issues: changes in outcomes and characteristics of children in foster care from ASFA's enactment through fiscal year 2000; States' implementation of ASFA's fast track and 15 of 22 provisions; States' use of ASFA's adoption-related funds; and practices States use to address barriers to achieving permanency for children in foster care.

The fast track provision allows States to bypass efforts to reunify families in certain egregious situations. The 15 of 22 provision requires States, with a few exceptions, to file a petition to terminate parental rights (TPR) when a child has been in foster care for 15 of the most recent 22 months.

My comments are based on our analysis of national data from HHS, a survey we conducted of child welfare directors in the 50 States and the District of Columbia, and information obtained during visits to 6 States and interviews with Federal officials and child welfare experts. We reported our findings from this work to you and the other requesters in a June 2002 report.

The number of annual foster care adoptions increased by 57 percent from ASFA's enactment through 2000. However, data limitations restricted our ability to determine how other foster care outcomes and children's characteristics changed. The limitations also

restricted our ability to determine how ASFA affected the number of adoptions of other foster care outcome.

However, recent HHS data provides some information about the characteristics and experiences of foster care children after enactment of ASFA. For example, children leaving foster care between 1998 and 2000 spent a median of nearly 1 year in foster care, and those who were adopted spent a median of about 3½ years in foster care. Upon leaving foster care, most children returned home to the families they had been living with prior to entering foster care. However, about a third of the children who went home to their birth families in 1998 subsequently returned to foster care by 2000.

Few States provided data on the numbers of children affected by ASFA's fast track, and 15 of 22 provisions, and HHS collects very little data on the use of these provisions. Four States that provided fast track data in response to our survey indicated that they do not use this provision frequently. They described several court-related issues that make it difficult to fast track more children, including court delays, a reluctance on the part of some judges to relieve the State from reunification efforts, and difficulty in proving the existence of the aggravated circumstances that would justify fast tracking.

Survey responses from the few States that provided data on the 15 of 22 provision indicate that these States do not file TPRs for many children who are in care for 15 months. Officials in the six States we visited reported that they determined the filing of TPR under this provision for many children is not in the children's best interest.

States reported in our survey that they most commonly use their adoption related funds to recruit adoptive families and provide post-adoption services. Child specific recruitment efforts included featuring children available for adoption on television, hosting matching parties for prospective adoptive parents to meet children available for adoption, and taking pictures and making videos of foster children to show to prospective families.

General recruitment efforts included promoting adoption through national adoption month events, hiring additional recruiters, and partnering religious groups. About 60 percent of the States responding to our survey funded post-adoption services such as counseling, respite care, support groups, and recreational activities.

States have developed a range of practices to address longstanding barriers to achieving permanency for children in a timely manner. However, because few of these practices have been vigorously evaluated, limited information is available on their effectiveness.

Such practices include mediation involving family members and potential adoptive parents, assigning a judge trained in handling child welfare issues to a cluster of rural counties, targeting efforts to recruit adoptive parents to individuals who may be more likely to adopt children with special needs, and subsidizing long-term guardianships.

In conclusion, the availability of reliable data, both on foster care outcomes and the effectiveness of child welfare practices, is essential to efforts to improve the child welfare system. In this regard, to obtain a clear understanding of how ASFA's two key perma-

nency provisions are working, we recommended in our June 2002 report that the Secretary of HHS determine the feasibility of collecting data on States' use of the fast track and 15 of 22 provisions. In addition, we are currently conducting an engagement for the Senate Finance Committee and the House Majority Leader on States' automated child welfare information systems. I expect this report to be issued in July.

Mr. Chairman, this concludes my remarks. I would be happy to answer any questions.

[The prepared statement of Ms. Ashby follows:]

**Statement of Cornelia M. Ashby, Director for Education, Workforce, and Income Security Issues, U.S. General Accounting Office**

Mr. Chairman and Members of the Subcommittee, thank you for inviting me here today to discuss the implementation of the Adoption and Safe Families Act of 1997 (ASFA). As you are aware, this legislation was enacted in response to concerns that some children were languishing in temporary foster care while prolonged attempts were made to reunify them with their birth families. ASFA contained two key provisions that were intended to help states move children in foster care more quickly to safe and permanent homes. One of these provisions, referred to as "fast track," allows states to bypass efforts to reunify families in certain egregious situations. The other provision, informally called "15 of 22," requires states, with a few exceptions, to file a petition to terminate parental rights (TPR) when a child has been in foster care for 15 of the most recent 22 months. In addition, ASFA emphasized the importance of adoption when foster children cannot safely and quickly return to the care of their birth parents. Toward that end, ASFA established incentive payments for states that increase their adoptions. In addition, the law provided a new source of funds for states to use to promote and support adoptions through the Promoting Safe and Stable Families (PSSF) program.

My testimony today will focus on four key issues: (1) changes in the outcomes and characteristics of children in foster care from the time ASFA was enacted through fiscal year 2000, (2) states' implementation of ASFA's fast track and 15 of 22 provisions, (3) states' use of adoption-related funds provided by ASFA, and (4) practices states are using to address barriers to achieving permanency for children in foster care. My comments are based on the findings from our June 2002 report, *Foster Care: Recent Legislation Helps States Focus on Finding Permanent Homes for Children, but Long-Standing Barriers Remain* (GAO-02-585, June 28, 2002). Those findings were based on our analyses of national foster care and adoption data from the U.S. Department of Health and Human Services (HHS) for fiscal years 1998 through 2000;<sup>1</sup> site visits to Illinois, Maryland, Massachusetts, North Carolina, Oregon, and Texas; and interviews with federal officials and child welfare experts. In addition, we conducted a survey of child welfare directors in the 50 states and the District of Columbia.<sup>2</sup> We received responses from 46 states, although they did not all respond to every question.<sup>3</sup>

In summary, while the annual number of adoptions has increased by 57 percent from the time ASFA was enacted through fiscal year 2000, the lack of comparable pre- and post-ASFA data makes it difficult to determine ASFA's role in this increase or changes in other foster care outcomes. However, HHS data on children who left foster care between 1998 and 2000 provide some insight into the experiences of children in foster care. For example, children who left foster care during this time spent a median of nearly 1 year in care. Of these children, those who were adopted spent a median of approximately 3½ years in foster care. Recent improvements in the quality of HHS data, however, make it difficult to determine if changes observed after 1998 are the result of changes in data quality or actual changes in the outcomes and characteristics of foster children. Similarly, data on states' use of ASFA's two key permanency provisions—fast track and 15 of 22—are limited, although some states described circumstances that hindered the broader use of these provi-

<sup>1</sup>Throughout this testimony, fiscal year refers to federal fiscal year, unless noted otherwise. In addition, we selectively updated information contained in this testimony.

<sup>2</sup>Throughout this testimony, references to state survey responses include the District of Columbia.

<sup>3</sup>In addition, we requested survey data by federal fiscal year for 1999 and 2000. However, of the 46 states responding to our survey, 22 provided data for time periods other than federal fiscal years 1999 and 2000, such as calendar year or state fiscal year.

sions. For example, state officials described several court-related issues, such as reluctance on the part of some judges to allow a state to bypass reunification efforts, which made it difficult for these states to use the fast track provision for more cases.

In general, states are most frequently using the new adoption-related funds provided by ASFA to recruit adoptive parents and provide post adoption services. For example, Connecticut used its adoption incentive funds to buy advertisements on Spanish language television to recruit adoptive families for older Hispanic children and sibling groups to address a shortage of families for these children. Oregon used its PSSF funds to create a new, statewide resource center to provide information and referral services, support groups, and educational workshops to adoptive families. The states we visited have implemented a variety of practices to address long-standing barriers—such as court delays and difficulties in recruiting adoptive families for children with special needs—to achieving permanency for foster children. To help address court delays, for example, Massachusetts has developed a mediation program to help birth families and potential adoptive parents agree on the permanent plan for a child, thereby avoiding the time associated with a court trial and an appeal of the court's decision. States are testing different approaches to address these barriers; however, limited data are available on the effectiveness of these practices.

### Background

The foster care system has grown dramatically in the past two decades, with the number of children in foster care nearly doubling since the mid-1980s. Concerns about children's long stays in foster care culminated in the passage of ASFA in 1997, which emphasized the child welfare system's goals of safety, permanency, and child and family well-being. HHS's Administration for Children and Families (ACF) is responsible for the administration and oversight of federal funding to states for child welfare services under Titles IV-B and IV-E of the Social Security Act.

These two titles of the Social Security Act provide federal funding targeted specifically to foster care and related child welfare services.<sup>4</sup> Title IV-E provides an open-ended individual entitlement for foster care maintenance payments to cover a portion of the food, housing, and incidental expenses for all foster children whose parents meet certain federal eligibility criteria.<sup>5</sup> Title IV-E also provides payments to adoptive parents of eligible foster children with special needs.<sup>6</sup> Special needs are characteristics that can make it more difficult for a child to be adopted and may include emotional, physical, or mental disabilities; age; or being a member of a sibling group or a member of a minority race. Title IV-B provides limited funding for child welfare services to foster children, as well as children remaining in their homes. In fiscal year 2002, total Title IV-E spending was approximately \$6.1 billion and total Title IV-B spending was approximately \$674 million.

HHS compiles data on children in foster care and children who have been adopted from state child welfare agencies in the Adoption and Foster Care Analysis and Reporting System (AFCARS). HHS is responsible for collecting and reporting data and verifying their quality. States began submitting AFCARS data to HHS in 1995. Twice a year, states are required to submit data on the characteristics of children in foster care, foster parents, adopted children, and adoptive parents. Prior to AFCARS, child welfare data were collected in the Voluntary Cooperative Information System (VCIS), operated by what was then called the American Public Welfare Association.<sup>7</sup> Since reporting to VCIS was not mandatory, the data in the system were incomplete. In addition, the data submitted were inconsistent because states used different reporting periods and different definitions for various data elements.

ASFA included two key provisions intended to help states move into safe, permanent placements those foster children who are unable to safely return home in a reasonable amount of time. Under the fast track provision, states are not required

<sup>4</sup>In addition, Title XX provides funds under the social services block grant that may be used for many purposes, including child welfare.

<sup>5</sup>Certain judicial findings must be present for the child in order for the child to be eligible for Title IV-E foster care maintenance payments.

<sup>6</sup>Special needs are defined as a specific factor or condition that make it difficult to place a child with adoptive parents without providing adoption assistance. States have the discretion to define the specifics of the special needs category. The existence of special needs is used to determine a child's eligibility for adoption assistance under Title IV-E. To qualify for an adoption subsidy under Title IV-E, the state must determine that the child cannot or should not return home; the state must make a reasonable, but unsuccessful effort to place the child without the subsidy; and a specific factor or condition must exist that makes it difficult to place the child without a subsidy.

<sup>7</sup>In 1998, the American Public Welfare Association became the American Public Human Services Association.

to pursue efforts to prevent removal from home or to return a child home if a parent has (1) lost parental rights to that child's sibling; (2) committed specific types of felonies, including murder or voluntary manslaughter of the child's sibling; or (3) subjected the child to aggravated circumstances, such as abandonment, torture, chronic abuse, or sexual abuse. In these egregious situations, the courts may determine that services to preserve or reunite the family are not required. Once the court makes such a determination, the state must begin within 30 days to find the child an alternative permanent family or other permanent arrangement.<sup>8</sup>

The second provision requires states to file a TPR with the courts if (1) an infant has been abandoned; (2) the parent committed any of the felonies listed in the fast track provision; or (3) the child has been in foster care for 15 of the most recent 22 months. ASFA allows for some exemptions from the 15 of 22 provision. Under ASFA, states are not required to file a TPR if the child is placed with a relative; the state has not provided services needed to make the home safe for the child's return; or the state documents a compelling reason that filing a TPR is not in the child's best interest.

ASFA also created two new adoption-related funding sources. First, ASFA reauthorized the family preservation and family support program under subpart 2 of Title IV-B of the Social Security Act, renaming it Promoting Safe and Stable Families (PSSF) and adding two new funding categories: adoption promotion and support services and time-limited family reunification services. The original family preservation program included only family preservation and community-based family support services. In January 2002, the PSSF program was reauthorized, authorizing \$305 million for each of fiscal years 2002 through 2006, along with an additional \$200 million in discretionary grant funds for each of those years.

Second, ASFA created the adoption incentive payment program, which awards states \$4,000 for each foster child who is adopted over a previously established baseline and an extra \$2,000 for each adopted child characterized by the state as having a special need. States have earned a total of approximately \$145 million in incentive payments for adoptions finalized in fiscal years 1998 through 2001.

ASFA also expanded the use of federal child welfare demonstration waivers that allow states to test innovative foster care and adoption practices. In 1994, the Congress gave HHS the authority to establish up to 10 child welfare demonstrations that waive certain restrictions in Titles IV-B and IV-E of the Social Security Act and allow broader use of federal foster care funds. ASFA authorized 10 additional waivers in each year between fiscal years 1998 and 2002 to ensure more states had the opportunity to test innovations. States with an approved waiver must conduct a formal evaluation of the project's effectiveness and must demonstrate the waiver's cost neutrality—that is, a state cannot spend more in Titles IV-B and IV-E funds than it would have without the waiver. Projects generally are to last no more than 5 years.

#### **Limited Data are Available to Measure Changes in the Outcomes and Characteristics of Children Since ASFA**

The number of annual adoptions has increased since the implementation of ASFA; however, data limitations restrict comparative analysis of other outcomes and characteristics of children in foster care.<sup>9</sup> Foster care adoptions grew from 31,004 in fiscal year 1997 to 48,680 in fiscal year 2000, representing a 57 percent increase.<sup>10</sup> However, current data constraints make it difficult to determine what role ASFA played in this increase. The lack of reliable and comparable pre- and post-ASFA data limits our ability to analyze how other foster care outcomes or children's characteristics have changed. Current data do, however, provide some information about the characteristics and experiences of foster children after ASFA. For example, children leaving foster care between 1998 and 2000 spent a median of approximately 1 year in care. Of these children, those who were adopted spent more time in care—a median of approximately 3½ years.

<sup>8</sup>In addition, the Abandoned Infants Assistance Act of 1988, as amended in 1996, requires states to expedite the termination of parental rights for abandoned infants in order to receive priority to obtain certain federal funds.

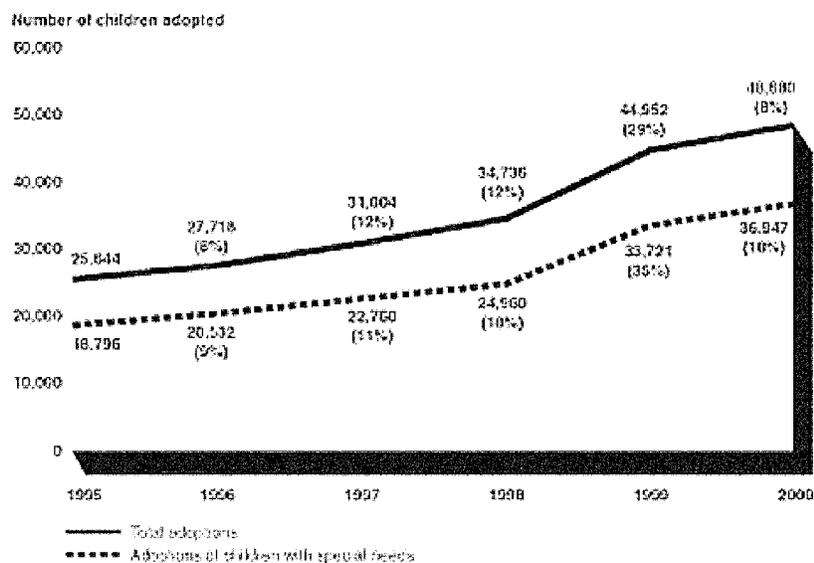
<sup>9</sup>HHS officials believe that the adoption data available as early as 1995 are more reliable than early data on other outcomes because of the incentive payments that states can earn for increasing adoptions. They noted that states made great efforts to improve the accuracy of their adoption data when the incentive payment baselines were established. For example, HHS initially estimated about 20,000 adoptions for fiscal year 1997, but after states reviewed and submitted their adoption data, as required for participation in the Adoption Incentives program, they reported about 31,000 adoptions.

<sup>10</sup>All HHS data are presented in terms of federal fiscal year.

### Adoptions Have Increased Since ASFA, but Changes in Other Outcomes Unclear

Adoptions from state foster care programs have increased nationwide by 57 percent from the time ASFA was enacted through fiscal year 2000, but changes in other outcomes are less clearly discernable. According to data available from HHS, the increase in adoptions began prior to the enactment of federal child welfare reforms (see fig. 1). For example, adoptions generally increased between 8 percent and 12 percent each year between 1995 and 2000, except in 1999 when they increased by 29 percent over 1998 adoptions. The increase in overall adoptions of children in foster care is accompanied by a parallel increase in the adoptions of children with special needs.

**Figure 1: Number of Children Adopted from Foster Care Between Fiscal Years 1995 and 2000**



Source: Data from HHS's Child Welfare System used to determine adoption outcome reports.

Note: The percentages in parentheses represent the increase in finalized adoptions over the previous year.

The role ASFA played in the increase in adoptions after 1997, however, is unclear. Similarly, whether the number of foster children being adopted will continue to rise in the future is unknown. For example, since our report was issued last June, HHS reported that 48,741 adoptions were finalized in 2001, which represents only a slight increase over adoptions finalized in 2000. While ASFA may have contributed to the adoptions of these children, other factors may have also played a role. For example, HHS officials told us that state child welfare reform efforts that occurred before ASFA might be linked to the observed increase in adoptions. Since it can take several years for foster children to be adopted, and ASFA has only been in existence for a few years, evidence of ASFA's effect may not be available for some time.

ASFA's effect on other foster care outcomes, such as birth family reunifications, is also difficult to determine. Lack of comparable and reliable data on foster care children, before and after ASFA, make it difficult to know how ASFA has affected the child welfare system. While HHS officials report that some data are reliable to provide a picture of children in foster care after ASFA, they state that the child welfare data covering pre-ASFA periods are not reliable due to problems such as low response rates and data inconsistencies. Since 1998, however, HHS data specialists have observed improvements in the data submitted to HHS by states and attribute the changes to several factors, including the provisions of federal technical assistance to the states on data processing issues, the use of federal financial penalties and rewards, and the use of outcome measures to evaluate states' performance. Ac-

According to HHS, these data improvements make it impossible to determine whether observed changes in outcomes from one year to the next are the result of changes in data quality or changes in state performance. HHS expects that the data will stabilize over time and can eventually be used as a reliable measure of state performance.

#### **Current Data Describe Characteristics and Experiences of Children Who Exited Care Between 1998 and 2000**

Although pre-ASFA data are limited, current data do shed some light on the characteristics and experiences of the more than 741,000 children who exited foster care between 1998 and 2000.<sup>11</sup> According to HHS data for this time period and results from our survey, the following outcomes and characteristics describe the experiences children had while in foster care:

- Children left foster care after a median length of stay of approximately 1 year, although the amount of time spent in care differed depending on where the children were permanently placed. For example, in 2000, the median length of stay for children exiting care was 12 months. In contrast, the median length of stay for adopted children was 39 months in 2000.
- Many children have only one placement during their foster care stay, but a few experience five or more placements. Adopted children tend to have more foster care placements than other children, in part, because of their longer foster care stays.
- Upon leaving foster care, most children returned home to the families they had been living with prior to entering foster care. However, approximately 33 percent of the children who went home to their birth families in 1998 subsequently returned to foster care by 2000, for reasons such as additional abuse and neglect at home.
- Our survey results indicated that the median percentage of children abused or neglected while in foster care during 1999 and 2000 was 0.60 percent and 0.49 percent, respectively.<sup>12</sup> Maltreatment rates in foster care ranged from a high of 2.74 percent in the District of Columbia to a low of 0.02 percent in Nebraska.<sup>13</sup>
- Children exit foster care in a number of ways, including reunifying with their families,<sup>14</sup> being adopted, emancipation,<sup>15</sup> or entering a guardianship arrangement.<sup>16</sup> Although most children reunify with their families, the second most common way of exiting foster care is through adoption. The children adopted from foster care have a wide variety of characteristics, yet the data indicate some general themes.
- On average, 85 percent of the children adopted in 1998, 1999, and 2000 were classified as having at least one special need that would qualify them for adoption subsidies under Title IV-E.<sup>17</sup> According to results from our survey, 18

<sup>11</sup>According to HHS's AFCARS data, 223,255 children exited foster care in fiscal year 1998 from 44 states (including the District of Columbia and Puerto Rico); 250,950 exited foster care in fiscal year 1999 from 51 states (including the District of Columbia and Puerto Rico); and 267,344 exited foster care in fiscal year 2000 from 51 states (including the District of Columbia).

<sup>12</sup>Of the 46 states that responded to our survey, 16 provided data on the percentage of foster children who had a substantiated report of abuse or neglect in fiscal year 1999, 2 provided data for calendar year 1999, 1 provided data for state fiscal year 1999, 18 provided data for fiscal year 2000, 1 provided data for calendar year 2000, and 2 provided data for state fiscal year 2000.

<sup>13</sup>According to HHS's Child Welfare Outcomes 1999: Annual Report, the median percentage of foster children abused and neglected while in care was 0.5 percent for the 20 states reporting. Maltreatment rates in foster care range from a high of 2.3 percent in Rhode Island to a low of 0.1 percent in Arizona, Delaware, and Wyoming.

<sup>14</sup>In AFCARS, reunification is defined as the child returning to the family with whom the child had been living prior to entering foster care.

<sup>15</sup>A child is emancipated from foster care when the child reaches majority age according to state law.

<sup>16</sup>Guardianship arrangements occur when permanent legal custody is awarded to an individual, such as a relative.

<sup>17</sup>While current AFCARS data indicate that 85 percent of children adopted in fiscal years 1998 through 2000 have at least one special need, the adoption incentive data presented earlier in figure 1 indicate a lower proportion of children with special needs adopted from foster care. An HHS official explained that this discrepancy is due to the timing of the measurement of the data. The data in figure 1 were measured at an earlier point in time and the numbers are not updated since adoption incentive payments are awarded to states based on the number of finalized adoptions reported at the end of each fiscal year. The data presented here reflect changes to AFCARS based on states resubmitting previous data after the initial reporting periods and are as recent as April 2002.

states reported that, on average, 32 percent of the children adopted from foster care in 2000 had three or more special needs.<sup>18</sup>

- Children adopted from foster care are equally likely to be male or female, slightly more likely to be black, and much more likely to be under age 12. The gender and race/ethnicity distributions of children adopted from foster care are similar to those of the general population of children in foster care. However, children adopted from foster care tend to be younger than the general population of children in foster care.
- Our survey results indicate that in fiscal year 2000 adopted children spent an average of 18 months living with the family that eventually adopted them prior to their adoption being finalized.<sup>19</sup>

As noted for other outcomes, the lack of reliable and national pre-ASFA data make it difficult to determine whether the rate at which adoptions encountered problems has changed since ASFA was enacted.<sup>20</sup> However, limited data suggest that problems occur in a small percentage of foster care adoptions. According to our survey,<sup>21</sup> about 5 percent of adoptions planned in fiscal years 1999 and 2000 disrupted prior to being finalized.<sup>22</sup> States also reported that approximately 1 percent of adoptions finalized in these years legally dissolved at a later date and that about 1 percent of the children who were adopted in these years subsequently re-entered foster care.<sup>23</sup> However, little time has elapsed since these adoptions were finalized, and some of these adoptions may fail at a later date.

#### **While Little Data are Available on Key ASFA Permanency Provisions, Some States Describe Circumstances That Limit Their Broader Use**

While few states were able to provide data on the numbers of children affected by ASFA's fast track and 15 of 22 provisions, some reported on circumstances that make it difficult to use these provisions for more children. In addition, HHS collects very little data on the use of these provisions. Data from four states that provided fast track data in response to our survey indicate that they do not use this provision frequently. However, they described several court-related issues that make it difficult to fast track more children, including court delays and a reluctance on the part of some judges to relieve the state from reunification efforts. Survey responses from the few states that provided data on the 15 of 22 provision indicate that these states do not file TPRs for many children who are in care for 15 months. Officials in the six states we visited reported that they determine that filing a TPR under this provision for many children is not in the children's best interests. The determination is based on a variety of factors, such as difficulties in finding adoptive parents.

#### **While Data on Fast Track Are Limited, Some States Report Court-Related Issues That Hinder the Use of the Fast Track Provision for More Children**

Few states were able to provide data on their use of the fast track provision in response to our survey and HHS does not collect these data from the states. As a result, we do not have sufficient information to discuss the extent to which states are using this provision. Survey data reported by four states suggest the infrequent

<sup>18</sup> One of the 18 states reporting on the number of children adopted with three or more special needs provided data based on calendar year 2000.

<sup>19</sup> Of the 46 states responding to our survey, 22 provided fiscal year data on the length of time children lived with the family that eventually adopted them and 1 provided data for calendar year 2000.

<sup>20</sup> Studies on adoption problems prior to ASFA's enactment have several limitations, such as small samples sizes, coverage of a few locations, and a focus on narrowly defined groups of children.

<sup>21</sup> Of the 46 states that responded to our survey, 17 provided data on adoption disruptions for fiscal year 1999, 2 provided data for calendar year 1999, 18 provided data on adoption disruptions for fiscal year 2000, and 2 provided data for calendar year 2000.

<sup>22</sup> For example, Illinois reported a 12.4 percent disruption rate for fiscal year 1999 on our survey. In comparison, one study (Robert Goerge and others, *Adoption, Disruption, and Displacement in the Child Welfare System, 1976–1995* (Chicago: Chapin Hall Center for Children at the University of Chicago, 1995)) reviewed all planned and finalized adoptions in Illinois between 1981 and 1987. During that time, an average of 9.9 percent of adoption plans for Illinois foster children disrupted.

<sup>23</sup> Of the 46 states that responded to our survey, 18 provided data on dissolutions for fiscal year 1999, 19 provided data on dissolutions for fiscal year 2000 and 1 provided data for calendar year 2000. In addition, 21 states provided survey data on foster care re-entries by children adopted in fiscal year 1999, 22 provided data for children adopted in fiscal year 2000, and 1 provided data for children adopted in calendar year 2000. Our survey results indicate that of all the children with finalized adoptions in fiscal year 1999, 0.55 percent returned to foster care in fiscal year 1999 or 2000. Of all the children with finalized adoptions in fiscal year 2000, 1.43 percent returned to foster care in fiscal year 2000.

use of fast track. In fiscal year 2000, for example, about 4,000 children entered the child welfare system in Maryland, but only 36 were fast-tracked. Child welfare officials in the six states we visited told us that they used ASFA's fast track provision for a relatively small number of cases. Three states indicated that they fast-tracked abandoned infants, while four states reported using fast track for cases involving serious abuse, such as when a parent has murdered a sibling; however, some state officials also noted that few child welfare cases involve these circumstances. In addition, five states reported that they would fast track certain children whose parents had involuntarily lost parental rights to previous children if no indication exists that the parents have addressed the problem that led to the removal of the children.

Officials in five of the states we visited described several court-related issues that they believe hindered the greater use of the fast track provision. However, because of the lack of data on states' use of fast track, we were unable to determine the extent of these problems. Officials in these states told us that some judges or other legal officials are at times reluctant to approve a state's fast track request. For example, child welfare staff for a county in North Carolina described a case in which a judge approved a fast track request involving a child who had suffered from shaken baby syndrome, but refused a similar request on a sibling who was born a few months after the shaking episode. County staff said that the judge's decision was based on the fact that the parents had not hurt the newborn and should be given an opportunity to demonstrate their ability to care for this child. State officials in North Carolina also told us that delays in scheduling TPR trials in the state undermine the intent of fast tracking. They noted that the agency may save time by not providing services to a family, but the child may not be adopted more quickly if it takes 12 months to schedule the TPR trial. Officials in Massachusetts expressed similar concerns about court delays experienced in the state when parents appeal a court decision to terminate their parental rights.

Other difficulties in using fast track to move children out of foster care more quickly are related to the specific categories of cases that are eligible to be fast-tracked. Officials in five states told us that they look at several factors when considering the use of fast track for a parent who has lost parental rights for other children. If a different birth father is involved, child welfare officials told us that they are obligated to work with him to determine if he is willing and able to care for the child. According to Maryland officials, if the agency is providing services to the father to facilitate reunification, pursuing a fast track case for the mother will not help the child leave foster care more quickly. In addition, child welfare officials in Massachusetts and Illinois emphasized that a parent who has addressed the problems that led to a previous TPR should have an opportunity to demonstrate the ability to care for a subsequent child.

Regarding the fast track category involving parents who have been convicted of certain felonies, child welfare officials in Massachusetts and Texas described this provision as impractical due to the time it takes to obtain a conviction. Massachusetts officials told us that, in most cases, the children are removed at the time the crime is committed, and judges will not approve the fast track in these cases until the parent is actually convicted, which is usually at least a year after the actual crime. Finally, in Massachusetts, Texas, and Maryland, officials reported that it can be difficult to prove that a parent subjected a child to aggravated circumstances, such as torture or sexual abuse. According to these officials, the time and effort to go through additional court hearings to demonstrate the aggravated circumstances is not worthwhile; instead, the child welfare agency chooses to provide services to the family.

