

Intentions and Results

A Look Back at the Adoption and Safe Families Act

Conclusion

Building Upon the Child Welfare Reform Efforts of the Adoption and Safe Families Act (ASFA)

Over the past twelve years, mandates for children’s safety and permanency under the federal Adoption and Safe Families Act (ASFA) have dramatically altered how most child welfare systems operate. The Center for the Study of Social Policy and the Urban Institute commissioned a series of papers, “Intentions and Results: A Look Back at the Adoption and Safe Families Act,” to examine ASFA’s impact on children, families, and child welfare system performance. Overall, most of the authors conclude that ASFA has accomplished much; however, these papers also identify areas where child welfare jurisdictions fall short and fail to ensure that every child grows up in a safe and supportive family. Specifically, while many children who enter foster care eventually are reunified with their families, adopted by another family, or otherwise linked to an alternative permanent living arrangement, certain populations of children have not uniformly achieved these outcomes. Many jurisdictions struggle to adequately and appropriately work with families who face complex issues related to substance abuse, mental health, incarceration, or undocumented immigration status.

This paper summarizes the key conclusions of papers in the series and provides a next-stage agenda for child welfare reform work in this crucial area.

Learning based on a decade of ASFA Implementation

ASFA created a profound shift in the legal framework and operations of child welfare systems of all states and counties. Specific contributions of ASFA identified by the authors in this series include:

- ▷ Clarity that foster care is a short-term solution to familial problems when a child’s safety is threatened rather than a long-term solution to a child’s ultimate well-being;
- ▷ Requirements that courts and child welfare systems follow clear deadlines and review processes to determine whether a child should return home or find permanency through another option;
- ▷ Unprecedented legal recognition that placement with a relative is an acceptable permanency option for a child and that public systems should help relatives to care for their kin; and
- ▷ A significant increase in the number of children leaving the foster care system through guardianship and adoptions.

Important areas of unfinished business raised by the papers are discussed below:

- 1 ASFA has increased exits from the foster care system through adoption and guardianship, yet many youth exit foster care through emancipation and many without connections to a family.

Papers in this series highlight the importance of ASFA's focus on moving children to permanent families more quickly. Based on the understanding that a "child's sense of time" requires cases to be resolved as fast as possible and that children should not languish in foster care, ASFA created timelines to promote quicker decision-making regarding reunifying a child with his/her family or finding another permanent home. Since ASFA's inception, there has been a significant increase in adoption and guardianship for children in the foster care system.

However, the permanency results for older youth have not been as positive. Older youth remain in foster care for long periods of time, and as they age their chances of achieving permanency through adoption or guardianship diminish. It is troubling that the number of youth who have "emancipated" (i.e., have left foster care when they reach majority age, either 18 or 21) has increased since ASFA was passed. Some authors point out that the greater emphasis on termination of parental rights (TPR) without a permanent family identified beforehand may lead to a larger number of youth being rendered legal orphans and that a portion of these youth never find another permanent family, emancipating from the system with no legal family connections.

- 2 ASFA acknowledged the need to support birth families to prevent removal if possible and to reunify quickly and safely with their children, but did not fully address what must happen to make this a reality for many children.

ASFA requires "reasonable efforts" to prevent removal of children and support family reunification but adequate investments in community-based services and supports for struggling families are missing. Several papers, including the testimonials of parents, describe confusion over what services should be made available to families and what constellation and quality of services constitute "reasonable efforts." Many families with varying needs are referred to a similar set of services (anger management, parenting classes, and psychological evaluation) without adaptation for their unique needs or assessment of the impact of these services on behavioral change. Further, as many authors discussed, there is a dearth of immediate, meaningful services for families in need of housing support, substance abuse, and mental health treatment, and other services to stabilize families, especially those living in poverty.

The ASFA timeline prevents some families from being reunified. Several authors suggest that the ASFA timelines requiring a decision to be made regarding TPR if a child has been in foster care 15 of the last 22 months¹ do not adequately account for the needs and situations of many families. The ASFA timeframes are particularly problematic for families with complex mental health and substance abuse issues, for incarcerated parents, and for immigrant families. The decisions to terminate parental rights are difficult ones, which require child welfare systems and the courts to understand the nuances and intricacies of the rights, desires, and needs of the parents and children in individual families. As authors and parents point out in this series, this decision making is complicated by the relative lack of effective and accessible

services for families with complex needs. This lack of service provision can qualify as a “compelling reason” for the state not to move toward TPR in accord with strict ASFA timeframes. Interestingly, the authors presented differing views about the use of “compelling reasons”: one opinion is that states are broadly using this exception for not moving quickly enough to TPR and permanency, while others suggest that “compelling reasons” are not being used enough to accommodate the individual needs, circumstances, and desires of families.