#### **Although Little Data Exist on 15 of 22, Some States Report That They Do Not File TPRs on Many Children**

Most states do not collect data on their use of ASFA's 15 of 22 provision. In response to our survey, only nine states were able to provide information on the number of children for whom the state filed a TPR due to the 15 of 22 provision or the number of children who were in care for 15 of the most recent 22 months and for whom a TPR was not filed. In addition, HHS does not systematically track these data, although it does collect some limited information on the 15 of 22 provision as part of its review of state child welfare agencies. The survey responses from 9 states indicated that they did not file a TPR on a number of children—between 31 and 2,919 in 2000—who met the requirements of the 15 of 22 provision. For most of these nine states, the number of children for whom a TPR was not filed greatly exceeded the number of children for whom a TPR was filed. For example, while Oklahoma filed over 1,000 TPRs primarily because the child had been in foster care for 15 of the most recent 22 months, it did not file a TPR for an additional 2,900 children.

Officials in all six states we visited told us that establishing specific timeframes for making permanency decisions about children in foster care has helped their child welfare agencies focus their priorities on finding permanent homes for children more quickly. Two of the states we visited—Texas and Massachusetts—created procedures prior to ASFA to review children who had been in care for a certain length of time and decide whether continued efforts to reunify a family were warranted. Other states had not established such timeframes for making permanency decisions before the 15 of 22 provision was enacted. The director of one state child welfare agency told us that, prior to ASFA, the agency would work with families for years before it would pursue adoption for a child in foster care. Officials in Maryland, North Carolina, and Oregon said that the pressure of these new timeframes has helped child welfare staff work more effectively with parents, informing them up front about what actions they have to take in the next 12 to 15 months in order to reunify with their children. Private agency staff in three states, however, expressed concern that pressure from these timeframes could push the child welfare agency and the courts to make decisions too quickly for some children.

Child welfare officials in the six states we visited described several circumstances under which they would not file a TPR on a child who was in care for 15 of the most recent 22 months. In five of the six states, these officials told us that the provision is difficult to apply to children with special needs for whom adoption may not be a realistic option, such as adolescents and children with serious emotional or behavioral problems. Officials from Maryland and North Carolina reported that, in many cases, the child welfare agency does not file a TPR for children who have been in care for 15 of the most recent 22 months because neither the agency nor the courts consider it to be in the children's best interest to be legal orphans—that is, to have their relationship to their parents legally terminated, but have no identified family ready to adopt them.<sup>24</sup> State officials in Oregon told us that state law requires that parental rights be terminated solely for the purposes of adoption, so as to avoid creating legal orphans.

Officials in four states noted that many adolescents remain in long-term foster care. In some cases, they have strong ties to their families, even if they cannot live with them, and will not consent to an adoption.<sup>25</sup> In other cases, the teenager is functioning well in a stable situation with a relative or foster family that is committed to the child but unwilling to adopt.<sup>26</sup> For example, officials in a child welfare agency for a county in North Carolina told us about a potentially violent 16-year-old foster child who had been in a therapeutic foster home for 10 years. The family was committed to fostering the child, but did not want to adopt him because they did not have the financial resources to provide for his medical needs and because they did not want to be responsible for the results of his actions.

Child welfare staff from two states told us that some parents need a little more than 15 months to address the problems that led to the removal of their children. If the child welfare agency is reasonably confident that the parents will be able to reunify with their children in a few months, the agency will not file a TPR for a child who has been in foster care for 15 months. In addition, child welfare officials in four states observed that parents must have access to needed services, particularly substance abuse treatment, soon after a child enters care in order for the child welfare system to determine if reunification is a realistic goal by the time a child has been in care for 15 months. Officials in Maryland, Oregon, and Texas reported that the lack of appropriate substance abuse treatment programs that address the needs of parents makes it difficult to get parents in treatment and stable by the 15th month.

### **New ASFA Adoption-Related Funds Most Commonly Used to Recruit Adoptive Families and Provide Post Adoption Services**

States reported in our survey that they most commonly used their adoption incentive payments and PSSF adoption promotion and support services funds to recruit adoptive families and to provide post adoption services (see table 1). Child welfare officials in all of the states we visited reported that they are struggling to recruit adoptive families for older children and those with severe behavioral or medical problems. To meet this challenge, states are investing in activities designed to

<sup>24</sup>In North Carolina, child welfare agency staff may recommend to the court that a TPR not be filed on a child who has been in care for 15 of the most recent 22 months; however, according to state officials, North Carolina requires that a judge determine that one of the ASFA exceptions exists.

<sup>25</sup>All the states we visited require that children over a certain age consent to their adoption. For example, Maryland requires that children 10 years or older consent to their adoption.

<sup>26</sup>ASFA specifically allows states to exempt children placed with relatives from the 15 of 22 provision.

match specific foster care children with adoptive families, as well as general campaigns to recruit adoptive families. Child-specific recruitment efforts include: featuring children available for adoption on television, hosting matching parties for prospective adoptive parents to meet children available for adoption, and taking pictures and videos of foster children to show to prospective families. For example, Massachusetts used its incentive payments to fund recruitment videos to feature the 20 children who had been waiting the longest for adoptive families. General recruitment efforts being funded by states include promoting adoption through National Adoption Month events, hiring additional recruiters, and partnering with religious groups.

**Table 1: Main Uses of Adoption Incentive Payments and PSSF Adoption Promotion and Support Funds**

Activity	Number of states using adoption incentive payments (FY 1999 and FY 2000)	Number of states using PSSF adoption promotion and support funds (FY 2000)
Recruitment of adoptive families	19 <sup>a</sup>	16 <sup>b</sup>
Post adoption services <sup>c</sup>	17 <sup>a</sup>	21 <sup>b</sup>
Preadoptive counseling	<sup>d</sup>	15
Hiring/Contracting additional social work staff	13 <sup>e</sup>	<sup>d</sup>
Training	11	4

Source: GAO survey.

Note: Of the 46 states that responded to our survey, 34 provided data on the use of FY 1999 and FY 2000 incentive payments and 26 provided information on the use of FY 2000 PSSF funds.

<sup>a</sup>One state provided data for calendar year 1999.

<sup>b</sup>One state provided data for calendar year 2000.

<sup>c</sup>Post adoption services include: counseling, respite care (short-term specialized child care to provide families with temporary relief from the challenges of caring for adoptive children), support groups, adoption subsidies, and adoption preservation services.

<sup>d</sup>This activity was not included as a response for this funding source.

<sup>e</sup>One state provided data for state fiscal years 1999 and 2000.

States are also investing adoption incentive payments and PSSF funds in services to help adoptive parents meet the challenges of caring for children who have experienced abuse and neglect. During our site visits, officials in Massachusetts and Illinois pointed out that the population of adopted children had increased significantly in recent years and that the availability of post adoption services was essential to ensure that these placements remain stable. Approximately 60 percent of the states responding to our survey used their adoption incentive payments or their PSSF funds or both for post adoption services, such as post adoption counseling, respite services, support groups, and recreational activities. For example, California has used some of its adoption incentive funds to pay for therapeutic camps and tutoring sessions for adopted children. In addition, Minnesota has used PSSF funds to teach adoptive parents how to care for children with fetal alcohol syndrome and children who find it difficult to become emotionally attached to caregivers.

Although the 46 states responding to our survey reported that they are most frequently using the money for the activities described above, about two-thirds of them also reported that they are investing some of these funds in a variety of other services. Many states are using PSSF funds to provide pre-adoptive counseling to help children and parents prepare for the emotional challenges of forming a new family. Similarly, some states are using incentive payments and PSSF funds to train foster families, adoptive families, and service providers. For example, Arkansas used its incentive payments to help families attend an adoptive parent conference, while Kentucky used its incentive funds to train judges and attorneys on adoption matters. Finally, some states are using their adoption incentive payments to hire or contract additional child welfare and legal staff.

#### **States Develop Practices in Response to Long-Standing Barriers That Continue to Hamper Efforts to Promote Permanency for Foster Children**

States have been developing a range of practices to address longstanding barriers to achieving permanency for children in a timely manner—many of which have been the subject of our previous reports. Both independently and through demonstration waivers approved by HHS, states are using a variety of practices to address barriers relating to the courts, recruiting adoptive families for children with special needs,

placing children in permanent homes in other jurisdictions, and the availability of needed services. Because few of these practices have been rigorously evaluated, however, limited information is available on their effectiveness.

### **Systemic Court Problems Continue to Delay Child Welfare Cases**

Our previous work, officials in all the states we visited, and over half of our survey respondents identified problems with the court system as a barrier to moving children from foster care into safe and permanent homes.<sup>27</sup> In 1999, we reported on systemic problems that hinder the ability of courts to produce decisions on child welfare cases in a timely manner that meet the needs of children.<sup>28</sup> The barriers included inadequate numbers of judges and attorneys to handle large caseloads, the lack of cooperation between the courts and child welfare agencies, and insufficient training of judges and attorneys involved in child welfare cases.

During our visit to Massachusetts, state officials told us that the courts experienced significant delays in court hearings and appeals due to a lack of court resources. As an alternative to court proceedings, Massachusetts implemented a permanency mediation program—a formal dispute resolution process in which an independent third party facilitates permanency planning between family members and potential adoptive parents in a nonadversarial setting. By avoiding trials to terminate parental rights, Massachusetts officials reported that permanency mediation helps reduce court workloads, eliminate appeals, and more effectively uses limited court resources. A preliminary evaluation of the Massachusetts program suggested that cases involved in the mediation program needed less time and fewer court resources to reach an agreement than cases that go to trial. However, the evaluation did not directly compare outcomes, such as the length of time a child spent in foster care, for mediation and nonmediation cases.

Texas officials identified court barriers in rural areas that negatively affect both the timeliness and quality of child welfare proceedings—specifically, the lack of court time for child welfare cases and the lack of judges with training and experience in child welfare issues. In response to these barriers, Texas developed the visiting judge cluster court system, an approach in which a judge trained in child welfare issues is assigned to a cluster of rural counties. The judge travels from county to county presiding over all child welfare cases. This approach may create more court time in rural areas and allows knowledgeable and experienced judges to make the best possible decisions for children in foster care. While Texas officials believe this approach has been helpful in moving children to permanency, no formal evaluation of the approach has been conducted.

### **Permanency for Children With Special Needs Hindered by Lack of Adoptive Families**

Officials in five states we visited, along with the majority of the respondents to our state survey, reported that difficulties in recruiting families to adopt children with special needs is a major barrier to achieving permanent placements for these children.<sup>29</sup> Our survey revealed that states relied on three main activities to recruit adoptive families for children who are waiting to be adopted: listing a child's profile on state and local Web sites, exploring adoption by adults significantly involved in the child's life, and featuring the child on local television news shows.<sup>30</sup>

Several states we visited are using recruitment campaigns targeted to particular individuals who may be more likely to adopt children with special needs. For example, the child welfare agencies in Illinois, Maryland, North Carolina, and Texas are collaborating with local churches to recruit adoptive families specifically for minority children. However, an Illinois recruitment report noted that little information exists

<sup>27</sup> Of the 29 states that reported an insufficient number of judges or court staff, 18 reported that the problem represented either a moderate, great, or very great hindrance to finding permanent homes for children. Of the 28 states that reported insufficient training for court staff, 20 reported that the problem represented a moderate or great hindrance. Of the 23 states that reported that judges were not supportive of ASFA's goals, 10 reported that the problem represented either a moderate, great, or very great hindrance. Of the 46 states that responded to our survey, 40 reported on the insufficient number of judges and court staff, 41 reported on the lack of training for judges and court staff, and 39 reported on judges not being supportive of ASFA's goals.

<sup>28</sup> U.S. General Accounting Office, *Juvenile Courts: Reforms Aim to Better Serve Maltreated Children*, GAO/HEHS-99-13 (Washington, D.C.: Jan. 11, 1999).

<sup>29</sup> Of the 46 states responding to our survey, 43 states reported on the sufficiency of adoptive homes for children with special needs. All 43 states reported that they did not have enough adoptive homes for children with special needs, with 39 reporting that the problem represented a moderate, great, or very great hindrance to finding permanent homes for children.

<sup>30</sup> Of the 46 states responding to our survey, 44 answered the question about recruitment activities used in their states.

on what kinds of families are likely to adopt children with specific characteristics. While the states we visited used a variety of recruitment efforts to find families for special needs children, they generally did not collect data on the effectiveness of their recruiting efforts.

In addition to the activities described above, some demonstration waivers are testing a different approach to finding permanent homes for children in foster care.<sup>31</sup> Seven states are using demonstration waivers to pay subsidies to relatives and foster parents who become legal guardians to foster children in their care. These states hope to reduce the number of children in long-term foster care by formalizing existing relationships in which relatives or foster parents are committed to caring for a child but adoption is not a viable option. Evaluation results from Illinois's waiver suggest that offering subsidized guardianship can increase the percentage of children placed in a permanent and safe home. Results from most of the other guardianship waiver projects are not yet available.

### **Placing Children Across Jurisdictions Remains Problematic for States**

Many states encounter longstanding barriers in placing children with adoptive families in other states. As we reported previously, these interjurisdictional adoptions take longer and are more complex than adoptions within the same child welfare jurisdiction.<sup>32</sup> Interjurisdictional adoptions involve recruiting adoptive families from other states or other counties within a state, conducting comprehensive home studies of adoptive families in one jurisdiction, sending the resulting home study reports to another jurisdiction, and ensuring that all required legal, financial, and administrative processes for interjurisdictional adoptions are completed. Five states we visited reported frequent delays in obtaining from other states the home study reports necessary to place a child with a potential adoptive family in another state. According to recent HHS data, children adopted by out-of-state families typically spend about 1 year longer in foster care than children adopted by in-state families.

Child welfare agencies have implemented a range of practices to facilitate adoptions across state and county lines. In our survey, the most common practices for recruiting adoptive families in other jurisdictions included publicizing profiles of foster care children on Web sites, presenting profiles of children in out-of-state media, and contracting with private agencies to recruit adoptive parents in other states.<sup>33</sup> States have also developed practices to expedite the completion of home studies and shorten the approval processes for interstate adoptions. The two primary practices cited by states on our survey were working with neighboring states to facilitate interstate placements and contracting with private agencies to conduct home studies in other states.<sup>34</sup>

States we visited have implemented several of these practices to overcome barriers to interjurisdictional adoptions. In Oregon, the state child welfare agency works with neighboring states in the Northwest Adoption Exchange to recruit adoptive parents for children with special needs. In Texas, the state contracts with private agencies to place foster care children with out-of-state adoptive families. In Illinois, the state works with a private agency in Mississippi to conduct home studies because families in Mississippi adopt many Illinois children.

### **Poor Access to Services Can Impede Permanency Decisions**

Officials in four states told us that making decisions about a child's permanent home within a year is difficult if the parent has not had access to the services necessary to address their problems, particularly substance abuse treatment. We have previously reported on barriers to working with parents who have a substance abuse problem, including inadequate treatment resources and a lack of collaboration among substance abuse treatment providers and child welfare agencies.<sup>35</sup> Similarly,

<sup>31</sup>HHS is authorized to approve child welfare demonstration projects in up to 10 states for each of the 5 fiscal years 1998 through 2002. Under these projects, HHS waives certain restrictions in Title IV-E and allows broader use of federal foster care funds.

<sup>32</sup>U.S. General Accounting Office, *Foster Care: HHS Could Better Facilitate the Interjurisdictional Adoption Process*, GAO/HEHS-00-12 (Washington, D.C.: Nov. 19, 1999).

<sup>33</sup>Of the 46 states that responded to our survey, 22 reported that they publicized profiles of foster children in media in other states, 41 reported that they publicized profiles of foster children on Web sites, and 15 reported that they contracted with private agencies to recruit adoptive parents in other states.

<sup>34</sup>Of the 46 states responding to our survey, 35 reported that they worked with neighboring states to facilitate interstate placements and 19 reported that they contracted with private agencies in other states to conduct home studies.

<sup>35</sup>U.S. General Accounting Office, *Foster Care: Agencies Face Challenges Securing Stable Homes for Children of Substance Abusers*, GAO/HEHS-98-182 (Washington, D.C.: Sept. 30, 1998).

33 states reported in our survey that the lack of substance abuse treatment programs is a barrier to achieving permanency for children.<sup>36</sup>

To address this issue, four states have developed waiver projects to address the needs of parents with substance abuse problems. By testing ways to engage parents in treatment and to provide more supportive services, these states hope to increase the number of substance abusing parents who engage in treatment, increase the percentage of children who reunify with parents who are recovering from a substance abuse problem, and reduce the time these children spend in foster care. For example, Delaware's waiver funds substance abuse counselors to help social workers assess potential substance abuse problems and engage parents in treatment. Final evaluation results were published in March 2002 and concluded that the project successfully engaged many parents in substance abuse treatment and resulted in foster care cost savings, although it did not achieve many of its intended outcomes. For example, children participating in the waiver project spent 31 percent less time in foster care than similar children who were not part of the waiver project, although the project's goal was a 50 percent reduction. Evaluation results for the other states are not yet available.

### Concluding Observations

Most of the states we visited reported that ASFA has played an important role in helping them focus on achieving permanency for children within the first year that they enter foster care. However, numerous problems with existing data make it difficult to assess at this time how outcomes for children in foster care have changed since ASFA was enacted. While an increasing number of children have been placed in permanent homes through adoption during the last several years, we know little about the role ASFA played in the adoption increases or other important outcomes, such as whether children who reunify with their families are more or less likely to return to foster care or whether these adoptions are more or less stable than adoptions from previous years.

The availability of reliable data, both on foster care outcomes and the effectiveness of child welfare practices, is essential to efforts to improve the child welfare system. In the past few years, HHS and the states have taken important steps to improve the data available to assess child welfare operations. In addition, evaluation data from the demonstration waivers should be available in the next few years, providing key information on child welfare practices that are effective and replicable. However, important information about ASFA's impact on children in foster care is still unavailable. For example, the lack of comprehensive and consistent data regarding the fast track and 15 of 22 provisions make it difficult to understand the role of these new provisions in reforming the child welfare system and moving children into permanent placements. To obtain a clearer understanding of how ASFA's two key permanency provisions are working, we recommended in our June 2002 report that the Secretary of HHS review the feasibility of collecting data on states' use of ASFA's fast track and 15 of 22 provisions. In commenting on that report, ACF generally agreed with our findings and recommendation. ACF officials report that they are currently in the process of reviewing child welfare data issues, which includes an internal review of AFCARS and obtaining input from the states through focus groups. In addition, GAO is currently conducting an engagement for the Senate Finance Committee and the House Majority Leader on states' implementation of automated information systems and reporting of child welfare data to HHS. I expect this report to be released in July.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee may have.

### GAO Contact and Acknowledgments

For further contacts regarding this testimony, please call Cornelia M. Ashby at (202) 512-8403. Individuals making key contributions to this testimony include Diana Pietrowiak, Sara L. Schibanoff, and Michelle St. Pierre.

#### Related GAO Products

*Child Welfare: HHS Could Play a Greater Role in Helping Child Welfare Agencies Recruit and Retain Staff.* GAO-03-357. Washington, D.C.: March 31, 2003.

*Foster Care: Recent Legislation Helps States Focus on Finding Permanent Homes for Children, but Long-Standing Barriers Remain.* GAO-02-585. Washington, D.C.: June 28, 2002.

<sup>36</sup>Of the 46 states that responded to our survey, 39 reported on the lack of substance abuse treatment programs. Of the 33 states that reported that not enough drug treatment programs were available, 26 reported that the problem represented either a moderate, great, or very great hindrance to finding permanent homes for children.

- Child Welfare: New Financing and Service Strategies Hold Promise, but Effects Unknown.* GAO/T-HEHS-00-158. Washington, D.C.: July 20, 2000.
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- Foster Care: Kinship Care Quality and Permanency Issues.* GAO/HEHS-99-32. Washington, D.C.: May 6, 1999.
- Foster Care: Increases in Adoption Rates.* GAO/HEHS-99-114R. Washington, D.C.: April 20, 1999.
- Juvenile Courts: Reforms Aim to Better Serve Maltreated Children.* GAO/HEHS-99-13. Washington, D.C.: January 11, 2000.
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Chairman HERGER. Thank you very much, Ms. Ashby. Next is the Honorable Dave Heaton, Representative from the Iowa House of Representatives.

**STATEMENT OF THE HONORABLE DAVE HEATON, CHAIRMAN, APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES, REPRESENTATIVE, IOWA HOUSE OF REPRESENTATIVES, AND VICE CHAIR, COMMITTEE ON HUMAN SERVICES, NATIONAL CONFERENCE OF STATE LEGISLATURES**

Mr. HEATON. Thank you, Chairman Herger, Ranking Member Cardin, and the Members of the Subcommittee on Human Resources. I am Representative Dave Heaton of Iowa. I Chair the Health and Human Services Appropriations Subcommittee in the Iowa House of Representatives. I appear here today on behalf of NCSL, where I serve as Vice Chair of the NCSL Human Services Committee. I am honored to be here.

Mr. Chairman, ASFA, which NCSL supported, strengthened the State and Federal partnership to protect our Nation's children. I am proud to testify today about how Iowa has made significant progress to ensure that children have safe and loving homes and don't languish in the foster care system.

The ASFA was based in part on early State efforts to speed the permanency process and shorten children's stays in foster care. After passage of the Federal legislation, all States enacted implementing legislation. In Iowa, we did more than change our statute. Judges tell parents up front that this is the time frame in which you must get your act together or a TPR petition will be filed. Judges ask them what services they will need to be reunified with their child.

We are moving in the right direction, but our challenge now is how to shore up our gains and move forward in very difficult State fiscal times. We have increased adoptions dramatically across the Nation. In Iowa, finalized adoptions have climbed from 280 in 1995 to 792 in 2002, including a record number of special needs children.

We must also look at the needs of the children caught in the revolving door of foster care. I have personally met children with double digit foster care placements. States need flexibility to focus on addressing the root causes of a child's problems, not on following arbitrary rules and process requirements.

The ASFA was a great start, but there is more to do. In a time of severe budget shortfalls, State lawmakers will likely be asked for the funding and resources to make the necessary program improvements. We have a \$400 million shortfall in Iowa's 2004 budget. The minimum cumulative budget gap around the country is \$68 billion. In Iowa, we passed a supplemental appropriation for child and family services of \$5.7 million. Most of it went to pay for adoption subsidies. There wasn't enough for the Department of Human Services to use to cover the waiting list of children needing group foster care. Over 100 kids are on the list.

Mr. Chairman, adoption incentive funds give us a way to build on success. Incentive funds have gone to the Foster and Adoptive Parent Association for peer support to avoid incomplete and disrupted adoptions. We have also sent the funds down to Iowa counties to extend the important incentive to the local level. We used incentive funds to purchase a 30-hour training curriculum for new foster and adoptive parents to help them understand their role in helping ensure children are safe and have permanency.

The NCSL strongly supports reauthorization of the Adoption Incentives Fund. Any change in how incentives are apportioned should be closely examined for unintended consequences. A key change sought by State legislators in 1997 was a movement to an assessment system based on outcomes. How did Iowa do in meeting the new CFSR standards? The answer is, some are met and some are not, and some are pending further review.

We did learn from the review several items that Iowans can be proud of: our statewide system of keeping track of at-risk children, our case review system, and our statewide plan to recruit and support adoptive and foster parents.

By definition, all States must be in substantial compliance with all standards in order to meet the new threshold. No State has done so, nor will Iowa. For example, one area identified for improvement was that we needed to do more to help families handle the pressures of reunification so that children don't return to foster care. We know that these improvements will cost money. Unfortunately, Federal funds were not provided to implement the changes recommended by the reviews. To meet the challenges facing the children and families in our communities, it will take more creativity and flexibility at the State and local level, not greater restriction at the Federal level.

One area of need actually results from our huge success in increasing the number of adoptions from foster care, the need to provide support for these families that open their hearts to these children. Many of these troubled youngsters have social and emotional

wounds caused by abuse, neglect, and frequent moves among foster homes. To meet the new priorities of ASFA, States need flexibility to use Title IV–E money for prevention, including child welfare and family services. We applaud the fact that the Administration and Congress recognized the importance of financing the issues of child welfare. Thank you.

[The prepared statement of Mr. Heaton follows:]

**Statement of The Honorable Dave Heaton, Chairman, Appropriations Subcommittee on Health and Human Services, Representative, Iowa House of Representatives, and Vice Chair, Committee on Human Services, National Conference of State Legislatures**

Chairman Herger, Ranking Member Cardin, and the Members of the Human Resources Subcommittee of the U.S. House Committee on Ways and Means, I am Representative Dave Heaton of Iowa. I chair the Health and Human Services Appropriations Subcommittee in the Iowa House of Representatives. I appear today on behalf of the National Conference of State Legislatures (NCSL) where I serve as vice chair of the NCSL Human Services and Welfare Committee. NCSL is the bipartisan organization that serves the legislators and staff of the states, commonwealths and territories. I am honored to be here.

Mr. Chairman, the Adoption and Safe Families Act strengthened the state/federal partnership to protect our nation's children. I am proud to testify today about how Iowa has made significant progress to ensure that children have safe and loving homes and don't languish in the foster care system. And we are not alone in doing so.

Even before ASFA was enacted in 1997, state legislatures had passed laws to speed the permanency process and shorten children's stays in foster care. In fact, ASFA was based in part on these early state efforts. After passage of the federal legislation, all states enacted implementing legislation and have refined these laws in subsequent legislative sessions.

NCSL supported ASFA, which reinforced the importance of keeping children's safety paramount. It set very high goals for states and a process of child and family service reviews to help assess state outcomes to assure the safety of children and their timely and appropriate placement in permanent homes and to show us where improvements are needed. It created the adoption incentive fund, which we have used in Iowa to improve our efforts to increase permanency for children. Implementing ASFA has not been easy and the child and family services reviews have given us a road map to improvement. We are moving in the right direction, but still have more to do for these vulnerable children, especially older children.

Mr. Chairman, our challenge now is how to shore up our gains and move forward in very difficult state fiscal times. Adoptions have been our greatest success. We have increased adoptions dramatically across the nation—in Iowa, finalized adoptions have climbed from 280 in 1995 to 792 in 2002. A record number of special needs children (781) were adopted in FY 02 in Iowa.

Implementing ASFA involved more than just changing our statute. ASFA's change to shorter timeframes for terminating parental rights caused us to rethink our strategy with parents. We have made sure that everyone involved is fully aware of the timeframe set out in the law. Judges tell parents up front this is the timeframe in which you must get your act together or a petition terminating parental rights will be filed. The judge asks the family if there are services they need so that they can be reunited with their child, even if they are not in the case plan. In other words, Iowa is proactive in communicating the law, and in dealing with a family's issues. Iowa looks for relatives, including noncustodial parents, to see if that relative presents a permanency option.

As I said, Iowa has been very successful in increasing adoptions. The new federal measures in ASFA give us a way to measure our performance. The federal Child and Family Services Review standard is that at least 32 percent of children who cannot be reunited with their parents must be adopted within two years. Iowa exceeds this standard at 48.8 percent.

But adoption is one part of a larger system, and we need to also focus on the needs of the children in foster care. Our child and family services review also pointed out this issue—sadly, we still have too many children caught in a revolving door of multiple foster care placements. I have personally met foster children from all over Iowa whose placements number in the double digits. States are bound by tight federal controls. States need flexibility so that their systems can focus on addressing

the root causes of a child's problems, not on following arbitrary rules and process requirements.

ASFA was a great start, but there is more to do and in a time of severe budget shortfalls, state lawmakers will likely be asked for the funding and resources to make the necessary program improvements. We have a \$400 million shortfall in Iowa's 2004 budget. In February, NCSL estimated that the minimum cumulative budget deficit for all states for FY04 was \$68 billion, with 39 states reporting. This year in Iowa, we had to pass a supplemental appropriation for child and family services of \$5.7 million. The vast majority of it went to pay for adoption subsidies. However, this amount was insufficient for the Department of Human Services to use to cover the waiting list of children needing group foster care—over 100 kids on the list. In Iowa, our reviews suggested more social worker training, and maintaining our rich array of services. All of these are especially challenged by our fiscal condition. Flexible federal funding is essential to address the changing needs of families and leverage state program funding.

Mr. Chairman, I would like to comment on some of the key provisions of ASFA and give the perspective of state legislators. These provisions include Adoption Incentives Funds, Child and Family Services Review, policy and funding flexibility, the Social Services Block Grant and relative care.

#### Adoption Incentives Funds

Mr. Chairman, adoption incentive funds have given us a way to build on and increase our success. Funds are used for a range of activities including the recruitment and support of adoptive parents. Supporting adoptive parents is critical to avoid incomplete and disrupted adoptions. One year, we sent the funds down to the Iowa counties that had increased adoption to expand the effect of this important incentive to the local level. Incentive funds have also gone to the Foster and Adoptive Parent Association for peer support. In Iowa, we have wonderful peer support groups for adoptive parents.

Incentive funds also purchased a 30-hour training curriculum for foster and adoptive parents. What's special about this curriculum, called PS-MAPP or Partnering for Safety and Permanence-Model Approach to Partnerships in Parenting, is that this curriculum has been updated to incorporate the philosophy and requirements of ASFA. The curriculum helps new foster and adoptive parents understand ASFA and their role in helping to ensure children are safe and have permanency.

NCSL strongly supports reauthorization of the Adoption Incentive Fund. However, we must acknowledge that in many states, their success at moving children into permanency will impact their ability to compete for incentive funds as the number of children needing an adoptive placement decline. We urge you to work closely with NCSL in developing your proposal for reauthorization. We have supported increased incentives for special needs children. Any changes in how incentives are apportioned should be closely examined for unintended consequences.

#### Federal Child and Family Service Reviews

Mr. Chairman, a key change sought by state legislators in 1997 was movement from a process assessment of our progress in child welfare to one based on outcomes. States' performance in achieving the outcomes of child safety, permanency and well-being is now being measured by the federal Child and Family Service Reviews. State legislators want their states to meet the tough new federal standards established by these reviews, and we now have a preliminary report for Iowa.

How did we do in Iowa? Are we meeting the standards? The answer is, some are met, some are not, and some are pending further review. These new federal measures give us a way to measure our performance. And, we now have a better understanding of where our states fit in.

We did learn from the reviews several items that Iowans can be proud of. Our statewide system of keeping track of at-risk children and their histories meets or exceeds federal requirements and our case review system is strong and getting stronger, with a written case plan for every child in foster care. We meet the Federal requirement for periodic review of every child in foster care. There is a strong partnership between the judiciary, the DHS and the Foster Care Review Board. Iowa has a statewide and focused plan to recruit and support adoptive and foster parents.

By definition, all states must be "in substantial compliance" with all standards in order to meet the new threshold. No state has done so, nor will Iowa. The reviews told us we need to do more. For example, one area identified for improvement was that we needed to do more to help families handle the pressures of reunification so that children don't return to foster care. Thus, our Department of Human Services

will work with partners in Iowa and with federal officials to prepare and implement a program improvement plan in the summer of 2003.

However, we already know that these improvements will cost money. Unfortunately, federal funds were not provided to implement the changes recommended by the assessment in the reviews. This is compounded by the lack of flexibility in the use of Title IV–E dollars and the look-back provision, which ties foster care funds to eligibility for the old Aid to Families with Dependent Children program.

#### The Need for More Flexible Funding for System Improvements

We are still trying to shorten the timeframe for permanency solutions. We have been learning from the Illinois experience and are moving to a results-based system and trying to free social workers to be able to do more investigations and prevention.

When states have attempted to reform service systems serving children and families, they are often unable to meet local service needs because of the inflexibility of the major federal funding streams and the wasteful administrative structure they require. To meet the challenges facing the children and families in our communities it will take more creativity and flexibility at the state and local levels, not greater restriction at the federal level. The use of funds is sometimes so restricted that states cannot use these funds to meet locally determined needs. States attempting major service reforms often face regulatory barriers that impede their efforts, require creative financing and contradict service priorities.

Children are being adopted from foster care at unprecedented rates; unfortunately, there has been less of a focus on support for families after adoption. Within the next two years, experts say, the cumulative number of children under 18 adopted from out-of-home placement will exceed the number of children in foster care. We need support for the families that open their hearts to these children, many of whom may have health and mental health problems as they mature. This is especially true of families who have been willing to adopt older children. Many of these troubled youngsters have social and emotional wounds caused by abuse, neglect and frequent moves among foster homes. Types of services needed for post adoption support include: mental health services, including short-term residential treatment; respite care; peer support; and information and referral. Respite services, for example, are tremendously beneficial for adoptive parents dealing with children with special needs.

In order to better meet the new priorities of the Adoption and Safe Families Act, states need flexibility to use Title IV–E for prevention, including child welfare and family services. NCSL is very pleased that the Administration and Congress are discussing child welfare financing, and we look forward to working with you on this critical issue. We applaud the fact that you recognize the importance of the financing issues in child welfare and the importance of state flexibility. State lawmakers have the responsibility of child welfare funding decisions and thus must participate in framing a financing proposal. NCSL is on record as opposing a mandatory block grant of child welfare funds.

#### Program Coordination

Approximately 8.3 million children live with one parent who is dependent on alcohol and/or in need of treatment for illicit drugs. An estimated 40–80% of children in the child welfare system have families with alcohol and drug problems. In particular, widespread addiction by women has been a hidden problem. The Adoption and Safe Families Act has strict timelines for state decisionmaking. Significant federal support is needed to meet the treatment needs of families who come to the attention of the system. This is critical to keeping children safe and in permanent families.

NCSL supports reforms to help states address the growing problems that substance abuse has placed on the child welfare system, including extensive outreach, education and early intervention to pregnant women and specialized early childhood problems. State legislators have long been the innovators of these programs, using predominantly state, local and private funds. NCSL supports the creation of federal incentives for partnerships between substance abuse and child welfare agencies that could enhance these efforts. Such efforts include cross system training of staff, improved screening and assessment procedures, comprehensive treatment and prevention programs and improved data collection.

NCSL supports federal incentives for coordination between child welfare systems, domestic violence agencies, and juvenile courts. Families and children in the child welfare system often face complex problems such as homelessness, substance abuse, and HIV infection that require interdisciplinary and interagency solutions. To com-

bat service fragmentation, the federal government should provide support for the coordination of service delivery among the public and private child welfare, child mental health, and juvenile justice systems as well as TANF, education and health agencies. Interagency collaboration including public/private partnerships should be encouraged to further integrate and coordinate services. State flexibility must be maintained in these programs to provide interagency training, budgeting, planning and conflict resolution as well as integrated data systems.

Coordination with Medicaid is critical for these children. I want to note that NCSL is concerned about the recent denial of plans where states have used Medicaid for targeted case management.

NCSL also supports expanded federal waiver authority so that states can test the results of increased state funding flexibility on the development of service alternatives in particular as well as the overall delivery of child welfare and family services. NCSL especially supports lifting the cap on the number of states that can receive child welfare waivers as a way to increase innovation in child welfare programs. We appreciate this provision in H.R. 4.

#### Social Services Block Grant (SSBG)

The Social Services Block Grant is an increasingly important source of child welfare services, including protective services. The flexibility of SSBG funds, distributed at state discretion, is critical to the success of these programs. In Iowa, we use SSBG to assist our foster care system and to improve case management. SSBG is a vital part of the delivery of community and home-based services to the most vulnerable segments of society including the disabled, elderly, and children in need of protective services. Unfortunately, Title XX has fared poorly in the federal budget environment, and Congress has abandoned its commitment to the current authorized level of \$2.8 billion as agreed to in the 1996 welfare law. NCSL urges Congress to increase funding for this critical program.

It is also critical that the amount states can transfer from their TANF grants to the SSBG remains at least 10% and is not reduced. Further reductions in funding for this grant would mean programmatic losses and service reductions.

#### Relative Care and Permanency

NCSL supports the concept that grandparents, or other immediate family members, who are caring for children who cannot safely remain with their parents, should be given priority for such custody and placement over placement in a foster home, unless the court determines that placement with any of these relatives is not in the best interest of the child or children.

In Iowa, as I stated earlier, we seek out these relatives. Additionally, kinship foster care placement and/or subsidies should not be contingent on physical removal of a child from his or her relatives. Subsidized guardianship with relatives may be an appropriate permanency option for children who cannot safely return home. Federal funds should be available for this option and for support services for caretaker relatives. This may be especially important for older children for whom adoption may not be well received and when termination has implications not only for relationships with parents but with siblings.

#### The "Look Back" Provision

An issue that remains to be addressed is reconciling the "look back" date to a state's old Aid to Families with Dependent Children (AFDC) plan when determining IV-E eligibility. As members of the subcommittee are well aware, the AFDC program ceased to exist with the creation of the TANF program. NCSL urges federal policymakers to reconsider this provision. We urge Congress to consider delinking foster care eligibility from AFDC eligibility as of July 16, 1996 and move toward reimbursement for all children in care, as the states determine. States already serve all children at risk for abuse and neglect despite their parent's income. States currently fund foster care for all non-AFDC eligible children because all children must be protected under law. It should be a state-federal partnership to serve all vulnerable children.

#### Prevention

In Iowa, we created a community empowerment program to focus on primary prevention—ages birth to preschool—using combined efforts of education, public health, and human services. Most of the money is going to home visiting programs and quality child care. There is a general long-term plan to begin incorporating other age groups as the program matures. As I said earlier, more flexibility is needed to enhance prevention in this system.

Technical Assistance

NCSL urges Congress to provide states with additional federal financial support and technical assistance in their efforts to implement a comprehensive service system that helps institute more effective child welfare and adoption policies and practices. NCSL assisted the Children's Bureau with AFSA implantation by providing state lawmakers with help as they enacted state statutory and funding changes.

Mr. Chairman, that concludes my testimony. I would be very happy to respond to any questions that you and the members of the subcommittee have at this time.

Chairman HERGER. Thank you very much, Representative Heaton. Now to testify next is Ms. Arnold-Williams, on behalf of the APHSA. Ms. Arnold-Williams.

**STATEMENT OF ROBIN ARNOLD-WILLIAMS, EXECUTIVE DIRECTOR, UTAH DEPARTMENT OF HUMAN SERVICES, AND CHAIR, POLICY COUNCIL, AMERICAN PUBLIC HUMAN SERVICES ASSOCIATION**

Ms. ARNOLD-WILLIAMS. Chairman Herger, Congressman Cardin, and Members of the Subcommittee, in addition to serving as Executive Director of the Utah Department of Human Services, I serve as Chair of the APHSA's Policy Council. I thank you for the opportunity to testify today about implementation of ASFA.

Over the past 5 years, States have fundamentally changed their child welfare programs, focusing their ASFA reforms, including permanency timelines, termination of parental rights, and adoption efforts on the goal of achieving safety and permanency for children.

Some States adopted stricter provisions than ASFA. For example, in Utah we limit reunification efforts to 12 months, as compared to the Federal goal of 15 months. A record increase in the number of adoptions has been a key outcome. In 1999, States increased adoptions by 28 percent, and in subsequent years, they continue to increase, with States earning more than \$100 million in adoption incentive bonuses.

States have been so successful that the pool of children who are being placed has diminished, and harder to place children, including older children, those in large sibling groups, or with mental health or behavioral problems remain in care.

In a system where States are too often penalized, this incentive program provides States with flexible resources to provide safety and permanency for children. That is why APHSA supports reauthorization of this program. However, the formula and base year must be changed so that States, particularly high-performing ones, continue to have an incentive to promote adoption. Flexibility in the scope of services for which bonus money can be used must also continue.

While APHSA has not yet finalized its position on the President's proposal, we do register some concern regarding targeting children by age. For some of these older children, permanency may be achieved through legal guardianship, an outcome not supported by the current incentive system.

The ASFA has also increased State accountability by measuring outcomes related to safety, permanence, and well-being. The CFSR is involved in intense, on-site case reviews and interviews with children, families, and stakeholders. States must create program

improvement plans establishing specific goals and strategies. Thirty-two States have now been reviewed, and while some have wrongly characterized these reviews as measures of whether States have passed or failed, States view the results as establishing a baseline by which they can assess their continuous improvement.

The CFSRs are important to measuring outcomes and ensuring State accountability. However, the process raises some concerns. Given State budget shortfalls, there are limited resources to implement State performance improvement plans. The Title IV–E funding stream is so inflexible that it may not be utilized to meet many of the outcomes States seek to achieve. We believe the Federal Government has an obligation to show its leadership and commitment by providing States with the flexibility and resources needed to meet the outcomes of ASFA.

The ASFA has strengthened linkages between programs, such as health, substance abuse, domestic violence and the courts. The health and mental health of foster children is a key outcome in the CFSR. The APHSA is very concerned about recent restrictions on the use of Medicaid funds for targeted case management services for foster children. We have funded these services with Medicaid for decades, and we want to work with Congress and the Administration to ensure that we can continue to fund these critical health services for children.

In my State of Utah, we have made tremendous progress. I am pleased to report that during the last year, all regions exceeded our high child and family status performance standards, including safety, stability, health, emotional well-being, learning progress, appropriateness of placement, and caregiver functioning. Over the last 10 years, my child welfare budget has increased 184 percent, with State funds increasing 345 percent. Even in these difficult times, my legislature recently adopted the Governor’s budget, adding 51 additional caseworkers and trainers, so we can maintain our low caseloads and deliver quality services.

We now serve many more children and families through up front, in-home service and kinship care than we do in foster care, and our foster care caseload has steadily declined over the last 5 years.

Mr. Chairman, the child welfare system is faced with many challenges that require a sustained Federal and State partnership. With this in mind, we offer the following recommendations for your consideration:

The Federal financing structure for child welfare no longer supports the outcomes we seek to achieve. Title IV–E funding is biased toward out-of-home care. In addition, to foster care maintenance payments, we believe Federal funding should support front-end services, reunification, and post permanency services.

The Aid to Families with Dependent Children (AFDC) “look back” standard should be repealed. The Federal Government should support all abused and neglected children, not just those who come from poor families. The CFSRs measure outcomes for all children, while Federal funding streams support a declining percentage of those children.

We urge the House to support an increase in the Social Services Block Grant (SSBG), which is a key support for child welfare services. The ASFA has made important improvements to the child

welfare system. However, we must not forget those children who remain in foster care, and their families.

We believe that a continued and renewed Federal/State partnership will help us achieve the goals of ASFA, and I would be happy to answer any questions you have. Thank you.

[The prepared statement of Ms. Arnold-Williams follows:]

**Statement of Robin Arnold-Williams, Executive Director, Utah Department of Human Services, and Chair, Policy Council, American Public Human Services Association**

**INTRODUCTION**

Chairman Herger, Congressman Cardin, Members of the Subcommittee, I am Robin Arnold-Williams, executive director of the Utah Department of Human Services. In this position, I am responsible for a variety of programs, including aging and adult services, disabilities, child support collections, substance abuse, mental health, youth corrections and child welfare (including child abuse, neglect, foster care and adoption). I have served in this position since 1997. I am also here today in my role as chair of the National Council of State Human Service Administrators, the policymaking body of the American Public Human Services Association (APHSA). APHSA is a nonprofit, bipartisan organization that has represented state and local human service professionals for more than 70 years. As the national organization representing state and local agencies responsible for the operating and administering public human service programs, including child protection, foster care and adoption, APHSA, and its affiliate, NAPCWA, the National Association of Public Child Welfare Administrators, have a longstanding interest in developing and promoting policies and practices that enable states to help our nation's most vulnerable children and families. Thank you for the opportunity to testify today about implementation of the Adoption and Safe Families Act (ASFA).

On behalf of APHSA and the state of Utah, I want to take a moment to commend this Subcommittee for recognizing the importance of ASFA and for holding this hearing. I would also like to mention how pleased we are that President Bush has included full funding for the Promoting Safe and Stable Families program in his budget, and that reauthorization of the Child Abuse Prevention and Treatment Act (CAPTA) has passed the House and the Senate. We thank you for your efforts to reauthorize and reform the Title IV-E child welfare waiver authority in the welfare reform bill. Finally, I want to thank Representative Camp for introducing legislation that would amend Title IV-E to give tribal governments direct access to the foster care and adoption assistance program, providing Indian children with the same services that are currently available to other IV-E-eligible children, and encourage Members to support this legislation. We look forward to working with you on these issues and on child welfare funding during the 108th Congress and in the future.

**BACKGROUND**

The child welfare system serves some of America's most fragile and troubled citizens—families in crisis and children who have been abused and neglected. In 2001, state child protective service agencies received an estimated 2.6 million referrals alleging child maltreatment, with an estimated 903,000 found to be victims. As of September 2000, 556,000 children were in foster care, with 291,000 entering in that year, and 131,000 children were awaiting adoption. Public child welfare agencies provide a broad array of services to these children and families, including prevention and family support services; early intervention and family preservation services; child protective services; foster care; and permanency and post-permanency services. Public child welfare agencies also work closely with other public agencies that often deal with the same population, including TANF and Medicaid agencies; domestic violence programs; substance abuse treatment agencies; and mental health programs.

**THE ADOPTION AND SAFE FAMILIES ACT (ASFA)**

The Adoption and Safe Families Act (P.L. 105-89) became law on November 17, 1997. The law made the most sweeping changes to the child welfare system since passage of P.L. 96-272, the Adoption Assistance and Child Welfare Act of 1980. It made safety, permanency, and well-being the outcome goals of the child welfare system. The law makes it clear that the safety and well-being of children must be the paramount concerns of state child welfare systems. The act created bonuses to states for increasing adoptions; required states to make timely determinations about permanency for children in state care (under ASFA, states must file a petition to

terminate parental rights and find a qualified adoptive family on behalf of any child who has been in foster care for 15 out of the most recent 22 months); focused attention on outcomes and accountability; established a federal review system for the child welfare system (the Children and Family Services Reviews); and expanded the child welfare waiver demonstration program. ASFA holds states accountable for achieving outcomes for children with respect to safety, permanence, and well-being, and requires an annual report to Congress on state-by-state performance.

Since ASFA's passage, states have passed laws and implemented program changes in many areas in order to comply with ASFA's many new requirements. These areas include laws dealing with timelines for permanency hearings, adoption across state lines, assurances of child safety, classification of reasonable efforts, termination of parental rights, criminal records checks, and health insurance for special-needs children. It is important to note that many states had statutes, policies, and procedures in these areas in place even prior to ASFA. In fact, some states had, and continue to have, even stricter provisions than ASFA requires. In Utah, for example, there is a limit on reunification of families after only 12 months in foster care, rather than those in care for the last 15 out of 22 months. ASFA did, however, help standardize some of these procedures across regions and states.

## **IMPACT OF ASFA**

### ***Adoption***

There are several areas of child welfare policy and practice in which AFSA has had a strong impact. Perhaps it is easiest to see the impact AFSA has had on the adoption program. As part of its focus on permanency, ASFA included a provision establishing the Title IV-E Adoption Incentives Payment Program. The goal of this program was to promote adoption through incentive payments to states for increasing the number of children adopted from the public foster care system. States had been implementing innovative adoption programs for some time, and have been very successful in increasing the number of adoptions from foster care. In FY 1999, states increased the number of adoptions from foster care 28 percent from the year before and earned a combined total of \$51.48 million dollars in Adoption Incentive funds. States have been so successful in finding adoptive families for children in foster care that the pool of children who are being placed has diminished, thereby reducing the opportunity for states to earn significant incentive funds. In FY 2000, adoptions continued to increase, but given that states had completed such a large number of adoptions the previous year, they earned a total of only \$33.2 million in incentive funds. Adoptive homes have been found for less hard to place children, but many harder to place children, including older children, those in large sibling groups, or with mental health or behavioral problems, remain in care. As a result, in FY 2001, funds received through the program fell even further to \$17.6 million.

The Adoption Incentives Program expires on September 30, 2003, and the President's FY 2004 budget request includes reauthorization of the program. The President's request proposes changes to the incentive system to target older children who constitute an increasing proportion of the children waiting for adoptive families by amending the program to target incentives specifically to older children, with ACF awarding incentives to states using two independent baselines: one for the total number of children adopted from the public foster care system; and the other for children age 9 and older adopted from the public foster care system.

States have used funds received through the Adoption Incentives Program to make investments in many areas, including post-adoption services, recruitment of adoptive families and adoption awareness, staff training, and increased adoption subsidies and should be allowed to continue to benefit from this incentive program even though some are no longer able to increase the number of adoptions at previous levels. In a system where states are too often penalized and sanctioned, this incentive program is a positive step toward providing states with the flexible resources they need to provide safety and permanency to children in the child welfare system. That is why APHSA supports the reauthorization of this program. However, the formula and base year for determining the bonuses must be changed so that states, particularly high-performing ones, continue to have an incentive to promote adoption. States also should continue to have flexibility in the scope of services for which they can use bonus money. While APHSA has not yet finalized its position on the President's proposal, we do want to register some concerns regarding targeting children by age. For some of these older children, permanency may be achieved through legalized guardianship, an outcome not supported by the current incentive system.

Finally, it must be noted that rewarding states for increasing adoptions must be viewed in the larger context of child welfare financing reform. The Administration proposes setting a new goal, which would increase the total number of public agency

adoptions to 300,000 adoptions between FY 2004 and FY 2008. The budget states that 300,000 adoptions over five years is a substantial, but achievable, state goal. However, under the current financing structure, states will not be able to maintain the same level of momentum without access to more permanent and flexible sources of funding. Additional resources will also help continue the national momentum toward building services to support families once a permanent plan has been achieved.

#### ***Accountability Through Measuring Outcomes***

ASFA has also made an impact by increasing state accountability through outcome measurement. ASFA holds states accountable for achieving outcomes for children with respect to safety, permanence, and well-being, and required HHS to develop outcome measures in order to rate state performance. HHS is required, through ASFA, to publish an annual report on these child welfare outcomes. In order to inform the HHS process of creating outcome measures, APHSA established a working group of state human service administrators and child welfare directors to develop recommendations on outcome measures. APHSA then helped create the seven measures used in the report, which were developed by a consultation group of representatives from HHS, states, local agencies, tribes, courts, child advocates, and other experts in the field, including representatives from APHSA and its members. The final seven outcome measures are (1) reduce recurrence of child abuse and/or neglect; (2) reduce the incidence of child abuse and/or neglect in foster care; (3) increase permanency for children in foster care; (4) reduce time in foster care to reunification without increasing reentry; (5) reduce time in foster care to adoption; (6) increase placement stability; and (7) reduce placements of young children in group homes or institutions. To date, HHS has published two of the required reports, *Child Welfare Outcomes 1998: Annual Report* and *Child Welfare Outcomes 1999: Annual Report*. APHSA hopes that the data in the reports will act as baseline data to assess state improvements in performance in coming years, and not as a way to compare states to each other. As a result of our involvement in the process, states are committed to an increased focus on accountability and believe that an outcomes-focused system will ultimately improve the lives of vulnerable children and create safe and permanent families. We look forward to the next report.

#### ***Child and Family Services Reviews (CFSR)***

Annual report data are not the only manner in which the federal government is assessing outcomes for children. Federal regulations issued in January 2000 for ASFA established a new federal review process to measure states regarding the quality of services provided to, and outcome results for, at-risk children. These reviews are known as the Child and Family Services Reviews (CFSRs). A major initiative to come out of ASFA, with CFSRs states are currently involved in all aspects of the review process—from preparing for a review to implementing Program Improvement Plans (PIPs). The reviews include an assessment of state data and intensive on-site case reviews and interviews with children, families, and stakeholders (such as judges, foster parents, and service providers). Statewide data indicators and qualitative information obtained from on-site reviews in three state sites determine if a state substantially conforms under Titles IV-B and IV-E of the Social Security Act. As part of the review process, HHS has developed national standards to determine how well states are performing. The indicators help determine whether or not states are operating in substantial conformity. A state that is not operating in substantial conformity, as a result of their review, will have an opportunity for program improvement and technical assistance prior to any federal fund withholding. All states must create a Program Improvement Plan, establishing areas and goals for improvement in their system. As of January 2003, 32 states have participated in the review process. It is important to note that some have wrongly characterized these reviews as measures of whether states have passed or failed. However, APHSA and states view the results of the CFSR's as establishing a baseline, by which they can assess their continuous improvement over time.

In the past two years APHSA has held meetings on the Children and Family Services Reviews, most recently in January 2003. State child welfare administrators together with representatives from the Administration discussed the CFSR process. States agreed that they are committed to the review process and feel that there are many positive aspects to the reviews. Some of these positive aspects are (1) the focus of the reviews is on outcomes and not on process; (2) the move to a data-focused system has improved program administration; (3) the outcomes used are both relevant and positive; and, (4) the process is practice-focused and applies to the full spectrum of child welfare.

However, there are areas of the review process that are problematic for states. Perhaps the issue of greatest concern for states is that, given severe budget shortfalls, they do not have the resources to implement program improvements outlined in their PIPs. Furthermore, the Title IV-E funding stream cannot be utilized to meet many of the outcomes states seek to achieve. It is not enough to know what goals need to be achieved to help children and families in the child welfare system, the resources must also be available. We believe the federal government has an obligation to show leadership and commitment in this area by providing states with the flexibility and resources they need to meet the outcomes of ASFA as outlined in Program Improvement Plans.

States are also concerned about some of the data issues surrounding CFSRs. They would like to see current data systems updated to include a variety of data, such as longitudinal, point in time, exit, and entry cohort data. Another concern is that the national standards and methods of measurement do not consistently reflect best practices. In striving to meet the national standards, states must be able to also support good practice. The compatibility of data across states is a serious concern and states feel strongly that the baseline for each state should drive measurement of improvement rather than national standards. The results of a very rural state being compared with a largely urban state can prove misleading and the very nature of the child welfare population is another source of variation that contributes to the lack of comparability across states.

For states, the annual report and CFSRs are consistent with their commitment to improving outcomes and increasing accountability in the public child welfare system. APHSA and states have had a long-standing interest in moving the public child welfare system from a process-driven system to an outcomes-focused system, so that its success is measured by positive outcomes for children. States are committed to quality services for children and families and accountability for achieving outcomes and support the outcomes-focused approach to federal child and family service reviews, and the use of both qualitative and quantitative information to judge performance. However, reviews must serve as an accurate and fair measure of state performance. National standards on which performance is determined must be based on accurate data so that the fairness of these reviews is not compromised.

#### ***Links to Other Systems***

Another area where ASFA has led to changes in how the child welfare system functions relates to the important links between child welfare and other service systems. Child welfare practice has become more and more complex, with tremendous demands on the system, with increasingly challenging populations; high caseloads and scarce resources; interstate issues; overrepresentation of children of color; and increased expectations and requirements. In recent years, children and families who come to the attention of child welfare increasingly exhibit multiple problems that require a coordinated response from multiple public agencies and service systems outside child welfare. It is not unusual for families to have serious substance abuse problems, mental illness, or domestic violence concerns; in fact, it is not unusual for a family entering the system to enter it with all of these problems. It is important to recognize that the system encompasses more than the state public child welfare agency. The courts, as well as private agencies, are partners in providing for the safety, permanence, and well-being of children. In addition, substance abuse, mental health, medical, and domestic violence services are all integral to serving children and families who come to the attention of the child welfare system, and public agencies must collaborate with these other service systems in order to provide for the safety and well-being of children and to meet the shortened timeframes for permanency enacted in ASFA. Congress and the federal government could best help families by allocating new resources for communities to build collaborative services and partnerships among CPS agencies, domestic violence advocacy and intervention services, child and family health and mental health providers and multiple court systems.

#### ***Health***

The health and mental health of children in the foster care system is a key outcome measure in the CFSR. APHSA and our members are very concerned about recent actions to deny states ability to use Medicaid funds for targeted case management (TCM) services for children in the foster care system. States have helped many children and families in the system by providing wraparound services, such as comprehensive needs assessments, individual service plans, service plan development and review, referrals for services, service coordination and monitoring, case management, rehabilitation service coordination, rehabilitation links and aftercare, and service management through TCM. States have funded these services with Medicaid

money for decades. We want to work with Congress and the Administration to ensure that states can fund these critical health services for children in the child welfare system through Medicaid.

#### *Substance Abuse*

Linkages are particularly important in the area of substance abuse and child abuse. Substance abuse is estimated to be a factor in over one-half of child abuse and neglect cases. To fulfill ASFA requirements, child welfare and alcohol and drug prevention and treatment agencies must work together at federal, state and local levels and with other service providers, the courts, communities and families. APHSA has collaborated with both the Substance Abuse and Mental Health Services Administration (SAMHSA) and the HHS Administration for Children and Families on solutions to serving families who are affected by substance abuse problems in order to help meet ASFA's goals, particularly in terms of meeting ASFA's permanency timelines.

#### *Domestic Violence*

The link between domestic violence and child maltreatment has become clearer in recent years. For example, in Utah in FY 2002, 25 percent of substantiated cases were related to domestic violence. APHSA has taken a lead role in the area of the link between child maltreatment and domestic violence. An example of this leadership role is publication of *Guidelines for Public Child Welfare Agencies Serving Children and Families Experiencing Domestic Violence*, which provides broad guidance to public human service agency commissioners, public child welfare agency directors, and their staffs. The guidelines describe model policies, practices, programs, and protocols that address the multiple needs of families and children affected by domestic violence and child maltreatment, and provide a conceptual framework that enables child welfare agencies to integrate best practices and policies within their existing mandates, including ASFA.

#### *Courts*

ASFA requires shorter timeframes for permanency hearings and termination of parental rights proceedings. States have passed laws and changed their policies to meet these new requirements, but the juvenile and family courts currently do not have the capacity to address the backlog of children in care nor to move the new children entering the system more expeditiously to permanence. Although federal law places numerous mandates on the courts, federal funding is not provided. Clearly, the courts are integral to state child welfare systems meeting the goals of ASFA, yet their services are not reimbursable under the current Title IV-E funding scheme. ASFA's success requires increased court activities to enhance permanence and meet new timeframes. Further, state agencies are penalized if the court does not follow the mandates. In order to facilitate better partnership between state child welfare system and the courts, APHSA is working closely with the National Council of Juvenile and Family Court Judges (NCJFCJ), through a subcommittee established specifically to look at interstate placements. APHSA is working with NCJFCJ through this subcommittee to identify issues in interstate placements and work on resolving those issues, the most pressing of which is the time it takes to complete placements. For state child welfare agencies to meet the goals of ASFA it is critical that they and other agencies and providers have the resources they need in order to collaborate and serve these families. To ensure safety and permanence for children in the child welfare system new cross-agency partnerships are needed.