3 ASFA recognized, but did not sufficiently support, relative placement options.

In addition to adoption and reunification, ASFA included placement with relatives, legal guardians, or another planned permanent-living arrangements as appropriate permanency options for children who cannot be reunified with their parents. While the intention was to create a means of uniformly ensuring safety of children, some provisions of ASFA created challenges for a child to be placed with a fit and willing relative. Specifically, ASFA regulations require that relative foster homes be licensed in the same way as foster homes for children in non-relative placements, with only limited case-specific exceptions. Recent federal legislation, the 2008 Fostering Connections to Success and Increasing Adoptions Act (FCSIAA), makes this requirement a bit less restrictive by allowing states to waive non-safety-related licensing standards for relative homes on a case-by-case basis.

ASFA provides financial incentives for states to place children with adoptive families, but no similar incentive for supporting children in exiting foster care for permanent legal guardianship (including relative/kinship guardianship). In addition to the incentive to states, adoption subsidy programs through many states provide significant support to caregivers to adopt rather than become permanent legal guardians. Authors note that these provisions have disproportionately affected children of color whose relatives are willing to become legal guardians, but not adoptive parents, to their kin and who may need sufficient subsidy and support to adequately care for these children. Again, in 2008 the FSCIAA changed this provision by supporting states in providing financial subsidies to kinship legal guardianship placement as long as certain conditions have been met.²

4 ASFA revealed a need for improved collaboration, supports, and services from other public systems such as mental health, housing, income support, and criminal justice systems.

Many families who require child welfare intervention are already involved with or need the help of other human services systems. However, ASFA primarily addresses the operations of the child welfare system and does not provide specific guidance or mandates to ensure that services and supports of other public systems are provided in a timely and accessible manner to children and families. As a result, there has not been sufficient attention at either the federal or state levels to strategies that ensure cross-system collaboration.

Services to families with multiple issues and needs (e.g. substance abuse, mental health, domestic violence, incarceration) are often insufficient and infrequently coordinated. Some authors suggest that ASFA’s requirement of timelier decision making resulted in the development of special programs for some parents in some localities, such as family drug courts or substance abuse programs for mothers involved with child welfare systems. However, the availability of these programs and other services is not widespread, and access to programs informed by research is particularly lacking across the nation.

Data systems for families who are involved with multiple public institutions are disconnected so that leaders and workers in the field do not routinely know the full extent of the need for services and service coordination. ASFA provided much focus on the data needs of child welfare systems, but the next step will require that states and localities have the ability to track families across social service systems. Specifically, authors note the need to collect data on families involved with the child welfare system and criminal justice, mental health, and substance abuse systems. Further, cross-system collaboration is necessary to design solutions to ensure the coordination and delivery of multiple services and supports that many families need.

5 Infrastructure improvements continue to be needed in the child welfare systems in order to better support children and families.

The child welfare workforce requires strengthening. The work of child welfare is challenging and requires highly skilled, trained, and supervised case workers who are adequately paid and supported. Currently, child welfare systems struggle to hire enough workers, train them sufficiently, and retain them. Authors also point to the inadequate number of available bilingual workers; the lack of training and understanding among workers about mental illness and substance abuse issues; the inconsistent training on the ASFA “compelling reasons” exceptions; and the need for greater worker competency in addressing the needs of culturally, ethnically, and racially diverse families.

Practice and policy don’t adequately focus on the well-being of children in the child welfare system. While ASFA highlights the mission of the child welfare system to promote the safety, permanence, and well-being for the children under its care, much greater attention, in both the law and its implementation, has focused on the two goals of child protection and permanence. Once children are removed from unsafe or high-risk situations, the law and the resources that accompanied the law do not provide a clear framework of expectations regarding the system’s obligations related to the developmental and emotional needs of children. Specifically, workers are often ill-equipped to address the trauma of abuse or neglect, the impact of removal and multiple placements, the issues of attachment and separation anxiety, and other needs of children involved in the child welfare system. Additionally, although child well-being is the responsibility of multiple systems, including education, juvenile justice, mental health, etc., children involved in foster care frequently experience inadequate services coordination and delivery due to a lack of role clarification, conflicting case plans, and inadequate teaming and practice by interdisciplinary/interagency professionals.