#### ***Child Welfare Workforce***

Last week the General Accounting Office (GAO) released a report, *Child Welfare: HHS Could Play a Greater Role in Helping Child Welfare Agencies Recruit and Retain Staff* that identifies the challenges child welfare agencies face in recruiting and retaining child welfare workers and supervisors; how recruitment and retention challenges have affected the safety and permanency outcomes of children in foster care; and workforce practices that public and private child welfare agencies have implemented to successfully confront recruitment and retention challenges. The report states that child welfare agencies face a number of challenges in recruiting and retaining workers and supervisors and that low salaries, in particular, hinder agencies' ability to attract potential child welfare workers and to retain those already in the profession. The report recommends that the HHS secretary take actions that may help child welfare agencies address the recruitment and retention challenges they face. Such efforts may include HHS using its annual discretionary grant program to promote targeted research on the effectiveness of perceived promising practices or provide technical assistance to states.

**Utah**

In my state of Utah, we have made tremendous progress in addressing the safety, permanency, and well-being outcomes for our children through efforts to fundamentally change the culture of my child welfare agency and to reform the day to day practices of line staff, supervisors, and administrators. Our reform efforts began in 1994 through a cooperative effort of our agency, the legislature, and our judiciary. Over the past 10 years, the total budget for my child welfare division has increased 184 percent with the amount of state general funds increasing by 345 percent. Even in these difficult budgetary times of across the board budget reductions, the governor recommended and the legislature endorsed the addition of 51 child welfare caseworkers and trainers so that we can maintain our low caseloads and deliver quality services. Through our efforts and the capacity that our state resources have provided, we now serve many more children and families through up-front, in-home services than we do in foster care. In fact, our foster care caseload has steadily declined over the past five years from a high monthly average of 2,324 children in 1998 to a monthly average of 1,988 children in 2002.

We were a state that adopted standards for child safety, permanency, and well-being even prior to ASFA's passage. To continually monitor our performance on these standards, we developed a comprehensive case process and qualitative review process that has now been operating for over four years. The system we use is very similar to that employed in the federal Child and Family Services Reviews. I am pleased to report that during last fiscal year, all regions of my state exceeded the high performance standards we have for child and family status, including safety, stability, health and physical well-being, emotional and behavioral well-being, learning progress, appropriateness of placement, and caregiver functioning.

Another issue regarding the courts is that Utah, like many states, is subject to federal court oversight of our child welfare system operations. The majority of these court cases and corresponding settlement agreements and monitoring arrangements predated ASFA and development of national outcomes and performance standards signifying substantial conformity with federal requirements. In some cases, the standards to which we are being held for purposes of federal court oversight are higher and may conflict with the newly established federal standards. Utah's child and family services review is scheduled for later this month and a concern that we foresee is that as we develop our Performance Improvement Plan, it will not align with our plan to meet and exit from federal court oversight. My child welfare agency may be faced with meeting two different plans. Federal courts and the federal agency should hold states to the same standards.

**California**

Mr. Chairman, your home state of California has embraced the principles of ASFA, and passed laws enabling the state to comply with the law. The California Adoption Initiative is one example of how the state is successfully meeting ASFA's goals. In 2001, California received an HHS Adoption Excellence Award for creating a cross-cutting Adoption Initiative Bureau involving public and private providers, advocate and adoptive families. The result has been a significant increase in the number of children who are adopted from foster care.

**Maryland**

And Mr. Cardin, Maryland has made many changes to its child welfare system as a result of ASFA. One is the timely passage of a state law regarding children in out-of-home placements that incorporated both the requirements and the goals mandated by ASFA. Another was the development of the Child Welfare and Adult Performance System (CAPS). This case record review system is one of the methods that Maryland has implemented to ensure compliance with federal regulations. Maryland has also been successful in developing a safety instrument to measure safety for every child in out-of-home placement and for children receiving in-home services. Additionally, ASFA funding allowed Maryland to fully implement its court improvement project and provide judges with ASFA training.

**REMAINING CHALLENGES AND RECOMMENDATIONS**

APHSA and public child welfare administrators believe that children are safer and living in more permanent settings as a result of both state action and the landmark ASFA law. ASFA has become an inextricable part of child welfare policy and practice. In many areas, ASFA has changed the way child welfare is practiced in this country. However, while a great deal has been achieved, much more still needs to be accomplished to help families in the child welfare system.

### ***Adoption Incentives Program***

As I have stated, the Adoption Incentives Program should be reauthorized in a way that allows states to continue to have an incentive to promote adoptions and earn incentive funds. States have been so successful in finding adoptive families for children in foster care that the pool of children who are being placed has diminished, thereby reducing the opportunity for states to earn significant bonuses. The formula and base year for determining incentive payments must be changed so that they remain fair and equitable to states.

### ***Flexibility and Funding***

The federal financing structure for child welfare that was established in 1980 no longer works. The current structure of federal child welfare funding does not adequately support the outcomes for the children and families that public child welfare agencies, Congress, the federal government, child advocates, and the public seek to achieve. The biggest share of this federal funding is disproportionately directed toward funding out-of-home care—the very part of the system that agencies are seeking to minimize to achieve greater permanence for children. Title IV–E funds should fund services in addition to foster care maintenance payments, such as front-end services, reunification, and post-permanency services for children in the child welfare system.

The needs of state child welfare systems far outstrip the resources that are now provided with federal funding. With states historically outspending the federal government, we believe it is time for a more equitable state-federal financial partnership. Exacerbating the resource problem is that, under the welfare reform law, states are required to “look back” to old AFDC rules in effect on July 16, 1996, to determine Title IV–E eligibility. Not only is this administratively burdensome, but the law does not allow the income standards in effect on July 16, 1996, to grow with inflation. As a result, eligibility for federal reimbursement has decreased over time, leading to a continued loss of federal funding to states. We support delinking IV–E eligibility from AFDC so that the federal government can support all children in the child welfare system regardless of income. In the years since ASFA’s enactment, states have demonstrated significant progress, not only because of the new law but also because of state initiatives that were in place prior to the law. The federal government, however, has not provided sufficient resources to support state’s efforts to meet these new mandates.

In terms of ASFA, we are very concerned that given severe state budget shortfalls, we do not have the resources to allow states to improve outcomes for children and families outlined in their Children and Family Services Reviews and Program Improvement Plans. Given the limited resources available in states at this time, we feel that the federal government has an obligation to show leadership and commitment in this area by providing states with the flexibility and resources they need to meet the outcomes of ASFA.

### ***SSBG***

I cannot discuss child welfare funding without mentioning the Social Services Block Grant (SSBG). SSBG is a critical source of federal funding for child welfare services, and \$1.3 billion in increased funding is currently pending in the Senate as part of the CARE Act. There are a host of SSBG services that support children and their families involved in the child welfare system; it is significant that states used almost \$623 million for foster care, child protection, case management, and adoption alone. APHSA strongly encourages the subcommittee to make SSBG funding increases an integral part of any companion bill to CARE that moves through the House.

### ***Title IV–E Waivers***

Another priority area for APHSA, and an additional way to make federal child welfare funding more flexible, is to expand the Title IV–E Child Welfare Demonstration Waivers authorized under ASFA and to increase their flexibility. The current waiver process limits innovation, prohibits approval for multiple states to test similar innovations, such as subsidized guardianship; restricts research, control groups, and random assignment requirements; cost-neutrality methodology; and limits statewide approaches. While the waiver program has enabled some states to reinvest federal foster care funding in services and other activities to improve their systems and promote permanence, in its current mode of HHS implementation, it is a promise unfulfilled and will not meet state’s needs for the flexibility necessary to achieve broad systems change. APHSA strongly supports making substantial modifications to the current Title IV–E waiver process to allow more flexibility and to foster system change, including eliminating the limited number of waivers HHS can

approve; eliminating approval criteria that require random assignment and control groups that limit statewide approaches; eliminating the limited number of states that may conduct waivers on the same topic; eliminating the limited number of waivers that may be conducted by a single state; and enabling states to continue their waivers beyond five years. We appreciate the leadership of this Subcommittee to reauthorize IV–E waivers in H.R. 4, the welfare reform act.

#### **CONCLUSION**

Everyone can agree that ASFA has been successful in making important improvements to the child welfare system. However, we must be careful not to forget the children who remain in foster care and their families. While ASFA has helped states continue making improvements to the child welfare system and helping our nation's vulnerable children and families, the current structure of child welfare remains disproportionately directed toward funding out-of-home care, and does not promote services that encourage child safety or promote family reunification.

APHSA's vision for child welfare is a society where children are free from abuse and neglect, and live in safe, stable, permanent families—where children and families have needed supports and can help themselves. When children are at risk and come to the attention of the public agency, the agency can provide services and supports to them and their families to mitigate their problems and prevent them from being removed from their families and communities. When children must come into care, the agency can address children and family needs expeditiously and enable a safe reunification or, where that is not possible, find an alternative permanent placement expeditiously, while assuring their well-being in the interim. This is a vision where the safety and protection of children is the shared responsibility of all parts of the human service agency and the larger community. It is a vision where the child welfare system has the capacity to improve outcomes for children and families and the federal government and states are equal partners in serving all children in all parts of the system.

Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.

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Chairman HERGER. Thank you very much. Now we will hear from Ms. Judith Schagrin, Assistant Director, Baltimore County Department of Social Services.

#### **STATEMENT OF JUDITH M. SCHAGRIN, ASSISTANT DIRECTOR FOR CHILDREN'S SERVICES, BALTIMORE COUNTY DEPARTMENT OF SOCIAL SERVICES, BALTIMORE, MARYLAND**

Ms. SCHAGRIN. Good afternoon. I welcome the opportunity to speak with you today about the implementation of ASFA from the perspective of one who lives it. After 20 years in the public sector, I continue to have a passion for my work. I love the challenges of providing child welfare services—and there are plenty of them.

Through my 20 years, I have watched far too many children grow up unnecessarily in foster care, while their parents were given opportunity after opportunity after opportunity to remedy what brought their child into care.

What has been most valuable about ASFA was the change in focus in foster care services, from endless efforts at reunification to reasonable efforts, with an emphasis on permanent families for children. For many children, this has been a blessing. We have broadened our understanding of adoptive potential and are far more proactive about looking for permanent homes and encouraging foster parents, including relatives, to consider the permanence of adoption. We are finalizing adoptions not just of young children, but also teenagers up to the age of 18, as well as children with significant medical and mental health needs.

All of that being said, when ASFA was passed there were those who believed that all children are adoptable and that ASFA would eliminate the need for long-term foster care. In reality, there are not enough homes capable of meeting the needs of our most damaged children, and many of our adolescents simply don't want to be adopted. They have strong connections with families, though troubled, may be loving.

In Baltimore County, one-fourth of the children who are under our care are over the age of 13, and 50 percent of our overall population is over the age of 15. It's important to remember that there will always be children who the State, you, and I, will be responsible for. We have an obligation to these children to be the very best parents we can be.

In our rush to terminate parental rights, some children will be left legal orphans, while others whose adoption has been finalized are beginning to trickle back into foster care. Some of these families are committed to their children and working toward reunifications, while others have abandoned their children once again to the foster care system.

It is important to keep in mind as well that no new Federal funds were made available to carry the mandates of the ASFA legislation. For example, case workers are now spending three times as much time in court, paperwork requirements continue to burgeon out of control, and efforts to recruit, train, and support adoptive families for very damaged children must be expanded.

I was glad to hear you mention the GAO report on the Professionalization of Child Welfare. No matter what legislation is passed, no matter what incentives are made available, no matter what regulations are implemented, I firmly believe that without well-trained, adequately compensated, and professional staff, good results for vulnerable families and maltreated children will continue to be elusive.

You have heard today with respect to the financing of child welfare services that there are widespread sentiments that Federal Title IV-E funding is inflexible and eligibility requirements are outdated. Commenting first on eligibility, I have never quite understood why the government's commitment isn't to all children in government custody, not just those from impoverished homes, and surely it's time to reevaluate basing Title IV-E reimbursability on whether or not the home would have been eligible for an AFDC grant, according to standards that are now 7 years old.

Looking to the future, I understand there is some talk of block granting Title IV-E funds under the guise of offering greater flexibility. I believe that to be simply wrong. When we look back at our Nation's experience with Title XX block grants, we know that while there was a substantial allocation for family services when States had control of the funding, many of them stopped using them for the purpose for which they were intended.

Once the impact of block granting Title XX funds was felt, the number of children entering foster care grew dramatically, virtually wiping out the progress made by the first permanency planning legislation.

In summary, overall ASFA has had positive outcomes for many children. Continued progress toward a quality child welfare system

is critical. To the last half of the 19th century, we believed that orphan trains were a progressive way to care for orphans and maltreated children. I am hopeful that in another hundred years a revolution of social conscience will allow us to look back at the child welfare practices today with shock and amazement, that helpless children were given such short shrift in the land of plenty.

While ASFA has yielded many successes, the child welfare system is far from what our most precious resource, our children, need and deserve. These children depend on society's largess for their very existence. Please don't let them down.

[The prepared statement of Ms. Schagrin follows:]

**Statement of Judith M. Schagrin, Assistant Director for Children's Services, Baltimore County Department of Social Services, Baltimore, Maryland**

Thank you for the opportunity to share the perspective on implementation of the Adoptions and Safe Families Act from those of us doing the work. I began my career in child welfare shortly after the implementation of the Adoptions Assistance and Child Welfare Act passed in 1980 (P.L. 96-272). As an administrator, I have been responsible for integrating the changes brought about by the ASFA legislation into our agency's practice.

The shift brought about by the Adoptions and Safe Families Act away from protracted reunification efforts to an emphasis on achieving timely and permanent family placements for children has been of significant value. Over my 20 years in child welfare, I have watched children grow up unnecessarily in foster care while their parents were given opportunity after opportunity to remedy the issues that resulted in placement. When reunification cannot occur, ASFA has enabled us to move more quickly toward adoption or legal guardianship. Our understanding about adoptive potential has broadened significantly. We are finding adoptive homes for older children and those with multiple physical and emotional complications while for other children, relatives are stepping forward willing to offer the permanence of adoption. Especially for children under the age of six, one of the positive results in my own county has been that the length of stay has steadily dropped since ASFA implementation, from 21 months pre-ASFA to 15 months since July 1999.

Significantly, however, while ASFA created a number of new mandates for states, no additional federal funds were provided to meet these requirements. For example, caseworkers now spend three times as much time in the court, and recruitment efforts for families willing to adopt very special needs children need to be more intensive and far-reaching. Equally disturbing, little emphasis has been placed nationally on the professionalization of child welfare staff or lowering of caseloads to make this very important work possible. Increasingly studies are demonstrating the value of a social work degree to achieve better outcomes for children and their families. No matter what legislation is passed or what regulations are implemented, without well-trained, adequately compensated, and professional staff good results for vulnerable families and maltreated children will continue to be elusive.

This being said, some ASFA provisions have been problematic:

- A waiver of reunification efforts can be requested based on extreme circumstances. However, from our experience in Maryland it is uncertain whether the court can and will terminate parental rights at a contested TPR hearing when no efforts were made to provide reunification services.
- When ASFA was passed, there were those who believed that we would soon see the end of foster care, that all children are adoptable. An adoptive home will be found for a child at high risk for mental illness; a psychotic nine year old exhibiting destructive, assaultive, and sexualized behavior will need far more intensive supervision and treatment. It is critical to understand that there will always be children that the state will raise; we have a moral obligation to be the very best parent we can for those children.
- The emphasis on termination of parental rights at 15 out of 22 months without some reasonable certainty of an adoptive home will create an increasing pool of legal orphans.
- Children are beginning to re-enter foster care after the dissolution of their finalized adoptions; sadly enough this is likely to be a trend given the enormous challenges for families caring for very disturbed and damaged children.

- Outcome and other child welfare accountability measures don't necessarily measure the quality of care. Child welfare suffers from a dearth of meaningful research designed to establish protocols for successful interventions and meaningful performance measures.
- While lengths of stay may be decreasing, we have experienced an increase in the number of children entering foster care. Baltimore County's overall number of children in care has increased over the past ten years from 469 in July '93 to 682 children today, 51% of whom are over the age of 13. This is a population with significant mental health needs who may be coming from families in which substance abuse, mental illness, parental abandonment or incarceration, and domestic violence have been the norm. Adoption may not be reasonable or possible.

As Congress considers future financing policy in child welfare, the outdated eligibility for, and inflexibility of, Title IV-E federal funding are major issues. Commenting first on eligibility, surely it is only reasonable to anticipate that the federal government's commitment to children in government custody be inclusive of all foster children, not just those from impoverished homes. Basing eligibility for federal funding on whether a family would have met eligibility standards for the outdated Aid to Families with Dependent Children (AFDC) program using the "look back" date of June 1, 1996, carries a heavy price to administer and has resulted in fewer eligible children. Certainly a review of this requirement is long overdue.

While the inflexibility of IV-E funds is indeed a problem, block granting these funds in exchange for flexibility would be disastrous. Dismantling federal oversight and accountability is simply an abdication of responsibility for our nation's most helpless children, those who are in fact the state's children. To understand the downside of block granting child welfare funds, it is important to examine our nation's experience with the Title XX funds block granted by in the early 1980's. While there was originally a substantial allocation for family services—preventive, reunification, aftercare, etc.—when states had control of the funding, many ceased using the funds for their original intent. It is no coincidence that once the impact of block granting Title XX funds was felt, the number of children entering foster care grew dramatically, virtually wiping out the progress made by the implementation of the first permanency planning legislation, P.L. 96-272, in 1980. Please do not repeat this mistake; surely a better means of incorporating enhanced flexibility would be to revise current government regulations relating to federal child welfare funds.

In summary, overall the Adoptions and Safe Families Act has had positive outcomes for many children but continued progress is critical. Through the last half of the 19th century, we believed that Orphan Trains were a progressive way of meeting the needs of orphans and maltreated children. Perhaps in another 100 years a revolution of social conscience will cause us to look back at the child welfare practices of today with shock and amazement that helpless children were given such short shrift in such a land of plenty. While ASFA has yielded some successes, our child welfare system is far from what our most precious resource, our children, need and deserve. These children depend on society's largesse for their very existence; please don't let them down by abdicating federal responsibility for these children and their families.

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Chairman HERGER. Thank you very much for your testimony, Ms. Schagrin. Now we will turn to S. Truett Cathy, founder and Chairman of Chick-fil-A, Inc., Atlanta, Georgia. Mr. Cathy.

**STATEMENT OF S. TRUETT CATHY, MEMBER, HORATIO ALGER ASSOCIATION, AND FOUNDER, WINSHAPE CENTER, INC., ATLANTA, GEORGIA**

Mr. CATHY. Mr. Chairman and Members of the Committee, may I share with you a story about Woody Faulk. Woody was brought to my Sunday school class by a neighbor. Woody was a victim of circumstance. His mother and father divorced when he was 4. He lived with his mom in Lake City, Florida, where he joined the Boy Scouts. He was off on a scouting trip when he was located by a patrolman who told him his mom had been killed instantly in a car

accident. Soon after that he was notified that his father, who lived in California and whom he had not seen for years, died. He had one sister, a college student, and an aunt and uncle. He was brought to Jonesboro, Georgia to live in my community with his aunt and uncle.

Realizing his needs, I gave him a lot of my time and attention and invited him to live with us. Woody, at the age of 13, came to me and told me, he said, when I grow up, I want to work for you. He said he didn't want to operate one of those Chick-fil-A units, but he wanted a desk and a secretary like I had.

Today he has accomplished that goal. He graduated from the University of Georgia with high honors. I served as best man at his wedding. He achieved a Master of Business Administration at Harvard and is happily married and has three precious little girls. Woody has accompanied me here today.

From this experience came the motivation for me to start foster homes. I created WinShape Homes. I saw there were many children in America who never stole anything, never used drugs or alcohol, but were seeking some guidance and encouragement from others.

The children we try to identify are those who do not have serious behavior problems, but oftentimes have heavy baggage. We have been successful in keeping sibling groups together. We currently have 89 siblings in our program that would otherwise not be together.

The homes we have established have 12 children in each home. These homes are described as all-American, fashionable homes, with a large amount of acreage for the children to run and play. We employ full-time parents who view their responsibilities as a calling, not a job.

All of these children are treated as my own grandchildren. I play the part of an adopted grandpa. I tell the children they do not have to call me grandpa, but those who do call me grandpa get more.

[Laughter.]

I introduce them to others as their grandpa by choice. They chose me, and I chose them. We tell the children this is your home for as long as you like. This is your place where you bring your children and tell them, "This is where I grew up." You do not have to worry about a caseworker coming and taking you away to another foster home. They feel secure and stable.

I endorse adoption. Adoption is wonderful if it takes place at an early age, the earlier the better. It is very difficult for an older child to make the adjustment to comply with the rules and regulations of the home.

About 2 years ago we had three sisters who had been with us for 6½ years, who were happy, well adjusted, and well bonded to their house-parents and other family members. Their caseworker was mandated by the Federal government to find an adoptive placement for these girls, even though the girls did not want to be adopted. The adoption process was started and was very upsetting to the girls, as well as the whole family. After two potential placements disrupted, WinShape went before the Commissioner of the State of Tennessee to ask for his consideration in leaving the girls

with WinShape as a long-term placement. The case was reviewed and WinShape was granted custody and the girls are still with us.

Approximately 5 years ago WinShape Homes had three bi-racial children who have been living with us for almost 3 years. The children were thriving for the first time in their lives and doing well in school. The State of Georgia decided to look for an adoptive home for these children and eventually found one, even though it has seven other children. Before the year was out, the adoption disrupted, the kids were back to their old emotional state of mind, and they were split up and sent to different facilities. We had already filled their beds and had no room for them at the time. It is very emotional and upsetting when we lose a child, not only to the house-parents, but very upsetting to their grandpa.

In some cases, I have gone through the court system and personally become legal guardian of nine children in order to keep them. WinShape Homes currently has 36 private placements.

WinShape has 14 homes, 9 in Georgia, 3 in Tennessee, 1 in Alabama, and 1 in Brazil, that serve 134 children. The house-parents are role models for the children, often blending their own natural children together, all treated equally. We have had only two changes in house-parents during the 15 years we've been in business.

I was in Washington this past week where I serve as a member of the Horatio Alger Association, where we recognized 104 children who came from poverty and abused situations, who have overcome their upbringing to set high goals for themselves. They were awarded—

Chairman HERGER. Mr. Cathy, if you can sum up, your time has expired. We certainly will put all your testimony in the record.

Mr. CATHY. All right. Let me close by saying I highly endorse adoption. I am responsible for two boys being adopted, but neither worked out. While I know that adoption is great, there is a place for foster care, particularly those of an older age. We generally select children from school age. We are what is classified as an "All-American home" by the parents there, to nurture the children off to school, to greet them when they come home, get them to the doctors and dentists and other places, and get them to participate in the school activities. We feel we are rendering a service, and we would like to be able to use that and to continue on since we have had so much success in this area.

[The prepared statement of Mr. Cathy follows:]

**Statement of S. Truett Cathy, Member, Horatio Alger Association, and Founder, WinShape Center, Inc., Atlanta, Georgia**

My thanks to U.S. Representative Mac Collins, and others responsible for extending this invitation to speak to you today on a subject very dear to my heart—foster care.

Mr. Chairman and Members of the Committee, may I tell you a story about Woody Faulk. Woody was brought to my Sunday school class by a neighbor. (I have taught Sunday school for 47 years.) Woody was a victim of circumstance—mother and dad divorced at the age of 4. He lived with his mom in Lake City, Florida, where his mom worked two jobs. Woody joined the Boy Scouts (and later made Eagle Scout) early in his life. He was off on a scouting trip when he was located by a policeman who told him his mom had been killed instantly in a car accident. Soon after, he was notified that his father, who lived in California and whom he had not seen for years, had died. He had one sister, a college student, and an aunt and uncle. He was sent to Jonesboro, Georgia to live in my community with his aunt

and uncle. There they made room for Woody to share a bedroom with his cousin who was the same age as Woody.

Realizing his needs, I gave him a lot of my time and attention with the consent of my wife, Jeannette and our three children, who were all in college at that time. Woody, at the age of 13, came to me in church to tell me when he grew up he wanted to work for me. He said he didn't want to operate one of our Chick-fil-A units, but wanted a desk and secretary like I had. Today, he has accomplished his goal. I attended his graduation at the University of Georgia. He received high honors in marketing. I served as best man in his wedding. He achieved an MBA at Harvard and is happily married and has three precious little girls. Would you please recognize Woody Faulk who accompanied me today.

From this experience came the motivation to start foster homes, and I created WinShape Homes as part of my foundation, WinShape Centre. I saw that there were many children in America who never stole anything, never used drugs or alcohol, but were seeking some guidance and encouragement from others.

The children we try to identify are those who do not have serious behavior problems, but often time have heavy baggage. We have been successful in keeping sibling groups together. We currently have 89 siblings in our program that would, otherwise, not be together.

The homes we have established have 12 children in each home. These homes are described as All-American, attractive and comfortable with a large amount of acreage for the children to run and play. We employ full-time parents who view their responsibilities as a calling, not a job. All of these children are treated as my own grandchildren. I play the part of an adopted grandpa. (I tell them they do not have to call me grandpa, but they get more if they do!) I introduce them to others as their grandpa by choice—they choose me and I choose them. We tell our children, you'll be here forever. This is the place you bring your children and tell them "this is where I grew up." You do not have to worry about a caseworker taking you to another foster home.

I endorse adoption. Adoption is wonderful, if it takes place at an early age—the earlier the better. It is very difficult for an older child to make the adjustment and comply with the rules.

About two years ago, we had three sisters who had been with us for 6½ years who were happy, well adjusted and had bonded with their houseparents and other family members. Their caseworker was mandated by the federal government to find an adoptive placement for these girls, even though the girls did not want to be adopted. The adoption process was started and was very upsetting to the girls as well as the whole family. After two potential placements disrupted, WinShape went before the Commissioner of the State (Tennessee) to ask for his consideration in leaving the girls with WinShape as a long-term placement. The case was reviewed and WinShape was granted custody. The girls are still with us.

Approximately five years ago, WinShape Homes had three bi-racial children who had lived with us for almost three years. The children were thriving for the first time in their lives and doing well in school. The State (Georgia) decided to look for an adoptive home for the kids and eventually found one—even though it was with seven other children. Before the year was out, the adoption disrupted, the kids were back to their old emotional state of mind and they were split up and sent to different facilities. We had already filled their beds and had no room to take them back. It is very emotional and upsetting when we lose a child, not only to the houseparents, but to their grandpa.

I was responsible for securing the adoption of two boys to two different families that I knew well, but neither worked out. The adopted parents had a six month trial period after which they did not have to keep the child. You can imagine the trauma to that child's life—to be rejected after a short period of time.

In some cases, I've gone through the court system and personally become legal guardian of nine children in order to keep them. WinShape Homes currently has custody of 36 private placements.

WinShape now has 14 homes—9 in Georgia, 3 in Tennessee, 1 in Alabama and 1 in Brazil, that serve 134 children in these homes. The parents are role models for the children, often blending their own natural children together, all treated equally. We have had only two changes in houseparents since we began in 1987.

I was in Washington this past week where I serve as a member of the Horatio Alger Association. We recognized 104 children, who came from poverty and abused situations who have overcome their upbringing to set high goals for themselves. They were awarded a \$10,000 scholarship to the college of their choice. These Horatio Alger Scholars were selected from 7,000 applications.

There is a problem in America today—how to handle deprived children. A child today only has a 50–50 chance of having both mom and dad living under the same roof.

Mr. Chairman, I applaud the work of Congress focusing on the long-term security of children who have been displaced from their biological family for one reason or another. I hope the 1997 Adoption and Safe Families Act has had many positive outcomes. However, one unintended consequence has been the impact on our program, and possibly others like ours.

While we do not believe our program is sole answer to the problems facing displaced children, I strongly feel we are part of the solution, a larger solution of providing alternatives to courts and child welfare agencies.

Right now, with the sole emphasis on adoption, reunification, or placement with a relative, programs like ours are not having the chance to help children which may benefit most from a permanent and stable placement. In other words, for some children, adoption is not in the best interest of the child. For instance, many children have been in our care for several years and have bonded with their houseparents. Some of our children are part of sibling groups who do not want to be split up. Others still have relationships with their parents, grandparents or other family, and severing of parental rights (as required for adoption) may not be the best option for that child.

What I am asking this committee and Congress to do is give courts and child placing agencies the flexibility to consider plans like ours on an equal footing with adoption and other permanency alternatives when developing permanency plans for children, which would include the incentive payments to State agencies that you are considering today. While we have many private placements, and could accept only private placements in our homes should we so choose, we feel children in State custody are just as deserving of our services and that the State and WinShape can both benefit by working together.

In closing, Mr. Chairman, my goal is to impact the lives of children in a positive way, and give them what they may never have otherwise—a loving, permanent, home. My foundation is endowed to continue to add homes and grow long after I am gone, and I hope, with your help, it will have the opportunity to keep serving the most vulnerable of our society, our children.

There is a need for programs such as ours. I could tell you many wonderful stories of our successes and a few failures. But the success stories far outweigh the failures. That's what motivates me to be better and encourages me to do more. We're not perfect, but we are making efforts to help those who desperately need help.

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Chairman HERGER. Mr. Cathy, I want to thank you for the incredible example of your involvement of going the extra mile, and then some, to help those who are so in need. Thank you very much, and thank you for being here and for your testimony today. Next we will turn to Mark Hardin, Director, National Child Welfare Resource Center on Legal and Judicial Issues. Mr. Hardin.

**STATEMENT OF MARK HARDIN, DIRECTOR, NATIONAL CHILD WELFARE RESOURCE CENTER ON LEGAL AND JUDICIAL ISSUES, AND DIRECTOR OF CHILD WELFARE, CENTER ON CHILDREN AND THE LAW, AMERICAN BAR ASSOCIATION**

Mr. HARDIN. Mr. Chairman and Members of the Subcommittee, I very much appreciate the opportunity to testify today. I'm going to cover four points.

First, the role of courts in achieving goals of ASFA; second, how the Federal Court Improvement Program (CIP) helps States implement ASFA; third, continuing barriers courts are facing in playing their role in the implementation; and finally, some promising new developments in the CIP.

I am sure you're very well aware of the critical role that court decisions play in the foster care system. After all, courts decide when children can be placed in foster care, whether and when they

can be returned home, and whether children are going to be placed in new permanent homes. When judges make mistakes or delay decisions, a child can suffer injury, even death. A family can needlessly be broken up and a child can languish for years in foster care. So, obviously, the performance of courts has a lot to do with the ultimate success of ASFA.

The ASFA, incidentally, includes a number of specific directives to courts with regard to findings courts are supposed to make, deadlines for hearings, and also what is supposed to happen at different hearings.

My second point is about the Federal CIP and how it's making a difference in ASFA implementation. The CIP provides grants to State courts. It goes to the highest State court and the money is exclusively to be used in improving the way the courts perform in child abuse and neglect foster care adoption cases. Every State has accepted these funds as well as the District of Columbia and Puerto Rico.

Nearly every State CIP project played a major role in developing the State laws to implement ASFA. Many have revised court rules, court forms, and court procedures. The CIP projects have also done a great deal to educate their practitioners. They have developed judicial bench books, and lawyer manuals. Every program has done repeated training on ASFA.

They have also been involved in many, many other ways in implementing ASFA, including reorganizing courts. I will just say that attached to my written testimony is an article about that.

My third point is about the persistent barriers facing courts in implementing ASFA. In ABA's opinion, the CIP is a remarkably effective Federal program, especially given the funding level. On the other hand, we feel that most courts have not yet received the level of excellence that we think is possible that, in fact, we know is possible by the examples of some courts.

One serious barrier is still excessive judicial workloads in many courts. Many judges still don't have the time to devote to each case to really take a careful individualized look at the situation of the child and the family.

Another problem is unevenness of legal representation. This is important. After all, attorneys and guardian ad litem and counsel volunteers are very largely responsible for providing the information to the judge, that the judge takes into account in making decisions. Again, CIP projects have been very helpful, but we have a long way to go.

Finally, I want to mention some promising signs of progress, even regarding these very difficult challenges. To improve judicial workloads, we are improving our ability to determine how many judges are needed and court staff are needed to handle these challenges. The ABA, the National Council of Juvenile Family Court Judges, and the National Center for State Courts are together working hard on this. We feel the State CIP projects are very receptive.

There is also some hope for improvement of legal representation. Many States are adopting strict performance standards for attorneys in our field. The ABA has also endorsed standards.

There is a recent book describing how to reorganize and improve law offices to be more effective. There is a lot to be said about that. Again, there's a lot to be done, frankly, in terms of legal representation.

Another important development is the courts are developing a better capacity to evaluate their own work. We think this is critical. There are now a few States that are able, through their use of computer technology, to gather routine data measuring how they're doing.

One example, of course, is their timeliness, where are they finding delays, where are they doing well, and moving their cases through the courts. There are some modest Federal funds just released under the Strength and Abuse Neglect Courts Act (SANCA), and we're excited about that because we think that can expand some of these initiatives. We hope that SANCA funding will continue and, indeed, grow.

Another development is courts are increasing long-range planning. A new Federal program instruction is working on that.

To sum up, CIP has done much to improve court performance. It's not going to solve all the problems, but we think it will help countless children achieve safety and permanency. Thank you.

[The prepared statement of Mr. Hardin follows:]

**Statement of Mark Hardin, Director, National Child Welfare Resource Center on Legal and Judicial Issues, and Director of Child Welfare, Center on Children and the Law, American Bar Association**

Mr. Chairman, Members of the Subcommittee. Thank you for the opportunity to testify this afternoon.

On behalf of Alfred P. Carlton, Jr., President of the American Bar Association (ABA), I am pleased to appear today before the Subcommittee and to submit this statement regarding the contribution of the Court Improvement Program to the success of the Adoption and Safe Families Act of 1997. The ABA continues its strong support of the Adoption and Safe Families Act (ASFA), which is helping to achieve higher levels of safety, permanency, and well being for foster children. The ABA also continues to support the Court Improvement Program (CIP), which is helping to achieve systemic improvement of our Nation's juvenile dependency court systems, so that all children who have been the victims of abuse and neglect can achieve safety and permanency and enjoy the stability and love of family.

The ABA has for many years devoted considerable attention to improving court processes affecting children in foster care. In 1980, the ABA House of Delegates adopted a resolution in support of passage of the Federal Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, 42 U.S.C. §§ 620-629, 670-679. In 1988, the ABA House of Delegates further called for substantial amendments to that Act to strengthen the role of the legal system and ensure more consistent services for children. These amendments included creation of federal fiscal incentives to courts to reduce or limit delays in foster care litigation and improve court rules governing foster care cases. In February 1997, the ABA House approved a recommendation supporting federal legislation to remove barriers to adoption, which formed the basis for our support of ASFA.

The ABA Center on Children and the Law has been actively involved with improving the handling of child abuse and neglect proceedings for many years, developing model statutes and court rules, providing technical assistance to states, and developing legal manuals for attorneys and judges. The Center has also provided extensive training throughout the United States to help courts and child welfare agencies comply with the mandates of the Adoption and Safe Families Act of 1997 (ASFA).

I am the Director of Child Welfare at the American Bar Association Center on Children and the Law and also Director of our federally supported National Child Welfare Resource Center on Legal and Judicial Issues. For over 25 years, I have specialized in legal issues concerning child abuse and neglect, foster care, and adoption. I have also testified before this Subcommittee a number of times during my 23 years at the ABA.

I testify today about how the CIP is helping state courts implement ASFA. As you know, the CIP provides grants to each of the highest state courts, specifically to improve their performance in child abuse, foster care, and adoption cases. During my testimony, I will discuss four points:

- First, the critical role of courts in achieving the goals of the federal Adoption and Safe Families Act of 1997 (ASFA).
- Second, how the Court Improvement Program helps state courts implement ASFA.
- Third, continuing concerns facing the courts.
- Fourth, promising new ways that the Court Improvement Program can help make ASFA more effective.

1. Courts play a critical role in achieving the goals of ASFA.

You are already aware, I'm sure, that courts play a central role in planning and decisionmaking for children in foster care. Courts make a whole series of pivotal decisions concerning each foster child. Among other things, courts decide whether a child will be placed in foster care, be returned home, and—when return home is not possible—whether a child will be placed in a permanent new home.

Because they are charged with making these decisions, judges play a vital role in achieving the ASFA goals of child safety and permanency. Safety for an abused child may require a judge to authorize the child's placement in foster care. Permanency for a neglected child who can't safely return home may require a judge to free the child for adoption.

When judges make errors or delay decisions, the results can be severe. A child can suffer injury or even death, a family can needlessly be broken up, and a child can languish for years in foster care instead of growing up in a new safe, permanent home.

So, court performance is a key to achieving the goals of ASFA. And besides being essential to achieving ASFA's goals, courts must also implement the letter of ASFA. That is, important ASFA requirements specifically apply to courts. For example, ASFA requires courts to:

- Determine whether agencies have made reasonable efforts to preserve families or to achieve new permanent homes for foster children;
- Conduct timely and decisive permanency hearings, to assure timely permanent homes for children in foster care;
- Hear termination of parental rights petitions; and
- Decide whether and when children are to be adopted, placed in legal guardianship, or in other permanent placement arrangements.

2. The Court Improvement Program has had a major role in helping courts to implement ASFA. The Court Improvement Program has played a major role in ensuring that the courts implement ASFA. Nearly every CIP project has helped develop state legislation to implement ASFA requirements. Many have revised court rules and procedures to conform to ASFA. Still others have redesigned court forms to set forth decisions and findings that ASFA requires.

Of course, it is not enough to change laws, procedures, and court forms. Practitioners have to understand and apply the intent of the law. Most CIP projects have made substantial efforts to accomplish this. For example, CIP projects have:

- Provided training for judges, attorneys, and other advocates, which focuses on the goals and requirements of ASFA;
- Developed benchbooks for judges to help judges implement ASFA; and
- Developed ASFA manuals and instructional materials for attorneys.

Further, state CIP projects have helped courts make organizational changes to facilitate their implementation of ASFA. Many projects have helped courts tighten scheduling to ensure timely permanency hearings and timely termination of parental rights proceedings. CIP projects also have funded evaluations to measure how well courts are actually following legal deadlines, including ASFA deadlines, and how well they are achieving timely permanency for foster children.

CIP projects have engaged in a wide range of other activities to help implement ASFA and achieve its goals. An article describing these activities, entitled *Court Improvement for Child Abuse and Neglect Litigation: What Next?* is attached to the ABA's written statement.

3. Courts continue to face barriers in their implementation of ASFA.

In spite of the efforts of CIP projects, many courts do continue to face barriers to full implementation of ASFA. While CIP is a remarkably successful federal pro-

gram, particularly given its modest level of funding, most courts hearing child protection cases have not yet achieved the level of excellence that is possible.

One of the most persistent and serious barriers to judicial excellence is excessive judicial workloads. Many judges still have too many child protection cases and not enough time to handle each of these complex and highly sensitive cases.

Another serious problem is the persistence of judicial rotation and master calendars. Although CIP has helped decrease these practices in many states, there still are many courts where the same judge does not usually hear all stages of a child protection case. The results of this are additional court delays, less efficiency, judges' loss of important information about the children and families, and judges who have less authority and responsibility for their cases.

Equally important is the continuing uneven quality of legal representation. This is vital, because attorneys, GALs and CASA volunteers largely control what information comes before judges in child protection cases. While CIP projects have helped improve advocacy, major improvements are needed in such areas as the hiring and appointment of counsel, attorney compensation and working conditions, and attorney oversight and evaluation.

Still another barrier is how difficult it is for courts to know how well they are performing in child protection cases. It is difficult for judges and court administrators to get an accurate overall picture of how they are affecting the lives of children and families.

Finally, few judges in sparsely populated rural areas are able to gain the needed knowledge concerning child protection litigation. Most such judges still hear a wide range of cases, making it difficult or impossible to become expert in the area of child protection.

4. In spite of these difficulties, there are new ways that the Court Improvement Program is helping courts tackle these difficult barriers to achieving the goals of ASFA.

While we must recognize the persistence of these formidable problems, there are promising developments related to each of them. Regarding judicial workloads, there have been advances in calculating the numbers of judges needed to handle child protection cases. The American Bar Association, the National Council of Juvenile and Family Court Judges, and the National Center for State Courts are working together to advance and disseminate these methods of assessing judicial workloads.

With respect to master calendars and judicial rotation, there are nationally accepted standards opposing these practices in child protection cases. These practices have gradually declined, in large part due to the federal Court Improvement Program. But we need to remain focused on these issues.

There is hope for major improvement in legal representation in child protection cases. Many states have adopted standards for attorney performance in these cases and many others are likely to do so soon. State courts have begun to improve their practices of appointing attorneys, in some cases developing contracts that set high expectations. A recent ABA book explains how child protection agencies can reorganize and improve their law offices. Important research has begun concerning attorney workloads.

Promising new developments suggest that courts will become increasingly well informed concerning their own performance. A new federal Program Instruction directs CIP projects to reassess their performance, as they did after CIP was first enacted. In addition, states are beginning to gain the capacity, through the use of computer technology, to collect routine information regarding their performance, such as information concerning the timeliness of their hearings and decisions, the consistency of important procedural protections such as notice and appointment of counsel, and the safety of children after court proceedings begin.

The American Bar Association, the National Council of Juvenile and Family Court Judges, and the National Center for State Courts have developed standard measures of court performance and are working together to help state CIP projects to put them into place. This work includes helping state and local courts use computer technology to measure their performance. Modest federal funding under the Strengthening Abuse and Neglect Courts Act will add momentum to this development.

Reinforcing the courts' emerging ability to objectively assess their performance are new efforts at long-range judicial planning. The new federal Program Instruction calls upon CIP projects to engage in careful strategic planning for improvement, including long- and short-range goals, tasks, and deadlines.

The Program Instruction also calls upon courts to coordinate their self-improvement planning with state agencies, pursuant to federal Child and Family Services Reviews (CFSRs). CFSRs are comprehensive federal-state reviews of each state's

overall child welfare system. Following each CFSR, there is a Final Report of the findings of the review, and each state drafts and negotiates a Program Improvement Plan (PIP) with the Federal government. Specifically, the Program Instruction calls upon CIPs to take into account in their strategic plans the court-related findings of the state's CFSR Final Report as well as the court-related portions of the state's PIP.

Overall, CIP has done a great deal to increase judicial understanding of child protection litigation, to improve attorney performance, to make organizational improvements, and to secure additional state resources. With your support, it will continue to do so. While the Court Improvement Program will not solve all the problems in court performance for abused and neglected children and their families, it will continue to make a major difference in the lives of countless abused and neglected children and their families.

We appreciate the opportunity to testify.  
Thank you very much.

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### COURT IMPROVEMENT FOR CHILD ABUSE AND NEGLECT LITIGATION: WHAT NEXT?<sup>[i]</sup>

By Mark Hardin \*

Director, National Child Welfare Resource Center on Legal and Judicial Issues

—A Service of the U.S. Children's Bureau

The following is a draft version of an article that will appear in forthcoming issues of *ABA Child Law Practice*, <http://www.abanet.org/child/15-12toc.html>, and *ABA Child CourtWorks*, <http://www.abanet.org/child/courtworks.html>, both published by the ABA Center on Children and the Law.

#### INTRODUCTION

The Court Improvement Program (CIP) is a federal grant program designed to improve the quality of court proceedings in child abuse and neglect cases. Over eight years have passed since CIP was enacted in 1993.<sup>[ii]</sup>

State CIP projects have worked to improve child abuse and neglect litigation since the mid 1990s and some have made stunning progress. This article discusses CIP accomplishments, describes continuing barriers to court improvement, and recommends future directions for the program.

CIP projects can help practitioners achieve excellence in various ways. For example, they can reduce delays; improve practitioners' skills and knowledge; and improve workloads, thus allowing practitioners to better prepare for hearings making possible more thorough hearings. Ultimately, court improvement projects strengthen court decisions in child protection cases, thereby improving the lives of abused and neglected children.

This article will provide a national overview of child protection court improvement projects, describe what such projects are doing throughout the country and suggest future directions. In describing CIP accomplishments and new directions, this article provides examples of CIP activities throughout the United States. Because of space limitations, however, only a few examples are presented. For a more comprehensive description of CIP activities, see D. Rauber, *Court Improvement Progress Report 2002* (ABA).

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\*Mark Hardin is the Director of the National Child Welfare Resource Center on Legal and Judicial Issues at the ABA Center on Children and the Law. The Resource Center is funded by the U.S. Children's Bureau. Views expressed in this article have not been endorsed by the ABA Board of Governors or House of Delegates and therefore do not necessarily reflect official policies of the American Bar Association. In addition, they do not represent the views of the U.S. Department of Health and Human Services, Children's Bureau.

<sup>[i]</sup>Information for this article is based on a variety of sources. First, during the early years of the CIP, when state courts were conducting their self-assessments, the National Child Welfare Resource Center for Legal and Judicial Issues prepared a compendium and analysis of self-assessment findings. (The Resource Center is an activity of the ABA Center on Children and the Law and is funded by the U.S. Children's Bureau.) Second, for the last five years, the Resource Center has interviewed all state CIP directors and has prepared a report on the progress of every state CIP program. Third, we systematically collect and disseminate materials developed by CIP projects. Fourth, staff of the Resource Center, including the author, provides training and consultation to state courts throughout the United States. In the course of our training and consultation, we are able to observe a wide range of CIP efforts.

<sup>[ii]</sup>Public Law 103-66, Omnibus Budget Reconciliation Act §§ 13711-13712.

**Sidebar #1****CIP Basics****Funding**

- State CIP projects are funded by Federal grants to state courts, supplemented by state funds. Federal authorization for CIP funds appears in Title IV–B of the Social Security Act. 42 U.S.C. §§ 629f–629h.
- Federal funding goes to the highest court of each state, which administers the CIP funds and directs the project.
- All 50 States plus the District of Columbia and Puerto Rico receive federal CIP grants.
- The amount of the grants is based on a \$85,000 minimum plus additional funds based on the total number of children in the state. In FY 2002, grants ranged from approximately \$99,000 for Wyoming to \$1,071,000 for California.
- In 2002, Congress reauthorized CIP for another five years.

**Use of Funds**

- Each state has wide discretion in how to use CIP funds. The state must use the funds to improve litigation for abused and neglected children.
- Each state must have a strategic plan for improvement, including a comprehensive new self-assessment of courts' performance in child abuse and neglect cases.

Key dimensions of CIP efforts include improving timeliness of judicial decisions in abuse and neglect cases, enhancing judicial expertise, improving legal representation quality, refining the judicial process, and upgrading judicial administration. For each topic, this article examines what CIP has achieved in the eight years since its enactment and suggests new directions for court improvement.

“Achievements” mean positive changes that have taken root in many courts and appear to have momentum. “New directions” mean changes that show great promise but are challenging or have not yet gained widespread momentum.

**TIMING OF DECISION MAKING**

Reducing judicial delay was a key goal of the original CIP legislation.<sup>[iii]</sup> Reducing judicial delay supports an overall goal of federal foster care legislation and accomplishes two important purposes in child abuse and neglect cases: (1) abused and neglected children are more quickly placed in permanent homes rather than spending large parts of their childhood in unplanned foster care; (2) children are spared painful, frightening uncertainties about their future. That is, while a court hearing and decision is pending, an abused and neglected child may fear the judge's decision. The delay—although reasonable or necessary to the attorneys and judge—can be highly stressful and seemingly endless to the child.

*Current CIP Achievements and Activities*

**Timelines.** Nearly every state CIP project has tightened state deadlines for child abuse and neglect litigation. Many of these efforts have focused on implementing the Adoption and Safe Families Act of 1997 (ASFA), which created tighter deadlines for permanency hearings and set a deadline for filing termination of parental rights petitions. Many CIP projects have led efforts to set deadlines that are stricter than those required by ASFA.

Further, some CIP projects have focused on imposing or shortening deadlines not explicitly required by ASFA. For example, North Dakota has adopted stricter deadlines for adjudication hearings. Others, such as Oregon and Texas, have enacted laws limiting the duration of efforts to reunify children once removed from home.

**Continuances.** A number of states have tightened criteria and procedures for continuances. For example, a West Virginia court rule bars judges from granting continuances except for compelling reasons, and Oregon law requires special findings when judges grant continuances. Other states have discouraged the use of continuances through training (e.g., Washington) and other states have done so through educational materials such as benchbooks.

<sup>[iii]</sup> House Conf. Rep. No. 103–213, U.S. Code Cong. and Ad. News 1993, 103rd Cong., 1st Sess., Vol. 3, 1530–1533.

**Caseflow management.** States are also increasingly applying caseflow management principles to child protection cases. For example, a number of projects (e.g., Connecticut, Maine, Georgia, Indiana, Massachusetts, North Carolina, Rhode Island, and Washington) conduct case management conferences before the court hearing to decide whether to grant a temporary custody order. Many local courts have implemented pretrial hearings to speed adjudication and termination of parental rights proceedings.

**Judicial compliance.** States are increasingly recognizing the need to measure judicial compliance with deadlines. Utah and Michigan enacted laws requiring courts to measure their adherence to deadlines in child abuse and neglect cases. Several jurisdictions, such as Arizona, Colorado, Oregon, and Utah, have made impressive documented improvements in the timeliness of the judicial process.

**Appellate process.** A number of state appellate courts are working to reduce delays in appeals. These include Alaska, Arkansas, Idaho, Louisiana, Minnesota, Missouri, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, and Wisconsin.

California and Iowa have sharply reduced the time of appeals, with appeals now typically taking about 3½ months from the trial court order to the appellate decision. To accomplish this, both states thoroughly redesigned their appellate process for child protection cases.

#### *New Directions to Improve Timeliness*

**Automation.** A few states are using automated systems to measure judicial timeliness. Arizona is setting up a computerized system to measure timeliness and expects to issue the first reports during 2003. Colorado, Maryland, and Oregon, among others, also have automated systems that generate data on timeliness. Nationwide, however, progress in implementing such measurement is difficult and slow.

Using computers to project future hearing deadlines and inform parties of deadlines is another way courts are avoiding delays. For example, during early hearings, parties are informed when the permanency hearing is due and when, if the family reunification plan does not succeed, the agency will be expected to file a petition for termination of parental rights. Washington state CIP pilot projects have used computers for such purposes.

**Cooperative Delay Reduction Projects.** Another promising development is cooperative delay reduction projects in which state child protection agencies work with courts, attorneys, and other agencies to identify and correct delays. Such projects have been successful in New York and New Jersey, for example, and some states may initiate them through state Child and Family Service Review (CFSR) Program Improvement Plans (PIPs). Oregon, for example, has included such projects in its PIP.

**Comprehensive Deadlines.** A logical development in establishing deadlines is to make them complete and systematic for dependency cases. This means (a) establishing deadlines that govern every step of the judicial process, ensuring that there will always be a deadline for the next hearing and (b) setting deadlines for completing as well as initiating hearings. Michigan has gone far in establishing such comprehensive deadlines, setting statutory deadlines for initiating and completing all major stages of the court process in child protection cases.

#### **JUDICIAL EXPERTISE**

Child protection cases are complex and share several unique characteristics:

(1) **Unique legal hearings**—typically including shelter care, adjudication, disposition, review, permanency, termination of parental rights, post-termination review, post-termination permanency, and adoption. Each hearing has a distinct purpose and differs procedurally. It takes time, effort, and experience for judges to understand how each hearing should work to achieve positive results for abused and neglected children.

(2) **Serious, complex family problems**—A rough analogy might be that child protection cases are to family law as homicide is to criminal law. Abusive and neglectful parents typically have severe dysfunctions and abused and neglected children typically have acute special needs. It is challenging for agencies, mental health experts, and courts to know whether to try to preserve a family with such dysfunctions and special needs. It takes time and effort for judges to learn how to hear and resolve these issues and to know how such issues should affect decisionmaking at each stage of the process.

(3) **Large bureaucracies**—Not only is the state of local public child protection agency intensively involved, but also other government agencies such as law enforcement, substance abuse treatment, and mental health. Judges have to learn how

these bureaucracies function in these cases, to be able to perform their child protection oversight role assigned by Congress and the state legislature.

A key purpose of CIP is to better prepare judges to cope with these complexities. CIP programs in every state have focused on improving judges' understanding of these difficult cases.

#### *Current Achievements and Activities*

**Growing awareness and appreciation.** A striking achievement of CIP is a growing judicial understanding of the challenges of child protection litigation. In courts throughout the United States, child protection cases are no longer the invisible area of litigation that they were when CIP was first enacted.

**Educational opportunities.** Because of CIP, a wide range of educational materials on child protection cases is available. There are now benchbooks on child protection law in at least 16 states (e.g., Arkansas, Hawaii, Idaho, Iowa, West Virginia, and Wyoming) and several states produce specialized newsletters (e.g., California, the District of Columbia, Georgia, Maryland, Nebraska, New Mexico, Tennessee, and Wyoming) and reports on child protection laws.

Because of CIP, judges also receive more frequent and consistent training on child protection issues. Nearly every state CIP program is providing more judicial training, and state courts are including more child protection presentations in their judicial education programs than before CIP.

Overall, although increases in judicial expertise are incremental in child protection cases and vary by state and locality, such increases are impressive given the relatively few years since CIP's enactment.

#### *New Directions*

**Systematic training.** To help judges gain expertise, courts need to develop more systematic training. Judicial training programs should ensure all new and experienced judges receive essential information about child protection litigation. State judicial educators can play a role by identifying basic information judges need in child protection cases and by developing a system to give them this information. At the same time, judicial educators can provide more in-depth information for judges who sit exclusively in family or juvenile court.

**Specialized judges.** Given the complexity of child protection cases, it is desirable to have specialized and highly trained judges to hear them. Several states are developing statewide family courts. In Texas rural areas, most child protection cases are now heard in "cluster courts," by judges who specialize in child protection cases. There is not yet a clear national trend toward specialized judges hearing child protection cases, however.

**Specialized dockets.** A number of courts (e.g., in Montana, Nevada, and San Diego) are experimenting with sub-specialized "problem solving court" dockets such as "family [child protection] drug courts" and "mental health courts." In drug court experiments, a judge sets aside a period of time to hear child abuse or neglect cases involving parents whose substance abuse led them to abuse or neglect their children. Careful evaluation of these and other specialized courts are needed to determine their effectiveness.

#### **LEGAL REPRESENTATION**

Advocates largely control the flow of information to the court. Advocates present testimony, frame issues, and present arguments to the court. Without diligent, skilled attorneys, the court misses vital facts and does not consider important legal and factual arguments. In short, it is very difficult for judges to make sound, timely decisions without competent attorneys.

Attorneys need knowledge, motivation, and time to present the cases properly. Because family problems are generally tangled and complex, the attorney, like the judge, needs to understand the basic language and concepts used by social workers and mental health professionals. The attorney must spend time investigating cases and arrange expert testimony when needed.

Unfortunately, many judicial self-assessments conducted in the late 1990s demonstrated significant deficiencies in the quality of legal representation in child protection cases. Some assessments reported that attorneys were frequently unprepared, took too little time to present their cases, and were replaced by other attorneys while cases were pending.<sup>[iv]</sup>

<sup>[iv]</sup>M. Hardin, D. Boyd Rauber, and R. Lancour, *Volume 1, Representing Clients, State Court Assessments 1995–1998 Dependency Proceedings* 33–39 (ABA 1999).

*Current Achievements and Activities*

**Training and mentoring.** State courts are expanding their training and mentoring for attorneys handling child protection cases. Nearly every state CIP provides training for attorneys. The number of attorneys interested and committed to child protection cases is also rising. CIP activities, by increasing the visibility of dependency practice, are contributing to this trend.

Many courts mandate training for court appointed attorneys. For example, many attorneys must participate in training to remain eligible for paid court appointments to represent parents and children. In some courts, such as in Massachusetts, San Francisco, and West Virginia, attorneys must assist a more experienced attorney in child protection cases before becoming eligible for such appointments.

**Children's attorney standards.** A number of states' CIP projects have developed standards for children's attorneys in child protection cases and this trend continues. Among these states are Arizona, Arkansas, California, Delaware, Florida, Georgia, Iowa, Kentucky, Louisiana, Maine, Maryland, Ohio, Oregon, Tennessee, Virginia, Washington, West Virginia, Wisconsin, and the District of Columbia. The standards for children's attorneys specifically describe good practice in child protection cases.

**Representation of all parties.** Other projects have worked to make sure parties are represented at all stages of the court process. Some states, such as Florida, have taken steps to ensure that agency caseworkers do not have to represent themselves in important court hearings and others, such as Connecticut, ensure that indigent parents and children are represented at the critical initial emergency removal ("shelter care") hearing.

*New Directions*

**Parent and agency attorney standards.** A few states are developing standards for parents' and government attorneys in child protection cases. For example, Oregon has standards for parents' attorneys, Georgia has developed guidelines for government attorneys, and the District of Columbia recently adopted standards for attorneys representing parents, children, and agencies. California law requires counties to develop standards.

**Contracts.** Another important development in improving the quality of legal representation is to more purposefully use contracts for such representation. Most states and counties that contract for attorneys to represent parents, children, or child protection agencies specify only that they are to provide legal representation.

Contracts for legal representation can go farther. They can specify minimum requirements for attorneys in representing their clients, as in Arkansas and Maryland as well as in Santa Clara and San Diego Counties, California. They can provide for judicial or peer oversight of attorney performance, as in San Francisco. They can also require attorneys for children and parents to meet with their clients before the day a case comes to court, and can specify minimum requirements for case preparation.<sup>[v]</sup>

**Law office management.** Law offices for attorneys handling child protection cases can do much to improve legal representation. Better recruiting and hiring practices, stronger supervision and support, more methodical performance evaluation for attorneys, career tracks in child protection, and better pay and working conditions can make a great difference.<sup>[vi]</sup>

**Attorney ethics.** Ethical guidance to attorneys can help clarify the outer limits of professional behavior in child protection cases. This includes ethics training and materials and bar association enforcement activities in extreme cases. If an attorney fails to take minimal steps to competently represent a child, parent, or agency, there should be practical consequences for such failure.

**Compensation.** It is difficult to expect full and competent representation by attorneys when compensation is grossly inadequate. There is great unevenness in attorney compensation in the United States, with some jurisdictions paying enough to attract and retain competent attorneys.

**IMPROVED JUDICIAL PROCEDURES IN CHILD PROTECTION CASES**

Over the last 25 years, the role of courts in child protection cases has changed dramatically. Court procedures have not always kept up with this new role, however. While Congress and state legislatures have directed courts to ensure timely permanent homes for abused and neglected children, most states have not developed

<sup>[v]</sup>See Sanders, *Using Contracts to Improve Representation of Parents and Children*, 5 Child CourtWorks, Issue 6 (ABA, November 2002).

<sup>[vi]</sup>See generally, M. Laver, *Foundations for Success: Strengthening Your Agency Attorney Office* (ABA 1999).

procedures for judicial “permanency” hearings to help ensure a thorough and decisive process.<sup>[viii]</sup> Likewise, while courts are directed to review case progress, many states have failed to organize review hearings to effectively provide such oversight. While courts have increasingly become involved in decisions affecting the rights of parents and children, procedural protections have remained underdeveloped.

In addition, in many courts, dependency cases still lack essential procedural protections for the parties. For example, parties—most notably noncustodial and putative fathers—do not consistently receive notice of the proceedings or have an opportunity to participate.

#### *Current Achievements and Activities*

**National Standards.** A major achievement of CIP is that there are now widely accepted, comprehensive national standards for child protection litigation, *i.e.*, the *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (NCJFCJ 1995). CIP has played a major role in advancing national acceptance of the *Resource Guidelines*.

The *Resource Guidelines* describe how to conduct hearings; outline characteristics of the judicial process that transcend specific hearing types; and address a wide range of important procedural issues, such as notice, who should be present, advice of rights, key judicial findings, and issues to address at different hearings.

State CIP projects have supported a variety of activities to implement the *Resource Guidelines*, such as incorporating key parts of the *Guidelines* into benchbooks and procedural guides, and adapting judicial checklists from the *Guidelines*. Notably, New Hampshire has combined into a comprehensive manual of protocols, the *Resource Guidelines*, *ABA Sample Court Rules for Abuse and Neglect Cases*, and ASFA requirements. Missouri’s pilot courts were specifically designed to implement the *Resource Guidelines*. Minnesota and Missouri have developed checklists for judges, patterned in part after the *Resource Guidelines*.

**Laws and court rules.** Most state court systems have improved laws or developed new court rules to improve the quality and sophistication of judicial procedure. Examples include:

- Earlier and more complete hearings following children’s removal from home as recommended by the *Resource Guidelines* (Arizona and Philadelphia).
- Notice to noncustodial parents and putative fathers when children are placed in foster care (Massachusetts, Idaho, and Michigan).
- Timely steps to resolve paternity when a child enters state foster care (New Jersey).
- More complete and accurate judicial findings following hearings. This creates a clearer record upon which to make decisions later in the judicial process.
- Judicial forms designed to reinforce good practice in child protection cases. Such forms remind agencies, attorneys, and judges to address key issues in different types of hearings, and encourage judges to make a record of their key findings and decisions.

Finally, many state CIP projects are experimenting with mediation and increased involvement of extended families in case decisions (family group conferences). In some courts, as in Hawaii and Santa Clara, California, these experiments are being carefully evaluated, using such social science principles as the random case assignment and statistical evaluation of case results.

#### *New Directions in Improving Judicial Procedures*

Courts are beginning to develop and use electronic court forms, which both reinforce good practice and allow flexibility for individual case differences. Such forms also make it easier to prepare court orders rapidly and to distribute them while the parties remain in the courthouse after a hearing. For example, West Virginia has developed and piloted software for this purpose and the court in San Antonio, Texas has used electronic court forms for this purpose.

In the future, electronic court forms should include templates allowing electronic filing of documents in child protection cases and avoiding the need to retype information already known to the court.

On-line bench books eventually should complement electronic forms. Such bench books will include automated reminders of deadlines and of the issues to address at each hearing.

<sup>[viii]</sup> See, e.g., M. Hardin, *Improving Permanency Hearings: Sample Court Reports and Orders* (ABA 1999, 2002).

## IMPROVED JUDICIAL ADMINISTRATION

The role of courts in child protection cases in recent years is expanding. Courts must review and monitor the progress of child protection cases and make timely decisions in child protection cases. In addition, because courts interact constantly with child welfare agencies and with other key governmental and private agencies, court staff must meet with them to work out efficient processes for such things as scheduling hearings, subpoenaing witnesses, and receiving and reviewing court reports.

Changes in judicial administration are needed to enable courts to fulfill these new responsibilities. Accomplishing these tasks requires new administrative duties and job descriptions for court staff, as well as new administrative responsibilities for judges.

### *Current Achievements and Activities*

**Coordination with agencies.** Many courts are expanding their coordination with child protection agencies and other entities in addressing mutual logistical and administrative issues. California's judicial standards explicitly call for this type of cooperation.

Some courts have encouraged agencies to locate critical services at or near the court. For example, in Louisville, Kentucky, drug testing and child support referrals are available before parents leave the courthouse.

**Assessments.** Another critical development is that more courts are evaluating their performance in child protection cases, starting with the judicial self-assessments in the late 1990s. These self-assessments may cover a range of performance areas, including timeliness, legal representation, judicial expertise, procedural fairness, and considerate treatment of persons appearing before the court.

Recent self-evaluation has occurred, for example, in Utah (statewide), Kansas (statewide), Missouri (pilot courts), Virginia (statewide), and Colorado (pilot family courts). A number of other state courts have worked with the state agencies in examining specific cases to prepare for the state's Child and Family Services Review (CFRS). See sidebar.

A recent Federal Program Instruction requires all state CIP projects to comprehensively reassess their progress in improving court performance in child protection cases since the earlier self-assessments in the late 1990s.<sup>[viii]</sup>

**Improved information for parties.** Many courts have taken concrete steps to make sure parties better understand the court process. For example, Illinois and Iowa have produced brief materials explaining the court process to parents in English and Spanish. California, Maine, New Mexico, and Tennessee, among others, have produced materials for children. Vermont, Georgia, Tennessee, Minnesota, Mississippi, and Montana have produced videotapes explaining the court process.

### *New Directions in Judicial Administration*

**Quality assurance.** Quality assurance—regular and periodic evaluation of court proceedings—is essential for courts that want to consolidate and continue their improvement process.

In Arizona, the state CIP project is going beyond occasional self-assessment to establish quality assurance. A team of individuals from the Administrative Office of the Courts regularly travels to various courts to review compliance with rules, timelines, and statutes. Other states, such as Virginia, use a combination of statistics on court performance and teams to help local courts interpret the numbers, evaluate their practices, and identify needed improvements.

**Improved workload analysis.** Courts have increasingly recognized the need for improved workload analysis—to determine how many judges, how many attorneys, and the numbers and types of court staff needed to fulfill national standards and to improve performance. Procedures, calculations, and standards are needed to objectively determine workload needs, taking into consideration both in-court and out-of-court time. Without objective and defensible standards for determining workload needs, it will be hard for courts to achieve excellence as described in the *Resource Guidelines*.

**Long-range vision for the courts.** Courts need a clear picture (“vision”) concerning the long-term objectives and directions of court improvement. Because raising the court process to the level described in the *Resource Guidelines* is hard, there is a risk that such vision will fade. Courts can compromise their vision of the future by concluding desirable changes are not really “needed,” impractical, or politically too difficult to achieve.

<sup>[viii]</sup> U.S. Department of Health and Human Services, Administration on Children, Youth and Families, Program Instruction ACYF-CB-PI-03-04 (March 28, 2003).

Minnesota courts are developing and implementing their vision of court improvement through their Children's Justice Initiative. The Chief Justice has joined with the Commissioner of the Department of Human Services to set new goals in child welfare. To help accomplish this, the Chief Justice has designated a lead judge in 28 counties, and in turn, each lead judge has developed a multidisciplinary team to identify needs and improvements. The Children's Justice Initiative will be phased into all counties by 2005.

One key to establishing a vision for the courts is making explicit long-term plans for change and closely linking CIP efforts to these plans. In Minnesota, each county "Action Plan," must follow a state template, which includes expectations regarding many practices set forth in the *Resource Guidelines*. Part of this planning also includes the uniform collection of data for each county, to be used in planning and evaluation.

Such long-range planning stands in sharp contrast to the practice of simply using CIP funds to pay for discrete small projects that are not designed to grapple with fundamental flaws in the court process. For example, instead of establishing small local "add on" projects that do not challenge current weaknesses in the court process, a state CIP should focus on its highest priorities.

The recent Federal Program Instruction requires all CIP projects to engage in comprehensive strategic planning.

#### Sidebar #2

##### **Involvement of State CIP Projects in Child and Family Services Reviews (CFSRS)**

- Child and Family Services Reviews (CFSRs) are comprehensive federal reviews of state performance in child welfare.
- CFSRs are important to courts because:
  - CFSRs measure the performance of the State as a whole, including the courts and executive branch agencies.
  - CFSRs play a central role in federal and state efforts to reform state child abuse and neglect interventions and therefore will have a substantial impact on child abuse and neglect litigation.
  - In the 2002 reauthorization of CIP, Congress called upon the courts to participate in Program Improvement Plans (PIPs) developed through the state CFSR, as the courts "deem necessary."
  - A recent Federal Program Instruction outlines how courts should consider CFSR findings in developing strategic plans.

For more information about the role of courts in CFSRs see Hardin, *Child and Family Services Reviews (CFSRs): How Judges, Court Administrators, and Attorneys Should Be Involved* (ABA 2002), online at <http://www.abanet.org/child/rcj/cfsr1.pdf>; reprinted in 5 *Child CourtWorks*, Issues 2, 3, and 4 (ABA, March, April, May 2002). Contact Yvonne Brunot, American Bar Association, 740 15th Street, NW, Washington, DC 20005; telephone 202/662-1746; fax 202/662-1755; e-mail: [brunoty@staff.abanet.org](mailto:brunoty@staff.abanet.org).

Another key part of long-range CIP planning is participation in Federal-State Child and Family Services Reviews (CFSRs), which are comprehensive reviews of overall state performance in child welfare. CFSRs, which began in the last several years, are important to CIP for several reasons: (a) CFSRs measure the performance of the state as a whole, including the courts as well as executive branch agencies; (b) CFSRs will play a central role in reforming state child abuse and neglect interventions therefore will have an important influence on child abuse and neglect litigation; and (c) CIP legislation requires the courts to participate in Program Improvement Plans (PIPs) developed through the state CFSR. A number of CIP projects, such as Arkansas and Oregon, have played a significant role in their state's CFSR.

The recent Federal Program Instruction requires CIP projects to take CFSR findings into account in developing their own strategic plans. The Program Instruction also directs CIP projects to work toward CFSR outcomes related to children's safety, permanency, and well being. Finally, the Program Instruction directs CIP projects to include in their own planning, court-related portions of the state's PIP.

When the economy inevitably improves, it will become possible in many states to secure resources for improving child protection litigation without taking away resources for other court proceedings. Achieving this will require both a strong vision for change and strong support from both inside and outside the judicial system. This, in turn, requires maintaining and strengthening partnerships with the child protection agency and the community.

**Improved technology.** Courts can use new technology to redesign internal processes. This may include routinely developing data for performance measurement as discussed above and using computers to schedule and prepare court calendars, track cases, electronically file and transmit orders, and exchange data with other entities. To use automation more effectively, state CIP projects need to hire experts in the court process to determine the courts' technology needs in child protection cases. Such experts need not be experts in technology, but must be given time to identify the court's technology needs, learn basics about technology, and work closely with the court's information technology experts.

**Cost effectiveness.** Since CIP was enacted in 1993, very little has been done to focus on the cost effectiveness of various court reforms. Documenting cost effectiveness is a useful way to improve efficiency and argue for needed court funding. Areas that should be studied include:

- Efficient use of court staff.
- How the organization of dockets affects the time and costs of attorneys and child protection agency staff.
- Cost savings of alternative dispute resolution in child protection cases.
- Costs savings for agencies resulting from court reforms that speed termination of parental rights and adoption.

### Sidebar #3

#### More Information About Court Improvement Activities

While this article describes many impressive examples of state and local CIP activities, there are far more examples than there was space to mention. The following sources provide further information about state and local CIP activities, as well as materials produced by CIP projects:

- **Child CourtWorks.** The National Child Welfare Resource Center on Legal and Judicial Issues (*Resource Center*) produces this free newsletter, which describes important new developments in court improvement. To subscribe, contact Lisa Waxler, 202/662-1743; fax 202/662-1755; e-mail: waxlerl@staff.abanet.org.
- **Annual Court Improvement Progress Reports**—an annual report summarizing state and national CIP activities over the previous year. Past reports are available in hard copy and future reports will be available both online and in hard copies.
- **Court Improvement Catalog.** The *Resource Center* collects and summarizes materials produced by CIP projects that are of interest to other states. Summaries of these materials are available online, both by state and subject matter, at <http://www.abanet.org/child/cipcatalog/home.html>. For many of the summarized materials, the catalog provides direct links, enabling the user to download them. For others, the catalog provides directions for ordering copies.
- **Court Improvement Website.** The *Resource Center* maintains a Web page at <http://www.abanet.org/child/rciji/home.html> with online articles, federal laws and regulations, publications lists and ordering information, links, descriptions of services available from the *Resource Center*, and other information. There is a special Web page on court improvement, which has many online court improvement articles. Its Web address is <http://www.abanet.org/child/courtimp.html>.
- **Child-court Listserv Group.** The *Resource Center* operates a large national listserv group named child-court, which exclusively discusses court improvement for child abuse and neglect litigation. While membership in this group is open, all messages are prescreened, so that only messages with substantive information regarding court improvement are sent to the group. To join child-court on line, go to <http://www.abanet.org/child/discussion.html> or e-mail Yvonne Brunot at [brunoty@staff.abanet.org](mailto:brunoty@staff.abanet.org) and ask to join.
- **Child-case Listserv Group.** The *Resource Center* also operates a national listserv group named child-case, which, unlike child-court, discusses individual case situations and technical legal issues related to child abuse and neglect litigation. Membership in this group is open only to attorneys and judges. To join child-court on line, go to <http://www.abanet.org/child/discussion.html> or e-mail Yvonne Brunot at [brunoty@staff.abanet.org](mailto:brunoty@staff.abanet.org) and ask to join.

- United States Children’s Bureau. The United States Children’s Bureau, which is part of the U.S. Department of Health and Human Services, administers CIP. Among other things, the Web site includes information about CIP and CFSRs and the text of Federal regulations and written policies. The Children’s Bureau Web site address is <http://www.acf.dhhs.gov/programs/cb/programs/index.htm>.

## CONCLUSION

### *What is Excellence?*

Excellence in child protection cases is no mystery. Here are some obvious features:

1. Timeliness—courts promptly schedule hearings, complete them without delay, and make timely ultimate decisions in each case.
2. Skilled and knowledgeable practitioners—imagine a patent tribunal where judges and attorneys knew little or nothing about patent law and basic engineering principles.
3. Thoroughness—parties have the full opportunity to present their views, the court touches on all key issues, and the judge effectively communicates his or her decisions to the parties.
4. Procedural fairness—all parties receive timely notice, all have competent representation, and courts apply fair rules of evidence.
5. Fair treatment of parties—all receive courteous treatment, hearings occur when scheduled, parties receive understandable information about the court process, communication in court is clear, and there are decent facilities for courtrooms and waiting rooms.

Many courts have progressed in these areas through CIP efforts, yet there is still much to do. In fact, courts such as those in Cincinnati and Grand Rapids, Michigan have demonstrated excellence in many ways. Achieving *state and national* excellence will require close attention to infrastructure issues, sufficient resources, and strong support from within and outside the court system.

### An Overview Of Judicial Advances to Achieve Excellence

The following is a short list of key judicial advances to achieve excellence in child protection litigation:

- Quality assurance through periodic automated and qualitative performance measurement.
- Demonstration programs that receive enough funds to show results and be scientifically evaluated.
- Workable workload calculations and standards for judges and attorneys.
- Job and task descriptions for court staff accompanied by workload standards and calculations.
- Long-range planning to achieve excellence.
- Systematic approaches to achieve excellence in legal representation.
- Improved cost-effectiveness analysis of court improvement.
- Increased specialization and stability of judges, who are selected in large part based on their skills and knowledge related to child protection litigation.

Every one of these reforms is practical. Abused and neglected children deserve all of them and more.

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Chairman HERGER. Thank you very much, Mr. Hardin. Our final witness is Jennifer Miller, Senior Associate, Cornerstone Consulting Group, Houston, Texas. Ms. Miller.

### STATEMENT OF JENNIFER MILLER, CORNERSTONE CONSULTING GROUP, HOUSTON, TEXAS

Ms. MILLER. Thank you, Mr. Chairman, and Members of the Subcommittee. We welcome this opportunity to testify on the Adoption Incentive Program and to share findings from “A Carrot Among the Sticks,” a survey that we conducted in 2001. This afternoon I will summarize the results of our survey and conclude with some recommendations about future incentive programs.

In 2000, Cornerstone Consulting Group received funding from the David and Lucille Packard Foundation to study States' experiences with the adoption incentive bonus. We conducted phone interviews with 50 States and the District of Columbia.

The two questions we asked that are likely to be of most interest to this Committee are, first, did States do anything differently to respond to the incentive, and second, how did States reinvest the bonus dollars they received?

To address the first question, States reported they did not change adoption practices to respond to the adoptions incentive program. The program was authorized during a period when States were already changing their adoption systems to reduce the number of children in foster care. The bonus provided an extra incentive to keep moving in the right direction, but in no case were improvements in the adoption process motivated solely by the existence of the bonus.

States, however, did report two very important side effects of the availability of the bonus on their systems. First, it stimulated improved data systems to ensure accuracy about the number of children adopted, and second, it fostered better collaboration with the courts to ensure timely and accurate transfer of information about finalized adoptions.

We also asked States how they reinvested their bonus dollars. When the incentive program was first authorized, some feared that States would not reinvest bonus dollars into adoption services and that funds would be used for staff and other general child welfare activities, with little accountability. Our survey found, on the contrary, bonus dollars were invested directly back into the adoption system.

Post-adoption services and recruitment of adoptive families were a high priority for many States. Several States invested their funds into activities to move existing cases through the system more quickly. Examples of such activities include training, contracting with providers to conduct home studies, providing additional legal services, and conducting adoption awareness campaigns.

What was the general outlook among those we interviewed toward the adoption incentive program? In general, child welfare officials we interviewed were very positive about the adoption incentive program. They believe it brought needed attention, energy and excitement to the adoption arena.

As the title of our survey suggests, the child welfare system is one with a long history of threatened sanctions from the Federal government, as well as extensive reporting in the media about failures of the system. Rewards for success have helped create a more positive environment for workers, supervisors, and administrators.

On the other hand, the following concerns were raised in our interviews, as well as in subsequent discussions about the current proposal for reauthorization. These should be considered as part of any future decisions about this program.

First, the bonus should reward other forms of permanency. Our respondents said that the bonus places value on adoption above all other forms of permanency, even when adoption may not be the most appropriate option for some families. Agencies should be re-

warded for all permanency options they thought, not just permanency for adoption.

Second, fundamental restructuring of child welfare financing is needed. The bonus does not change the fundamental structure of child welfare financing, and in the future States will not be able to maintain the same level of momentum toward permanency without access to more flexible resources and new investments for a wide range of child welfare services. We are pleased that the President's budget proposes to address this concern and look forward to more specifics about this proposal.

Third, many State adoption increases are leveling off. Many have expressed concern that States will find it increasingly difficult to surpass a previous year's baseline number as the increase in adoptions begins to level off. For instance, in fiscal year 1998, the first year for which the bonus was available, States earned \$42.5 million. By contrast, in 2001, they only earned \$17.5 million in bonus funds. With the new proposal for incentives to adopt older youth, however, States may have a new opportunity to surpass their baselines, particularly if adoption of older youth has not been a major priority in the past.

Fourth, incentives should support practice to remove barriers to permanency. Some have suggested that States should be rewarded for improving the process by which children achieve permanency. Suggestions included rewarding States for improved court procedures and reducing the length of time to termination of parental rights.

Finally, bonus funds should be reinvested into the child welfare system. Our survey found that in the States there was little public input into decisions about how to reinvest bonus funds. In the future, the adoption incentive program should provide measures to continue to hold States accountable for reinvestment of bonus funds into a wide array of services to promote all forms of permanency for abused and neglected children.

Thank you again for the opportunity to testify.

[The prepared statement of Ms. Miller follows:]

**Statement of Jennifer Miller, Cornerstone Consulting Group, Houston, Texas**

Cornerstone Consulting Group welcomes the opportunity to testify on the Adoption Incentive Program and to share findings from "A Carrot Among the Sticks," a survey we conducted in 2001. Cornerstone is a consulting firm focusing on health and human services solutions, organizational development and community revitalization. In the area of child welfare, Cornerstone has conducted several studies exploring aspects of child welfare policy and practice and has also provided technical assistance to state and county agencies on a variety of child welfare issues.

Our survey on the Adoption Incentive Program summarizes states' experiences with implementation and reports on how states reinvested their incentive funds. Through our interviews with each state child welfare agency, we learned that the adoption incentive provides states with a stimulus to continue promoting permanency through adoption for children in foster care. The incentive is reinforcing the priority of finding a permanent home for children in a timely way and is providing needed funds to shore up the infrastructure of state adoption programs.

We are pleased that the President's budget proposes to continue the Adoption Incentive Program and that it creates a new incentive to promote adoption of older youth. Recent analyses of data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) have demonstrated that the population of children wait-

ing for adoption became older between fiscal year 1998 and fiscal year 2000.<sup>1</sup> Researchers estimate that at 8 or 9 years of age, the probability that a child will stay in foster care becomes higher than the probability that they will be adopted.<sup>2</sup> Many states have been working hard to recruit adoptive homes for older youth, and the newly proposed incentive program provides them with an opportunity to reinforce this priority.

The Adoption Incentive Program has worked well to reinforce the priorities of the Adoption and Safe Families Act. As we state in a summary of findings from our report, however, it is only one piece of a much larger effort to promote permanency for children. Incentives might also be available to promote other forms of permanency for children, including reunification and guardianship. In addition, in order to make sustained change in the child welfare system, we must fundamentally change the ways services to children and families are funded by providing more flexibility to state and local agencies and making new investments in a wide array of child welfare services, including prevention, early intervention, foster care, and post permanency activities.

### **Background and Methodology for the Survey**

The Adoption and Safe Families Act (ASFA), adopted by Congress in 1997, placed renewed emphasis on the safety of children in child welfare systems by requiring states to make more timely determinations about permanent arrangements for children in state custody. The overriding message of ASFA was that foster care is not the best place for children to grow up and states must make more determined efforts to find permanent homes for children who cannot be returned to their biological families.

One of the most novel provisions in ASFA was the Adoption Incentive Program, which encourages states to find adoptive homes for children who are legally eligible for adoption by granting a financial incentive for each foster child the state places in adoption above a baseline number. Congress authorized a bonus payment of \$4,000 for each foster child adoption and \$6,000 for each special needs adoption above the baseline. The Department of Health and Human Services calculated the baseline by averaging each state's number of finalized adoptions of children in foster care for 1995, 1996, and 1997.

Between 1997 and 2001, adoptions increased substantially; to date, every state in the country received a bonus for at least one of the years in which the incentive was offered. Total bonus amounts were \$42.5 million for 35 states in FY 98, \$51 million for 43 states in FY 99, \$11 million for 35 states in 2000, and \$17.5 million for 23 states in 2001.

In 2000, the Cornerstone Consulting Group received funding from the David and Lucile Packard Foundation to study states' experiences with the Adoption Incentive Bonus. We conducted telephone interviews with 50 states and the District of Columbia. In some states we spoke with directors of child welfare, while in others we spoke with adoption specialists. It is important to note that this survey covered bonuses for fiscal years 1998 and 1999. Since then, two additional years of bonuses have been distributed to the states.

Among the questions we investigated were the following: Did states do anything differently to respond to the incentive? How did states reinvest the bonus dollars they received and how did they make reinvestment decisions? Is the Adoption Incentive Program a powerful enough incentive to move policy and practice in a different direction? Is it a wise use of federal resources? Are there other incentives Congress might consider to promote permanency for children in foster care?

Our inquiry was limited in several respects. Time constraints prevented us from developing a complete view of how the states' efforts to enhance adoption fit into the context of the whole child welfare system. We also relied on self-reported answers without independent verification. Our sources varied somewhat from state to state, including staff from different levels of the state organizations, and responses may have varied with the source. Finally, we spoke only to staff at the state level and did not gain perspectives from those at the local level.

Despite these limitations, we believe that we gained an accurate picture of the states' experiences with the adoption bonus and some useful suggestions for the use of bonuses to promote adoption and other permanency options.

<sup>1</sup>Maza, Penelope. "Who is Adopting Older Children?" The Roundtable of the National Resource Center on Special Needs Adoption, Volume 16, Number 2, 2002.

<sup>2</sup>Maza, Penelope. "The Age Factor in Adoption." The Roundtable of the National Resource Center on Special Needs Adoption, Volume 16, Number 1, 2001.

## **Findings**

### **States were already significantly enhancing efforts to promote adoption.**

In general, states reported that they did not change adoption practices to respond to the Adoption Incentive Program. The program was authorized during a period when states were already changing their adoption systems to respond to internal and external pressures, such as the enactment of state and federal legislation, litigation, the financial burdens of foster care, and public dissatisfaction with the status of children in foster care. The bonus provided an extra incentive to keep moving in the same direction, but in no case were improvements in the adoption process motivated solely by the existence of the bonus.

States did report two important side effects of the availability of the bonus on their systems: first, it stimulated improved data systems to ensure accuracy about the number of children adopted. Second, it fostered better collaboration with the courts to ensure timely and accurate transfer of information about finalized adoptions.

### **States reinvested bonus funds into activities to strengthen the adoption system.**

When the incentive program was first authorized, some feared that states would not reinvest bonus dollars into adoption services and that funds would be used for general child welfare activities with little accountability. Our survey found that on the contrary, bonus dollars were invested directly back into the adoption system. Post adoption services and recruitment of adoptive families were a high priority for many states. Several states invested their funds into activities to move existing cases through the system, or reduce the backlog of waiting children. Specifically, states made investments in the following:

- Post adoption services (n=16)
- Recruitment of adoptive families (n=11)
- Distribution to county child welfare services, in some cases based on performance (n=11)
- Training for adoption staff, mental health providers, etc. (n=9)
- Contract enhancements for case management, recruitment, home studies, etc. (n=7)
- Adoption awareness (n=6)
- Legal services to expedite adoption (n=5)
- Subsidy increases (n=4)
- General child welfare services (n=3)
- Staff (n=2)

Although the amount of the bonus funds was small in relation to total child welfare budgets, states made strategic decisions about how to use the money to fill gaps and to continue building the infrastructure of their adoption systems. Usually, these decisions were made as part of the executive budget process at the state agency level. Some states contacted local departments to help them identify critical needs, while others consulted with private contractors. A handful of states used reinvestment funds to respond to needs identified by existing committees or task forces. No state had a process that included families or the general public in deciding how incentive funds would be used.

Because the bonus received by most states was relatively small, few states experienced resistance to using funds in very flexible and innovative ways. Some states argued that if the bonuses had been larger, they might have had more trouble keeping the funds in their departments to fill critical gaps.

### **States found the adoption bonus a useful strategy with limitations.**

Many respondents felt strongly that, while the adoption bonus is a useful strategy to create incentives toward adoption in the short run, many other areas must be addressed to promote permanency in the long run. Several states responded that they would like to see an incentive for achieving permanency in general, including reunification, guardianship, *and* adoption. Respondents most commonly mentioned incentives for preventing foster care placement and for shortening the length of time children stay in the system as potential ways to improve permanency goals.

Respondents indicated several other areas where incentives or increased funding might be appropriate, including:

- Improved court processes
- Adoption within one year of Termination of Parental Rights

- Fewer adoption dissolutions and disruptions
- Adoption Tax Credit
- Funding for post adoption services
- Funding for more preventive services
- Research, particularly in the area of adolescent issues
- More discretionary funding to promote better practice

In general, the child welfare officials we interviewed were positive about the Adoption Incentive Program. They believed it brought needed attention, energy, and excitement to the adoption arena. In a system with a long history of threatened sanctions from the federal government, rewards for good behavior have helped create a more positive environment for workers, supervisors, and administrators. Further, the bonus created a data collection system that allows states to measure their progress toward increasing the number of adoptions and to compare their progress with that of other states.

On the other hand, many noted a concern about rewarding states for increased numbers rather than better outcomes, although few feared that agencies would make the wrong decisions in individual cases in a quest for bonus funds. Further, states that began successfully increasing adoptions in the mid-1990s, before the baselines were calculated, did not realize the same level of award as states that began reforms later. These state officials would like to have flexible resources to continue making improvements in their child welfare and adoption systems. Finally, perhaps the greatest criticism of the bonus is that it does nothing to change the largest impediment to child welfare reform: the structure of federal funding for child welfare.

#### **Implications and Conclusions**

The adoption incentive bonus is a creative federal strategy to boost attention and resources to the adoption system. It has allowed state agencies to invest a modest amount of additional resources in areas of greatest need without creating new funding sources.

Yet, the following concerns were raised in our interviews, as well as in subsequent discussions about the current proposal for reauthorization. These should be considered as part of any future decisions about this program.

#### **The bonus should reward other forms of permanency.**

First, the bonus places value on adoption above all other forms of permanency, even when adoption may not be the most appropriate option for some families. Agencies should be rewarded for finding safe and stable homes for children, not only for placing children with adoptive families. Rewards for all permanency outcomes, including reunification, guardianship and adoption, are appropriate.

#### **Fundamental restructuring of child welfare financing is needed.**

Second, the bonus does not change the fundamental structure of child welfare financing, which is a high priority for many concerned about abused and neglected children. In the future, states will not be able to maintain the same level of momentum toward permanency without access to more permanent and flexible sources of funding, as well as new investments, to support all forms of permanency, including family preservation, reunification, guardianship, kinship care arrangements, and adoption. This includes making more resources available to help achieve good adoption outcomes through post adoption services and supports.

It is critical that any financing reform ensures more flexibility and new investments in the financing system, while also ensuring safety and permanency for all children who must be placed in foster care. We are pleased that the President's budget proposes to address this concern and look forward to more specifics about this proposal. We also look forward to the work of the independent and bi-partisan Pew Commission on Children in Foster Care.

#### **Many state adoption increases are leveling off.**

Third, many have expressed concern that states will find it increasingly difficult to surpass a previous year's baseline numbers as the increase in adoptions begins to level off. Many states have already made great strides in reducing the backlogs in their systems and are not seeing the level of increase that they saw in previous years. For instance, in FY '98, the first year for which the bonus was available, states earned \$42.5 million. By 2001, states only earned \$17.5 million in bonus

funds. In the long term, the questions of how to sustain investments made with bonus dollars and how to sustain adoption reforms generally will be of concern.

**Incentives should support practices to remove barriers to permanency.**

Fourth, the bonus places emphasis on increased adoption *numbers*, with little attention to improved outcomes for children in foster care or improving the process by which children achieve permanency. Some have suggested that states be rewarded, for instance, for improved court procedures, reducing the length of time to termination of parental rights, completing timely home studies, reducing adoption disruptions and dissolutions, and recruiting eligible adoptive homes. Identifying best practices in adoption and supporting more research to understand which policies and practices promote good adoption outcomes would also increase the value of the bonus. This will be particularly true with the incentive to achieve adoptions for older youth. More focus on what works to recruit adoptive homes for older youth and to achieve more timely permanency for older youth is critical.

**Bonus funds should be reinvested into the child welfare system.**

Perhaps the most critical issue is how to ensure that states continue to reinvest bonus dollars in the child welfare system. With the national and state economies lagging, it will be more difficult to keep these dollars in the child welfare system in general, and the adoption system in particular. And with very little public input into how these dollars are invested, there will be little accountability for decisions on spending the resources. In the future, the Adoption Incentive Program should provide measures to continue to hold states accountable for reinvestment of bonus funds into an array of services to keep children out of foster care, support them once in foster care, and provide post permanency supports once they have achieved permanency through reunification, adoption or guardianship.

Thank you again for the opportunity to testify on this program; we look forward to continuing dialogue about how to best achieve safety, permanency and well-being for our Nation's most vulnerable children.

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Chairman HERGER. Thank you very much, Ms. Miller. Now to turn to questions. Ms. Arnold-Williams, in your testimony you highlighted that your State has a 12-month limit on reunification efforts for families. This is shorter than the requirement implemented by the ASFA that requires States to initiate termination of parental rights for children who have been in care for 15 of the past 22 months. There has been testimony presented today that points to this 15 of 22 provision as problematic because it does not require enough time to address all the issues a family might have. What has been Utah's experience with this shorter timeframe? How would you respond to this criticism?

Ms. ARNOLD-WILLIAMS. It is a great question. We actually had the 12-month limit prior to ASFA. We initiated major child welfare reform in 1994 in our State with the State overhaul of our legislation. So, the 12 months predated that. We actually have 6 months for small children, with the option to renew, and I stress on that, there is the option for the judge to extend that if in fact the parents are making substantial progress on their treatment plan. So, that is one way that we deal with that, is—I think as was said earlier—it is a clear message from the judge from day one that you are expected to be at work on your plan now. So, we have not experienced difficulty with that, because there is that provision to extend if we are making progress.

I would relate that the hardest issue on that is around substance abuse, as was mentioned earlier today. So, it has also taken, on the part of my Substance Abuse Division, concerted efforts. We had

created dependency drug courts that provide intensive, quick treatment and follow-up that tie in with that, as well as additional residential treatment options, where moms can bring their children with them and engage in intensive treatment, residential treatment, along with employment opportunities and those types of things.

So, you have to back it up with strong services. If you shorten that timeframe, it can't be the State's responsibility that the family is not following through with their treatment plan because things are not available. So, that is how we have addressed it.

Chairman HERGER. Thank you very much. Now I turn to the Ranking Member, the gentleman from Maryland, Mr. Cardin, to inquire.

Mr. CARDIN. Thank you, Mr. Chairman. Utah as well as all the States have opportunities for waivers or exceptions to the time limits when the interests of the child so determine. So, I think that is important.

Let me thank all of you for your testimony. I thought this was a very impressive panel. Mr. Cathy, I want to thank you for setting a national example of how one person can make a difference in the lives of so many children. So, thank you very much. Ms. Schagrin, I also want to thank you for not only devoting your life to this issue, but also as a parent. Thank you for doing that.

I think there is general consensus here that the States need flexibility and they need resources in order to deal with this issue, and that we can improve upon our current program. I think there is agreement there. Let me just caution, if I might, though, that in our haste to get the flexibility that you might want at the State level, that if we move toward block granting, there are going to be problems, there is going to be—just talking from a pragmatic point of view. I think most of you have agreed that the adoption bonus has been helpful. It hasn't been the sole reason for the increases in the numbers of adoptions, but it has been a useful means to access additional resources to accomplish a mutual objective.

We have problems in child welfare with addiction. I am afraid that unless the Federal Government makes that a priority, with some funding flow toward that, we are not going to make progress in that area. I think Mrs. Johnson was right to underscore that issue—80 percent, I think she mentioned. We have problems with the qualifications and training of caseworkers. We know that. Yes, the States are addressing that issue, but if the Federal Government provides an incentive, we will move a little bit faster and more children will be served.

So, yes, we need to make sure that we provide flexibility to our States, and a better job than we are doing currently. We also need to make sure that the Federal Government speaks to the priorities that are needed and allows the States to develop the models that will accomplish that. Therefore, I would just urge us to be very cautious on recommendations that I think can move us in the opportunity direction, because if you move toward block grants, that is usually the first step toward the reduction of Federal support, which I think could become a problem for us.

So, I would welcome any—if you want to comment on that, fine. I see everybody shaking their head. Unfortunately, the record

doesn't pick that up. Let me point out that every witness agreed with everything I just said.

[Laughter.]

Chairman HERGER. Does shaking mean you disagree?

Mr. CARDIN. Representative Heaton.

Mr. HEATON. Yes. I am an Appropriations Chair. When I make my appropriations, I like to know where my money is going, and I like to know that they are making good use of it. Once in a while, I am tempted to micro-manage just a little bit, but for the most part, I know that if I give them the flexibility, and I have my outcomes, I can get what I want. Flexibility is the key. Too many times things are—the appropriations are categorical and we can't bundle things. We don't get the flexibility to address specific issues.

So, I am asking—I approach the block grant with some caution, but if you give us the flexibility—tell us the outcomes that you want, hold our feet to the fire, and if we don't get to those outcomes, there should be some strong interest from Congress in why we didn't get there. We ought to be ready to explain why we didn't, and we ought to have some reason how we can get to where you want us.

Mr. CARDIN. I approach it a little bit differently. I think maybe I come to the same conclusion. I think that Congress needs to establish expectations and we need to provide the resources so that you can accomplish it, and give you the flexibility to meet the needs of your particular State in accomplishing them. I think the adoption bonus was a good example. We wanted to achieve a certain result, and there was money on the table in order to do it, so there was an incentive.

Mr. HEATON. Just to continue, that is why we are taking a look at approaching our child welfare system in maybe a different way than we have in the past. We want to purchase results. We look at our providers and say, if you deliver and provide us the result, we will pay you a bonus. If you fail, we will punish you.

Mr. CARDIN. Yes. Ms. Ashby, I think, wanted to make a quick comment. I know my time is about expended.

Ms. ASHBY. Yes, just a brief comment. I am in agreement with the other two comments on what you said. Of course, in order to have outcomes, in order to hold feet to the fire, as was said, you have to have data. That, of course, was our bottom line, that you have to do evaluations, you have to have data reported, and so forth. If you don't have that, you don't have outcomes.

Mr. CARDIN. Thank you.

Chairman HERGER. You're welcome. Ms. Ashby, I have a question for the GAO. The ASFA included provisions intended to facilitate interjurisdictional adoptions. However, your testimony highlights a number of significant barriers that remain to facilitating the adoption of children across State lines. In a recent report you completed in 1999, as required by ASFA, you recommended that HHS should do more to help States facilitate these adoptions. It seems that barriers still remain if you are highlighting this problem again in your 2002 report. What did you recommend, and do you still think these steps are necessary to help States?

Ms. ASHBY. Yes. Basically, we recommended in our 1999 report that HHS provide an action plan to help States coordinate with one

another, or to help child welfare within the States coordinate with each other and come to agreements and common systems for inter-jurisdictional placements.

Now, one of the major problems that we saw back then and we still see, or saw in our most recent work, had to do with the home studies. Those have not been standardized. Although there is an Interstate Compact on the Placement of Children that has actually been adopted by each State, it is a uniform law in each State, and it has formalized the process in terms of interjurisdictional adoptions, but within that process, it is very complex.

There are a number of places where documents and forms are reviewed, and home studies—there are different requirements in different States. There are home studies in each State, but they don't have the same requirements. So, you have one or more persons in the State requesting a home study in another State, mandating what needs to be done and reviewing what comes back. You have reviewers in the home State during the home study. Depending on at what point a home study is done, and sometimes has to be redone—if, for example, in another State you're simply looking for a family that is willing to adopt, but you don't have a specific child in mind, a home study is done. That home study might have to be updated or redone once a specific child is available for adoption. If there is a period of time before that child becomes available, perhaps the home study has to be updated every 6 months or every year, depending on the particular State's rules.

So, our recommendation was that HHS—although HHS does not have direct control of what goes on in the States—HHS could formulate an action plan that would be a guide for States to, among themselves, come up with more uniformity, more collaboration.

Chairman HERGER. Thank you very much, Ms. Ashby. Now I turn to the gentleman from Washington, Mr. McDermott, to inquire.

Mr. MCDERMOTT. Thank you, Mr. Chairman. I listen to you, having come up here as an NCSL witness a couple of times in the past, and all of you, I think to myself, we are talking here about a \$43 million program, right? That is what this is, this incentive for adoptions? This is—that is a rounding error up in this part of the world.

What isn't a rounding error is the cut in the Community Development Block Grant, when we promised you \$2.8 billion and you now get, what, \$1.7 billion? You both—at least Representative Heaton and Ms. Arnold-Williams, you mentioned it. How—are you just too polite to rail? You are talking about \$43 million here, but that is \$1.1 billion that was taken out of the system. Never mind what inflation is.

The States are in—if your States are anywhere near what Washington State is at the moment, you are in a big hole.

Ms. ARNOLD-WILLIAMS. Maybe if I could respond first on that. I mentioned the large increase in State general funds in my child welfare budget. Much of that was to make up the loss of SSBG money. Our legislature in the good years was able to do that. We are a State that spends the vast majority of our SSBG on child welfare. I spend it primarily on that, senior services, and disabilities.

So, those reductions in SSBG did hit us very hard in child welfare. Now, if those were to continue to happen—

Mr. MCDERMOTT. The State made it up?

Ms. ARNOLD-WILLIAMS. Our State made it up in child welfare, not in the other service areas, in terms of that. Then the other thing, and I think it is interesting with the SSBG report due to come out now, and we saw an early release of that, we transfer temporary assistance for needy families (TANF) money. We transfer TANF into SSBG in our State, and we are in a position where we are still able to do that to make up that difference. I spend the majority of that transferred TANF dollars in my child welfare division.

So, that is how we have pieced it together. It is contingent on having the TANF money to transfer—which is less and less available now, as TANF caseloads are going up—

Mr. MCDERMOTT. The TANF—are going up?

Ms. ARNOLD-WILLIAMS. Yes. Right. Which means my TANF agency needs the money for TANF benefits, and may not have the same option to transfer as much into SSBG. So, we do support restoring SSBG. It is a critical—it is one of the most flexible funds we have in order to meet and fill in the gaps that we can't fund with Title IV-E and some of those other funding sources.

Mr. MCDERMOTT. How do you do it in Iowa?

Mr. HEATON. Well, we came up short \$5.7 million in child welfare, and we had to do a supplemental. We used some one-time moneys, found some one-time moneys, and—

Mr. MCDERMOTT. What was the one-time money that you used?

Mr. HEATON. We used it from a senior living trust fund. Moved it from senior living trust to pay for Medicaid, which displaced general fund dollars, and moved the general fund dollars to child welfare. Yes, 1996, a deal was made that SSBG was supposed to be \$2.8 billion, and we haven't seen it.

Mr. MCDERMOTT. How does your delegation from Congress explain to you why they did that to you?

Mr. HEATON. Well, I tell you, Congressman, to be quite honest, I've never got up on my box and railed.

Mr. MCDERMOTT. Well, I suggest you call Mr. Nussle and ask him what he's up to.

Mr. HEATON. I'll do that.

Mr. MCDERMOTT. This whole issue, as I listen to you—I started, when I was in the State legislature back in 1971, started the Adoption Subsidy program, which has been going for a long time in the State of Washington. I am interested to hear your impressions of whether those adoption subsidy programs really work. Do they?

Ms. SCHAGRIN. Yes.

Mr. HEATON. Yes, they do.

Ms. SCHAGRIN. Absolutely. They—

Mr. MCDERMOTT. What does Maryland do in terms of adopt—if I find a kid who is physically handicapped or mentally limited in one way or another, or a mixed-racial child, or whatever—whatever one of those categories of hard-to-adopt kids are?

Ms. SCHAGRIN. Maryland has both the State and of course the Federal Subsidized Adoption program, and so families are offered a subsidy up to the amount of the foster care grant in order to eliminate the obstacles to adoption. So, finances never needs to be an obstacle. We are theoretically negotiating the amount of that subsidy based on what that child's needs are. The definition of special needs is very broad. So, it basically includes all children in care, but it means that a child who is in a stable, loving, foster home, there will be no reduction in the support for that child.

There is an issue in terms of the Title IV-E adoption subsidy. When children are returned to the foster care system, we have to keep giving them that subsidy.

Mr. MCDERMOTT. To the parents?

Ms. SCHAGRIN. Yes.

Mr. MCDERMOTT. Why?

Ms. SCHAGRIN. I would love to know the answer to that. Unless the rights have been terminated, our direction has been that it needs to continue. What we are starting to do is our court will order child support in the amount of the subsidy, but according to regulations we have recently been given, we can't stop the subsidy once the child returns.

Mr. MCDERMOTT. You are shaking your head down there at the law.

Mr. HARDIN. Well, I think perhaps that it would be good to check with the director of policy at the Children's Bureau about that.

Ms. SCHAGRIN. I recently—okay, I will do that. We were very clearly—and I have read the Title IV-E guidelines carefully.

Mr. HARDIN. That is my recommendation. Talk to the director of policy for the Children's Bureau.

Chairman HERGER. The time has expired. I thank each of you. Just to correct the record, we have a very recent study that has come out by the Center for Law and Social Policy in which they stated that "The national caseload has fallen 3 percent since the start of the recession."

With that, let me conclude with a question, if I could, to Ms. Miller. Since 1997, States have received \$145 million in adoption incentive payments because of their success in moving children into adoptive homes. Can you expand for us, please, on the findings of your report, and detail how the States have reinvested these funds in their child welfare systems? What further steps should we consider during reauthorization of this successful program to ensure that States continue to receive these funds and reinvest these funds into their programs?

Ms. MILLER. Sure. First, on the reinvestment question, I think there a number of things that States did to reinvest back into the adoption system. Let me say that how much a State received—it varies tremendously as to how much a State received, depending upon the extent to which they exceeded their baseline. So, depending upon how much they received, they made very strategic decisions about what they could invest in. Those States that didn't receive as much money, for instance, really invested in one-time activities, things that would really—hiring additional legal expertise to help move the backlog in the system, very specific, targeted re-

cruitment campaigns to find adoptive families. A number of States have used technology very strategically in the past to find adoptive homes for waiting children.

So, most of it was reinvested back specifically into the adoption system. I think it has been a system that there has not been a lot of attention paid to what really works in adoption. I think there has been a great deal of momentum in part because of the bonus dollars that they've had to reinvest and, really, sharing among the States about what works to help find adoptive homes for waiting children. So, as far as reinvestment is concerned, States made decisions to reinvest for the most part back into the adoption system.

As far as your other question is concerned about what considerations should be made in terms of future incentive programs, one of the things that a lot of people have said is that adoption is one form of permanency, but it is not the only form of permanency. There are many people who would like to see incentives for both reunification as well as for guardianship. A number of States have increased their efforts to be able to place children into legal guardianship homes. This is going to be an increasing concern, I think, as we try to reduce the backlog of older waiting children, in particular those children 9 and over. Many youth in particular don't want to be adopted. Even though many people feel that that is the best form of permanency. They have a tie to their biological family, there are cultural reasons that they don't want to be adopted, and so guardianship really provides another form of permanency for them.

In addition, I think we want to pay very close attention to the baseline issue. A number of States, when the baseline was first established, felt that they were being compared to years in which they had already done quite a bit to ensure that they were moving children from foster care. So, they felt that they were being compared to years in which they had already had a great deal of success, so that the comparison beginning in 1997 to the previous years was not as fruitful for them as it had been for other States. So, I think we want to pay close attention, particularly with this new proposal, as to how that baseline is formed.

Chairman HERGER. Well, thank you very much. I want to thank each of you for your outstanding testimony. This has given us many ideas as we consider the next steps to improve the child welfare system, including reauthorization of the Adoption Incentives program. I look forward to working with each of you, all of you in this process.

With that, this hearing stands adjourned.

[Whereupon, at 4:40 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

#### **Statement of Child Welfare League of America**

The Child Welfare League of America welcomes this opportunity to submit testimony on behalf of more than 1,100 public and private nonprofit child-serving agencies nationwide on the implementation of the Adoption and Safe Families Act (ASFA) (P.L. 105-89) and the use of adoption incentive payments. This hearing represents an important opportunity to review the impact of the law and to take a look at what still needs to be done to ensure that all children in this country grow up in safe, nurturing families.

## POSITIVE OUTCOMES AND DEVELOPMENTS SINCE ASFA

The primary goal of ASFA was to ensure safety and expedite permanency for children in the child welfare system. This goal has been achieved in part. Although the entries in care appear to be static, the number of children in foster care has dropped slightly, as have the number of children waiting for adoption.<sup>1</sup> The most positive outcome appears to be the increase in the number of legalized adoptions. The annual number of adoptions increased by 57% since ASFA, from 37,000 in 1998 to 50,000 in 2001.<sup>2</sup> These numbers are much larger than projected, however, the role ASFA played in the increase is unclear because some states had already begun renewed adoption efforts prior to ASFA.

There are other important developments related to ASFA. States have taken the ASFA timeframes seriously. They have enacted new legislation and promulgated regulations to expedite permanency, consistent with ASFA. Jurisdictions are holding permanency hearings sooner, often practicing some type of concurrent planning, and establishing a more expedited track for filing petitions to terminate parental rights when reunification is not possible or appropriate. The length of time before deciding on a permanency plan has been reduced. States are looking for tools to assist in expediting permanency, including concurrent planning, guardianship, and kinship support.<sup>3</sup>

In addition to the permanency option of adoption, there appears to be a broadening of the traditional notion of permanency in some states and localities. This includes states increasingly turning to relatives as a permanency option and making relatives a part of the permanency process. States report an increase in the use of temporary and permanent relative placements over the past few years. There are a number of new state initiatives in the areas of guardianship and kinship support. Some states are working to relieve relative burdens by using mediation and financial support to address relatives' needs, including guardianship programs and kinship assistance (subsidized and unsubsidized).<sup>4</sup>

Additional practice improvements have been noted in some jurisdictions. There is an increased use of family-based approaches and interventions including family group conferencing, family mediation, and Family-to-Family and other neighborhood foster care approaches. These approaches stress non-adversarial, collaborative efforts to achieve permanency for children. Similarly, there is greater use of voluntary relinquishment and open adoption, especially in conjunction with concurrent planning and foster parent adoption.

Finally, to achieve timely permanency for children, in many jurisdictions, there has been an increased and continuing focus on collaboration between public and private agencies and across systems to improve permanency for children.<sup>5</sup>

## AREAS WHERE IMPROVEMENT IS NEEDED

While ASFA has had some impact on increasing the number of adoptions from the foster care system, and possibly reducing the number of children in foster care, it is clear that more needs to be done. **While there has been a decrease in number of children in foster care in the last year or two, there continue to be over 500,000 children in care.**<sup>6</sup>

**Families continue to come to the attention of the child welfare system because targeted early intervention supports are not available.** Without these services, many families will require intensive and extensive interventions.<sup>7</sup> Appropriate services for families whose children are already in care and who must meet the ASFA time frame are also lacking. In many communities, there continue to be insufficient substance abuse, mental health, and other treatment resources for families, as well as sufficient housing and economic supports. All families—whether formed through reunification, adoption, kinship guardianship, or another permanent

<sup>1</sup> U.S. Children's Bureau. (2002). *Trends in Foster Care and Adoption as of 11/01/02*. Available online at [www.acf.hhs.gov/programs/cb/publications/afcars.htm](http://www.acf.hhs.gov/programs/cb/publications/afcars.htm). Washington, DC: Department of Health and Human Services.

<sup>2</sup> Ibid.

<sup>3</sup> Assistant Secretary for Planning and Evaluation. (2001). *Assessing the context of permanency and reunification in the foster care system*. Washington, DC: U.S.D.H.H.S.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> There were 556,000 children in foster care on 9/30/00. *The AFCARS Report: Interim FY 2000 estimates as of August 2002*. Available online at [www.acf.hhs.gov/programs/cb/publications/afcars/report7.htm](http://www.acf.hhs.gov/programs/cb/publications/afcars/report7.htm). Washington, DC: Department of Health and Human Services.

<sup>7</sup> There were 2,796,000 children referred for possible child abuse and neglect in 2000. Administration on Children, Youth, and Families. (2002). *Child maltreatment 2000*. Available online at [www.acf.hhs.gov/programs/cb/publications/cm00/outcover.htm](http://www.acf.hhs.gov/programs/cb/publications/cm00/outcover.htm). Washington, DC: U.S. Department of Health and Human Services (HHS).

plan—need follow-up support and assistance if they are to be successful. These services are rarely offered and are greatly needed to preserve permanency and prevent re-entry into the system.

**Children of color continue to be over represented in the child welfare system.** For all states, the rate of entry of African American children was higher than the rate for Caucasian children, and in 30 states it was more than 3 times higher.<sup>8</sup> Forty percent of the children in foster care are black, non-Hispanic, 38% are white non-Hispanic, 15% are Hispanic, and 2% are Native American.<sup>9</sup>

**The lack of preventive and treatment services appears to also be particularly relevant for families of color, whose children are disproportionately represented in the child welfare system.**<sup>10</sup> Preventive and treatment services need to be culturally competent and available in the family and child's language. In five states (NM, CA, AZ, CO and TX), over 30% of the children in the child welfare system are Hispanic. In both North and South Dakota, Native American children make up more than 25% of the children in foster care.<sup>11</sup> Further, AFCARS tells us that minority children are primarily adopted by single parents.<sup>12</sup> These parents, often relatives, need ongoing support by the agency, if they request it, so that they can best care for their children.

**The age of children in foster care waiting to be adopted has increased dramatically and there has been limited success in moving older children and youth to permanency.** The average age for a child to become legally free for adoption has increased, the median age of waiting children has increased, and over half of the waiting children are over 8 years old.<sup>13</sup> Concerted efforts are still needed to assist youth not only with independent living skills, but also with permanent, supportive relationships. For youth who enter the system at an older age, the use of voluntary relinquishment, open adoption, guardianship and other participatory approaches, are needed to assist youth and their families to achieve permanency.

Additionally, although the time from removal to termination of parental rights (TPR) has decreased, the **time from TPR to adoption has increased**, with the total time in care for waiting children remaining constant at 44 months.<sup>14</sup> Adoption work is intense and time consuming if done right. Yet, child welfare caseloads for adoption workers are increasing. Just this week, the Wisconsin Department of Family Services proposed eliminating 12.5 special needs adoption workers and five offices due to a 3.2 billion state budget shortfall.

**Workforce issues pose a challenge to ensuring children's safety and care.** A major challenge in reducing the number of children entering or remaining in out-of-home care or waiting for an adoptive family lies in the ability of a well-staffed and well-trained child welfare workforce. Caseworkers must assist families that are experiencing difficult and chronic family problems. They must also achieve the goals of safety and permanency and make lifetime decisions for the child within the ASFA timelines. Yet, the safety and permanency of children is hampered due to large caseloads, caseworker turnover and minimal training.

**The need for foster and adoptive families continues to grow.** In fiscal year 2001, the federal government reported that foster parents adopted 59% of the children from the foster care system.<sup>15</sup> Many states are instituting expedited permanency planning systems that seek to place foster children with "resource families" who will eventually become the adoptive parents. Despite this trend, the need for unrelated adoptive families has not diminished because there continue to be waiting children.

**Geographic barriers continue to delay adoptive placement for some children.** ASFA mandated that barriers to inter-jurisdictional adoptive placement be eliminated. *Adoption 2002*, a report issued by the U.S. Department of Health and Human Services (HHS), noted the following geographic barriers to adoptive place-

<sup>8</sup>National Clearinghouse on Child Abuse and Neglect Information. (n.d.) *Safety, Permanency, Well-being. Child Welfare Outcomes, 1999: Annual Report*. Washington, DC: Administration for Children and Families. Available online at <http://www.acf.dhhs.gov/programs/cb/publications/cwo99/index.html>.

<sup>9</sup>Ibid.

<sup>10</sup>See Summary, Conclusion, and Final Notes, *The Impact of ASFA on Children and Families of Color*, Proceedings of a Forum. (2002). Washington, DC: Child Welfare League of America.

<sup>11</sup>Ibid.

<sup>12</sup>Maza, P. The Role of the Single Mother in the Adoption of Children from the Child Welfare System. *Adoption News*, 3 (4) 3. Washington, DC: Child Welfare League of America.

<sup>13</sup>Presentation by P. Maza, CWLA National Conference, March 2003.

<sup>14</sup>AFCARS REPORTS (FY 1998, 1999, 2000, 2001) Op. Cit.

<sup>15</sup>Maza, Penelope, L. Ph.D., Senior Policy Research Analyst, "Is the Adoption and Safe Families Act (ASFA) Doing What it is Supposed to do?" November 7, 2002 workshop, Ft. Lauderdale, FL.

ments: lack of dissemination of information about waiting families and children; reluctance on the part of agencies to conduct home studies to place children who are outside their jurisdictions; reluctance of agencies to accept some studies conducted by agencies in other jurisdictions, difficulties in transferring Medicaid benefits; and issues with the Interstate Compact on the Placement of Children (ICPC).<sup>16</sup> Although there is a national Internet Photolisting service, AdoptUSKids, and many states have Internet registries that feature waiting children and families, workers do not often search these registries for families. Many remain reluctant to list available families, or to utilize families from other jurisdictions. Yet, adoption recruitment has become increasingly national, even global, in scope, and in order to ensure that children are placed in a timely way with waiting families, these barriers need to be addressed.

ASFA also underscored the continued importance of the courts in ensuring timely permanency for children. Greater judicial involvement and oversight is required to provide added protections for foster children. To be effective, everyone must work together to streamline court processes, ensure timely and complete documentation, ensure the participation of all relevant parties, and maintain a sense of urgency for every child. **Courts have been challenged to fully respond to the ASFA requirements, with limited new resources.** Judicial caseloads, inadequate representation, unnecessary delays, and unprepared workers and legal counsel are but a few of the possible difficulties encountered.

#### **REALIZING THE GOALS OF ASFA**

While some progress has been reached since the passage of ASFA, much more needs to be done to ensure that all children in this country grow up in safe, nurturing families. Several pieces of legislation have already been introduced this year, which would help advance that goal.

#### ***Change the Eligibility for Title IV-E Foster Care and Adoption Assistance***

To ensure child safety, permanency and well-being, federal funding should be provided for all children in out-of-home care. Congress has mandated legal and permanency protections for all foster and adopted children, however, federal funding is only available to pay for the costs of children who are eligible for Title IV-E of the Social Security Act. The current law links Title IV-E eligibility to archaic standards that each state had in place under their 1996 AFDC cash welfare system. This provision requires states to maintain the same eligibility standards that existed in July 1996. Since AFDC no longer exists, this continues to be an administrative burden on the states. Even more critical, however, is the fact that as time goes by, fewer and fewer numbers of children are eligible for support under these two funding streams. Data gathered by the Urban Institute indicates that as of 2000, approximately 57% of all children in out-of-home placement were eligible for IV-E funding.<sup>17</sup> Other data from HHS indicate this percentage is even lower. Some states may be able to serve less than one-third of their children in out-of-home placement through the use of IV-E foster care fund. If the current system remains in place, fewer and fewer children will be eligible for federal foster care and adoption assistance.

CWLA recommends that the eligibility link should be eliminated so all children in foster care receive federal assistance. The Child Protective Services Improvement Act (H.R. 1534) changes Title IV-E eligibility to link it with a state's TANF cash assistance program standards. Similar legislative language was included in a TANF reauthorization bill (S. 2052) introduced by Senator Rockefeller in 2002.

#### ***Prevention and Early Intervention Services***

Resources are needed for primary prevention services that can prevent many families from ever reaching the point where a child is removed from the home. Prevention and early intervention services play a vital role for children and families in communities. Family support, home visiting, and in-home services enable many parents to gain competence and confidence in their parenting while addressing other family concerns. Child care, housing, and job training/employment are services that enable families to stay together to the fullest extent possible. These and other preventive services need to be much more available to families early on as well as when a crisis occurs.

Community-based child protection programs have demonstrated that many families can be helped before there is a need for protective intervention with the family.

<sup>16</sup>U.S. Department of Health and Human Services. (1997) Adoption 2002. Washington, DC: author.

<sup>17</sup>The Cost of Protecting Vulnerable Children III, Occasional Paper Number 61, Roseana Bess, Cynthia Andrews, Amy Jantz, Victoria Russell, Rob Geen, The Urban Institute.

Often, the family can identify what is needed, can be connected to resources, and contact with the formal child welfare system can be averted. Often, after a formal report has been made, a child can be maintained safely at home with sufficient supports, clear expectations, and monitoring. At all points in the continuum, however, ongoing, targeted assessment must be taking place. Both the initial child protective services investigation and placement prevention services require appropriate immediate assessments of the family, the child and the community.

The Act To Leave No Child Behind (H.R. 936) would allow states to claim reimbursement under the Title IV–E foster care program to address these needs. CWLA strongly supports efforts led by this Subcommittee and the Administration to secure increased resources for the Promoting Safe and Stable Families program. Currently funded at \$405 million, Congress may approve up to \$505 million annually for this program.

#### *Family Reunification Services*

Reunification is the first permanency option states consider for children entering care. Yet, in many ways, it is the most challenging option to achieve in a plan-based, permanent way. Forty-three percent (239,552) of children in care on September 30, 2000 had a case plan goal of reunification with their parents or other principal caretaker while 57% (157,712) of the children who exited care during FY 2000 returned to their parent's or caretaker's home.<sup>18</sup> Successful permanency through reunification requires many things, including skilled workers, readily available supportive and treatment resources, clear expectations and service plans, and excellent collaboration across involved agencies, at a minimum. Worker skills are addressed below, as are the need for accessible and culturally appropriate support and treatment services for families with children. Also addressed is the critical need for after care or post-permanency services to ensure that safety and permanency are maintained following reunification.

The Act To Leave No Child Behind (H.R. 936) would allow states to claim reimbursement under the Title IV–E foster care program to address these needs.

#### *Kinship Permanency and Guardianship*

CWLA believes that one area that can serve as an important tool in providing children with a safe and permanent setting is the use of guardian kinship care arrangements. Some states have used various resources to fund this permanency option. A few states have utilized federal Title IV–E funds to support guardianship through the use of Title IV–E waivers. A federally funded guardianship permanency option should be available to allow states to provide assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have committed to care for on a permanent basis. Kinship guardianship assistance agreements and payments would be similar to the adoption assistance agreements in that they would take into consideration the circumstances and the needs of the child.

Kinship care, when properly assessed and supported, has been shown to provide safe and stable care for children who remain with or return to their families.<sup>19</sup> Twenty-five percent of children in care are living with relatives, some of who will not be able to return to their parents.<sup>20</sup> States vary in their use of relative homes for foster care even though federal regulations state that there is a preference for relative placements. States are challenged to provide the financial, social, and legal supports that are needed to ensure safety and permanency in kinship placements. Generally there is a lack of case management and support services made available to relative and legal guardian providers.

The Act To Leave No Child Behind (H.R. 936) and the Child Protection Services Improvement Act (H.R. 1534) would allow states to claim reimbursement under the Title IV–E foster care program to address these needs.

#### *Post Permanency/Post Adoption Services*

Post permanency services are needed to support permanency when children have been reunified with their families, adopted, or when relatives have assumed legal guardianship and permanent care. Services need to be available, affordable, accessible and appropriate to the family's needs. To accomplish this for all children and

<sup>18</sup> *The AFCARS Report: Interim FY 2000 estimates as of August 2002*, Op. Cit.

<sup>19</sup> Benedict, M.I., Zuravin, S., and Stallings, R.Y. (1996). Adult functioning of children who lived in kin versus non-relative family foster homes. *Child Welfare*, 75 (5), 529–549; Berrick, J.D., Barth, R.P., and Needell, B. (1994). A comparison of kinship foster homes and foster family homes: Implications for kinship foster care as family preservation. *Children and Youth Services Review*, 16 (1–2), 33–63.

<sup>20</sup> U.S. Children's Bureau. (2002).

families requires a system of service delivery which will ensure that post-permanency services are available and accessible in all parts of the country, both rural and urban; that sufficient funding is available to ensure services will continue to be available as the needs of the families and children change; and that an appropriate range of services are developed to meet the varying needs of adoptive families, birth families, and adopted children. The provision of these services would support reunification, prevent recidivism of children reentering foster care, and maintain permanency for adopted children and those in guardianship arrangements.

Due to the increased number of termination of parental rights, more special needs children are now waiting for an adoptive family or have been adopted. They need treatment services to a greater or lesser degree until they reach adulthood (or perhaps the rest of their lives). The services should be tailored to the specific needs of each child and family. They may range from occasional respite, to time limited therapy for the child and/or the parents, to day treatment, to residential care. Adoptive parents need a variety of supports to prevent disruption or dissolution. These needs are predictable, but states have no way of knowing the extent of the need or the cost. Potential adoptive families need to be able to adopt without fear that they cannot afford to adopt a "special needs" child because of potential extensive costs. It is imperative that appropriate services be ready for these families and their new children. Currently, in many jurisdictions, if an adopted child needs residential treatment, the adoptive family must give up custody of the child, and the child reenters the foster care system for services.

The Act To Leave No Child Behind (H.R. 936) would allow states to claim reimbursement under the Title IV-E foster care program to address these needs.

#### *Access to Mental Health Services*

It is estimated that 20%, or 13.7 million American children have a diagnosable mental or emotional disorder. Nearly half of these children have severe disorders, but only one-fifth receive appropriate services. For children living in foster care today, the problem is even more serious. Eighty-five percent of the 547,000 children living in foster care have a developmental, emotional, or behavioral problem. Most of these children have experienced abuse and/or neglect and are at high risk of emotional, behavioral, and psychiatric problems. Upon entering foster care some children already have a diagnosed serious emotional disturbance and require significant services. In addition, all children who are separated from their families experience some trauma and may require mental health services.

To improve the integration and coordination of services between the child welfare and mental health systems, CWLA supports the funding of \$10 million for the Improving Mental Health and Child Welfare Services Integration Program. This program, which is yet to be funded, was authorized to provide coordinated child welfare and mental health services for children in the child welfare system. It will provide a single point of access in order to better provide children with appropriate services, including comprehensive assessments, coordinated service and treatment plans, integrated mental health and substance abuse treatment when both types of treatment are needed. With improved coordination and access to services and treatment, mental health services provided to children and youth that come to the attention of the child welfare system can be achieved in a more appropriate, efficient, and cost-effective manner.

#### *Substance Abuse Treatment Services For Families*

Families in the child welfare system need access to appropriate substance abuse treatment. A common thread in child protection and foster care cases is the high percentage of children, their parents, or both who have a substance abuse problem. Up to 80% of the children in the child welfare system have families with substance abuse problems.

ASFA has designed to promote the safety and permanence of children by expediting the timelines for decision-making. That law requires that a court review plan for a child's permanent living arrangement be made within 12 months of the date a child enters foster care. It also requires that if a child is in foster care for 15 or the most recent 22 months that a petition to end a parent's rights to the child must be filed, unless certain exceptions apply. To ensure that permanency decisions can be made for children whose families have alcohol and drug problems, special steps must be taken to begin services and treatment for the family immediately upon a child's entry into foster care or regain custody of their children. These resources for substance abuse treatment for families are chronically in short supply. There is a national shortage in all types of publicly funded substance abuse treatment for those in need, especially for women with children. All states report long waiting lists. Alarming, over two-thirds of parents involved in the child welfare system

need substance abuse treatment, but less than one-third get the treatment they need.

This need is addressed in the Child Protective Services Improvement Act (H.R. 1534). Senator Olympia Snowe (R-ME) has also reintroduced the Child Protection/Alcohol and Drug Partnership Act, S. 614, and Representative Rangel is expected to reintroduce the companion bill in the U.S. House of Representatives in the near future. This bill will provide new resources (\$1.9 billion over five years) for a range of state activities to improve substance abuse treatment. State child welfare and substance abuse agencies, working together, will have flexibility to decide how best to use these new funds to enhance treatment and services. For example, states may develop or expand comprehensive family-serving substance abuse prevention and treatment services that include early intervention services for children that address their mental, emotional, and developmental needs as well as comprehensive home-based, out-patient, and residential treatment for parents with an alcohol and drug abuse problem.

#### ***Adoption Incentives to Increase Adoptions***

The adoption incentives program that rewards states for increasing the number of “special needs” children adopted from foster care needs to be reauthorized and modified. Last year, only twenty-eight of the states and territories received an incentive award since they were not able to continue to increase their adoptions over their established baseline. Yet, the national total number of adoptions was very close to the previous year (50,600 in 2000 and 49,617 in 2001).<sup>21</sup> States were not able to receive these payments because the backlog of foster parent adoptions in almost all states has been cleared, the number of children entering the foster care system has decreased slightly, and fewer children are considered “special needs” due to the AFDC 1996 income eligibility requirement, which has not been increased to keep up with inflation. Meanwhile, states are continuing to complete a record number of terminations of parental rights proceedings (75,000 in 2000),<sup>22</sup> and the number of children waiting for an adoptive family is decreasing. We also know that of the children still waiting for adoption, those who will not be adopted by their foster parent or relative are older and have more challenging needs.

CWLA supports a change in the adoption incentives program. We agree with the Administration’s proposal to create a new, additional, second baseline predicated on the number of children nine years of age or older that had finalized adoptions last year. This will focus on those children who *have been* identified as more than likely not to achieve an adoptive home due to their age. AFCARS has indicated that age is the most important factor for a child waiting for permanency.<sup>23</sup>

CWLA recommends that the original baseline also be modified. Although all states, during at least one of the program years, received an incentive bonus, many were not able to fully participate. States that had already begun to focus on increasing the number of adoptions prior to the implementation of ASFA were not able to continue to show an increase as their adoptions had already been processed in a timely manner. Additionally some states were able to finalize many adoptions in one year, which resulted in an artificially high baseline for the remaining years. We recommend that the original baseline be reset to allow states a more level playing field. An incentive to place a set percentage of the children waiting adoption would allow those states whose foster care populations are declining to continue to be rewarded for good work. It would also allow other states that have been excluded from the incentive program to again participate. These are states that have maximized finalizations in one year and/or have already reached a static waiting child population.

#### ***Reducing Inter-Jurisdictional Barriers to Adoption***

To secure additional adoptive homes, inter-jurisdictional barriers need to be eliminated. The interstate compacts (ICPC and ICAMA), designed to facilitate interstate placement, need to be modified. A subcompact to ICPC or a new compact could be created that is dedicated to only interstate child welfare adoptions. This would help facilitate adoptions across state lines. In order to expedite these inter-jurisdictional adoptions, a new compact should address the purchase of service process.

#### ***Building a Strong Child Welfare Workforce***

Successful outcomes for children and families in child welfare depend heavily on the quality of services received, and in turn, on the ability of the workforce delivering them. Yet, child welfare agencies across the country are facing a workforce

<sup>21</sup> U.S. Children’s Bureau. (2002), Op. Cit.

<sup>22</sup> *The AFCARS Report: Interim FY 2000 estimates as of August 2002*, Op. Cit.

<sup>23</sup> *Ibid.*

crisis on many fronts. Attracting, training, and retaining qualified staff at all levels has become increasingly challenging. Staff shortages and high turnover rates have grown with the increasingly rigorous demands of the work, low to modest compensation, and competition with other more attractive options in the current booming job market. Child welfare workers must be prepared to handle caseloads typically well beyond recommended national guidelines. Every day they work with children and families with complex problems and often in situations that may jeopardize their safety.

New evidence recently released a report from the U.S. General Accounting<sup>24</sup> Office found that states failed to meet some of the outcome measures in the Child and Family Services, due, at least in part, to workforce deficiencies. Areas where measures were not met due to workforce issues included: timely investigation of abuse complaints, efforts to reduce the risk of harm to the child, the ability to maintain stable foster care placements, establishing permanency goals for the child in a timely manner, involvement of children and families in case planning, and adequately monitoring child safety and well-being.

The Child Protective Services Improvement Act (H.R. 1534) begins to address these workforce issues by creating an incentive fund to help states build a strong workforce and also provides loan forgiveness for students who work in child welfare system.

### ***Training***

An important workforce issue is the need for training for both new staff and ongoing training for current staff. States must be able to ensure worker competencies through the provision of comprehensive, rigorous, competency based training programs. We believe that an important part of this strategy is to allow states that contract their services to private agencies to be able to use federal IV-E training dollars to train this important part of the workforce. Legislation introduced by Representative Weller (H.R. 1378) and the Child Protective Services Improvement Act (H.R. 1534) accomplishes that goal.

### ***National Standards and the Child and Family Service Reviews***

ASFA required states to develop and implement state standards to ensure that children in foster care are provided quality services. There is considerable variability across states in meeting this requirement. In addition, HHS has established “national standards” for the Child and Family Service Reviews. These standards are specific statewide data indicators that are used to determine, in part, whether or not states are operating in substantial conformity with state plan requirements. While useful as an aggregate measure, they do not provide detailed guidance to states regarding the delivery of quality child and family services.

The absence of a core set of nationally agreed-upon standards by which agency services can be measured seriously compromises quality and consistency across child welfare services. The lack of clear agency policy and accountability with regard to best practice all too frequently permits “free-lance” and unstructured casework practice. It fosters decision-making that by default may be driven by individual workers who are often inexperienced and inadequately trained. The lack of national standards by which agencies are held accountable has played out nationally in recent reports of the disappearance, serious injury and death of children. In addition to these most tragic examples, without complying with such standards, many agencies are ill equipped to provide the basic care and protection of children and support to families that we expect of an effective child welfare system.

Unlike other systems that provide critical services to children and families—such as schools and hospitals, there are no comprehensive nationally mandated standards for child welfare services. For many years, CWLA has been the principal national organization responsible for developing child welfare standards. CWLA’s eleven volumes of standards provide best practice guidance on many aspects of child welfare including the quantification of caseload ratios. Unfortunately, there remains a wide gap between the best practices recommended in these standards and what actually occurs in practice in many jurisdictions.

CWLA proposes the establishment of national standards for child welfare practice which would be linked to the Federal Child and Family Service Reviews. Once established, nationally adopted child welfare standards would provide guidance to state efforts to achieve the Child Welfare Outcomes and meet the requirements of State Program Improvement Plans. Establishing national standards of practice for child welfare services, and creating and implementing a process for states to use to

<sup>24</sup> Child Welfare: HHS Could Play a Greater Role in Helping Child Welfare Agencies Recruit and Retain Staff, General Accounting Office, GAO-03-357, March 2003.

“gear up” to the standards would result in more consistent, quality practice across jurisdictions and nationally. It would provide clear guidance to the states in their efforts to achieve the Child Welfare Outcomes and make improvements as laid out in their Program Improvement Plans. It would provide a needed practice framework, enabling child welfare service systems to achieve good outcomes for children and families and to be accountable for the important work that they do.

#### Tribal Access to Title IV–E Funding

CWLA supports direct tribal access to Title IV–E funding. Legislation introduced by Representative Camp (H.R. 443) allows tribes an option to directly access Title IV–E funds from HHS rather than negotiating for these funds in partnership with states. Presently the state IV–E agency must be responsible for the placement and care of foster children if Title IV–E eligible expenses are claimed; tribal expenditures can only be reimbursed through the state.

#### CONCLUSION

CWLA aspires to an America where every child is healthy, safe, and thriving, and where all children develop to their full potential, are nurtured, and are able to grow into adults who are able to make positive contributions to family, community, and the nation. Though most Americans embrace this view and act each day to fulfill it with the children they love, more is needed to meet these needs for all children. Essential improvements are still needed for the protection and care of children who have been abused and neglected. CWLA calls on Congress to act this year to ensure that we, as a country, do a better job of protecting and caring for these children.

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#### Statement of the National Indian Child Welfare Association, Portland, Oregon

The National Indian Child Welfare Association submits this statement regarding the implementation of the Adoption and Safe Families Act of 1997. Our specific comments will focus on how this law has impacted Indian children and families living on tribal lands and under tribal jurisdiction. Attached is a brief description of the work of our organization.

With the passage of the Adoption and Safe Families Act came sweeping reform of child welfare policy and practice in many state and local areas. Hopes of providing more certainty and stability for children caught up in the foster care system were key goals for agencies involved in implementing this landmark legislation. However, one group of children in the United States has seen little help from this law, and, in some cases, has actually seen progress complicated in their search for greater permanency. This group is Indian children, both under state and tribal jurisdiction. With some relatively small changes and improvements to federally based permanency funding, these children could also receive many of the benefits that Congress intended under ASFA.

**The need for stable funding to support permanency services.**—Over 500,000 Indian children are served by their tribal governments based upon their status as citizens of that government and the jurisdictional authority that exists for those tribal governments. There are over 560 federally recognized tribal governments, and each one provides some level of child welfare services for its member children and families. However, the resources to exercise that authority are not there for tribal governments, as indicated by the hodge podge of funding streams that they have to patch together to create child welfare services in their communities. Federal child welfare funding streams, while available and accessible for all states, are not always provided to tribes. The prime example is Title IV–E Foster Care and Adoption Assistance program with expenditures of over \$6 billion annually. States use this funding to support basic permanency services like foster care and adoption assistance, while tribal governments do not have direct access to this or any other reliable source of funding. The result is that tribal governments struggle to develop adequate foster care and adoptive home families without basic subsidies for training or support of these families. Children who need placement often have to be placed in homes that provide safe and loving environments, but struggle to make ends meet with an extra child in the home. This can also lead to foster care home burnout and a failed placement. Indian families that would like to adopt also have to think twice before making a commitment to a child when they know that basic support services may be lacking. This lack of basic permanency funding for tribal governments is the single largest impediment to helping Indian children find permanency.

Fortunately, the solution is not difficult. Congressman Camp in the House and others in the Senate have introduced legislation in this Congress to help fix this inequity and provide tribal governments and Indian children with the same benefits from IV-E that all other children enjoy. The legislation in the House (H.R. 443) is under this Subcommittee's jurisdiction and could not only bring more support for necessary services, but also open the door to more tribes operating the IV-E program, which contains many of the ASFA requirements. We commend Congressman Camp for standing up for Indian children and seeing the need to correct this situation, and we urge the Subcommittee to support this important legislation too.

**Promoting Adoption in Indian Country.**—Tribal governments, not unlike state governments, are concerned about the permanency of their children. Tribes have some of the same obstacles to face in terms of finding permanent placements that states do. For Indian children where adoption is an appropriate option, the incentives and support for prospective adoptive parents are not there. Because tribal governments cannot currently receive direct funding under Title IV-E, they have fewer resources and supports available to assist adoptive placements. Furthermore, unlike states, tribes that have increased the number of foster children in adoptive placement cannot share in the Adoption Incentives program under ASFA. In some cases, where a child is in state custody, but the adoptive placement originates from a tribally licensed adoptive home, the state receives the full incentive, while the tribe receives nothing. In these circumstances, often the tribe is also performing significant case management services to assist the state also. Providing tribes full access to Title IV-E and the Adoption Incentive Program would make good sense in helping tribes encourage adoption in their communities.

**Expanding the range of permanent placements.**—While adoption is an appropriate option for many younger children in need of a permanent placement, it does not fit well for many older children with special needs. Indian communities, like many other communities, have a full range of children that need permanent placements. The most difficult placements to secure are often those for older children with special needs. In these cases, more creative thinking and planning needs to go into securing a permanent home. Often, the only available homes in these situations are relatives. To enable these relatives to care for these children it takes different kinds of supports and more flexible placement options. Many relatives are not willing to adopt in these situations and would prefer to seek a guardianship placement. However, because of the special needs that these children often present and the general economic conditions that exist in most tribal communities, it is important to be able to offer a subsidized placement option where services and basic financial assistance can be provided. ASFA acknowledges a range of permanent placement options but does little to provide incentives or greater encouragement to use these options. The short time that ASFA has been in place shows us that additional efforts and incentives will be necessary to move these types of children from foster care into a more permanent living arrangement.

**Improving background checks for tribal foster care and adoptive homes.**—Because of unintentional conflicts between ASFA and the Indian Child Protection and Family Violence Prevention Act (P.L. 101-630), states are unable to use tribally licensed foster care and adoptive homes, which are very important to the overall goal of helping Indian children under their care secure permanency. The Indian Child Protection and Family Violence Prevention Act requires all tribes that license foster care and adoptive homes to conduct extensive background checks on these prospective homes. These background checks, which are often more extensive than state background checks using ASFA standards, include local, state and federal jurisdictions, but are often not accepted by states because of fears that the tribal background checks done through the FBI will not meet every ASFA requirement and might jeopardize the state's IV-E funding. This results in perfectly safe homes for these children being rejected and further delays in helping Indian children achieve timely placements. Existing federal law, the Indian Child Welfare Act of 1978, is also clear that tribally licensed homes should be treated as equivalent to state licensed homes for the purposes of helping Indian children find appropriate foster care and adoptive homes. We ask the Committee to consider an amendment to ASFA that would help clarify and recognize the federal system of background checks for tribally licensed homes and eliminate the unnecessary barriers to permanency for Indian children.

**Conclusion.**—The ASFA sought to provide some additional tools and guidance in meeting the challenges of moving children out of foster care and into more permanent living arrangements. While numbers of non-Indian children have been able to secure more timely permanent placements, Indian children have not. The primary factors have been less access to basic permanency funding for tribes, less access to financial incentives for adoption, a need for greater supports for non-adoptive per-

manent placements, and resolution of conflicts in federal law that create delays in using tribally licensed homes that have undergone federally prescribed background checks. These issues can easily be fixed and would lead to Indian children receiving a significant improvement in access to permanency. We urge the Subcommittee to seriously consider our testimony and work with us to develop some solid solutions to these troublesome barriers.

Thank you again for your consideration of our testimony.

National Indian Child Welfare Association (NICWA). The National Indian Child Welfare Association provides a broad range of services to tribes, Indian organizations, states, federal agencies, and private social service agencies throughout the United States. These services are not direct client services such as counseling or case management, but instead help strengthen the programs that directly serve Indian children and families. NICWA services include: (1) professional training for tribal and urban Indian social service professionals; (2) consultation on social service program development; (3) facilitating child abuse prevention efforts in tribal communities; (4) analysis and dissemination of public policy information that impacts Indian children and families; and (5) helping state, federal, and private agencies improve the effectiveness of their services to Indian people. Our organization maintains a strong network in Indian country by working closely with the National Congress of American Indians and tribal governments from across the United States.

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#### Statement of Voice for Adoption

Since 1997, P.L. 105–89, the Adoption and Safe Families Act (ASFA), has been instrumental in moving thousands of children into permanent, loving adoptive homes. Adoptions from foster care have doubled from 26,000 in 1996 to more than 50,000 in 2002. Most importantly, the law made children’s health and safety the paramount concern for child welfare and court workers.

Although there are many AFSA success stories, areas for improvement on the current law still exist, including interjurisdictional adoptive placements and the Adoption Incentive Program.

#### Advancing Interjurisdictional Adoptions

This following is a true story and was taken from *Placing Children Across Geographic Boundaries: A Step-by-Step Guide for Social Workers*. The guide was written by the National Adoption Center and Adoption Exchange Association with funding by the Dave Thomas Foundation for Adoption. This resource guide was compiled to address the challenges of placing children for adoption in different geographic regions than where they currently reside.

*Zach, Keith, Ashley, Shawn, Eva, and Troy had many challenges. When the youngest was six and the eldest was 12, the six siblings faced the day-to-day realities of poverty coupled with learning disabilities, mental retardation and Troy’s blindness. Despite these hardships, they had a stable home with parents and, most of all, each other.*

*Their world changed abruptly the day their father died. Reeling from her own grief, their mother could no longer adequately care for them. Soon, social services stepped in and the children were scattered to six separate placements.*

*After their mother’s parental rights were terminated due to her neglect of the children, they remained separated in foster care while their social worker sought a permanent home for them.*

*Across the country, an approved adoptive family saw the pictures of these children in a photolisting book. After sending a homestudy, the family was dismayed to learn that only families from the children’s state of residence would be considered.*

*For six years these children waited—six years of their childhood lost to the foster care system; six years of tax dollars supporting them. All the while, the family, thousands of miles away, continued to advocate for the children, and, after contacting their Governor, finally were allowed to adopt them.*

*The children, now young adults, moved into their new home when Keith was in the middle of his senior year in high school. When asked by his social worker how he felt about making such a move, he stated: “MOVE! All the way across the country? Leave my friends, my school? Is it worth it? To be reunited with my brothers and sisters, to have a mom and dad, never to have to move again. It’s definitely worth it!”*

For the majority of waiting children, a permanent family can be located in their own communities. Such placement is often in their best interest as they do not have

to adjust to new schools, cultural differences, and new friends at the same time they are adjusting to an adoptive family and home. However, for many other children, the local community does not have enough potential families to make this possible. For large sibling groups, such as the one mentioned above, or for children with exceptional special needs, teenagers, or children who have waited many years in their local foster care system, the largest possible net must be cast to find an appropriate, permanent home.

ASFA recognized the importance of going beyond geographic boundaries to place children. The law instructs states not to delay or deny placement of children for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the child's case. To help remove barriers that keep families from adopting children who live in a different county or state, the law penalizes states' Title IV-E funding if a violation is found.

ASFA also requires that states mobilize additional resources to increase the number of adoptive families. P.L. 105-89 mandates that all state child welfare agencies include plans for the effective use of interjurisdictional resources such as adoption exchanges.

Although ASFA addresses geographic barriers, lawmakers, families, social workers, judges, and advocates acknowledge that numerous obstacles still exist to moving children between jurisdictions.

One of the main obstacles to interjurisdictional placements is the lack of uniformity in adoption practice. The absence of national standards for family assessments has resulted in considerable variability among states regarding the content and format of home studies of prospective adoptive parents. Differences in home study practice have caused states to question the quality of other states' family assessment processes, particularly when they differ in meaningful ways from the process used by the child's state of origin. Similarly, there is great variability in the quality and intensity of post-placement services that are provided in different jurisdictions. These differences have led to concerns about the level of services and supervision a child will receive if placed with a family in another state, particularly when the perception is that those services are not equivalent to what the child would have received if placed with a family in the child's state of origin.

VFA urges HHS to develop regulatory guidelines and a best practice protocol for interjurisdictional adoptive placements.

#### **Reauthorize Adoption Incentive Payments to States**

The Adoption Incentive Program, considered one of the most innovative provisions in AFSA, encourages states to find adoptive homes for waiting children who are legally free for adoption by granting a financial incentive for each foster child that the state places in adoption. P.L. 105-89 authorized a bonus payment of \$4,000 for each adoption from foster care, or \$6,000 for each special needs adoption from foster care, above the baseline.

States received millions of dollars in adoption incentive payments during the past five years and reinvested their bonus funds for adoption programs, including post-adoption services, family recruitment, and adoption promotion and support.

The program is due for reauthorization this year. Congress must ask the Department of Health and Human Services to restructure the current baselines. Advocates and state child welfare workers believe that the existing baselines are now too high for states to reach. In 2001, only 28 states were able to increase their numbers of foster care adoptions above the current baselines.

Although details have not been released, VFA supports the Bush Administration's efforts to provide incentives to states for moving older children into permanent, loving homes. Additionally, VFA supports the Administration's proposal to maintain funding for the program at \$43 million.