Building on the Unfinished Work of ASFA

The goals of ASFA are as valuable and relevant today as they were when ASFA was passed in 1997. The new Fostering Connections to Success Act (FSCIAA) continues to support the goals of safety, permanency, and well-being of children by providing much-needed support for relatives interested in caring for children; requiring coordination of health care and education for children in foster care; supporting sibling placement; and funding tribes to administer child welfare systems that serve their members. Further, the field is recognizing the need to ensure that older youth for whom a permanent legal family cannot be found have strong connections with caring adults. In the past, older youth who failed to achieve permanency with their families have not seen strong concerted efforts to find them other families. The Fostering Connections Act doubles

adoption incentives for older child adoptions and adoptions of children with special needs. Youth who have been in foster care also can access some additional supports through Chafee legislation for assistance with education, employment, and medical insurance.

Laudably, most child welfare reform efforts focus on ensuring that all children are safe, healthy, and connected to families and that families are able to adequately and safely care for their children. The Center for the Study of Social Policy has written and continues to write much about how public systems and communities can achieve these goals for all children and families and for specific groups who may experience overrepresentation or disparate treatment.³ Each paper in this series contains specific and detailed recommendations to improve outcomes for children and families and improve child welfare practice. Rather than present a summary of these recommendations or reiterate recommendations previously made by CSSP in other documents, this paper sets forth a more limited set of policy, research, and practice changes identified by the authors as essential to a comprehensive agenda for action. In moving forward, this agenda should include:

- ▷ **Providing a national focus and support for community-based prevention and early intervention services to families.** Child welfare systems are currently funded and operate to support families who have come to their attention due to child abuse and neglect. However, each of the authors emphasized how critical it is to collaborate with communities to provide adequate supports for families before they reach the circumstances that contribute to child maltreatment. We know that the greatest number of children who enter the foster care system is infants—often having very young parents—and thus, specific attention and interventions should support these families. Additionally, the vast majority of families involved in child protection live in poverty or are among the working poor. A range of supports must be available and coordinated to help struggling families to remain intact, including safe and stable housing, health care, economic stability, child care, and quality mental health and substance abuse treatment. Child welfare systems alone cannot achieve the goals of safety, permanency, and well-being without attending to these pressing needs of families and collaborating with other systems that have the resources and expertise to provide these supports.
- ▷ **Increasing efforts and supports to keep families together, or if separated, to reunify them quickly.** Although obvious, it is important to affirm that families should be provided with appropriate and timely services to help them resolve issues that led to their involvement with the child protection system. As many of the families involved with the child welfare system are low income, significant investment in services to support these families must occur, and systems must have the flexibility to tailor these services to support the unique needs of individual families.

Stronger guidance to the states should be provided in order to ensure that “reasonable efforts” to prevent removal or support family reunification are uniformly and fairly made available to families. For example, the federal government has already issued guidelines for measuring the quality and timeliness of substance abuse treatment, which could be used to assess “reasonable efforts.” Further, “aggravated circumstances” that allow child welfare agencies to bypass providing reasonable efforts should be more thoroughly examined to eliminate uneven and unfair application.

Finally, to be successful, families must understand the interventions and planning by the State and accompanying court proceedings. Based on the testimonial of parents and youth, it is apparent that many did not understand their case plan or court proceedings. In addition to access to strong legal advocates with adequate resources and specialized training, families could benefit from programs such as the Family Navigators or Peer Advocates that help guide them through their experience with the child protection system.

- ▷ **Developing and supporting specialized treatment, especially for families challenged by substance abuse, mental illness, or incarceration.** Many parents and youth involved in child welfare systems are struggling with significant, often debilitating, substance abuse and/or mental health problems. Other families are often separated due to parental incarceration. First, better data must be collected on families involved in multiple systems so that a fuller understanding of the number and needs of families is attained. Second, successful reunification of families and treatment of parents in the child welfare system rests on the field's knowledge and effective delivery of programs designed to meet the unique needs of families. While a body of knowledge about such programs accrues, greater investment in promising programs is required so that a broader array of effective and culturally appropriate programs is available to parents and children. Finally, child welfare jurisdictions must be supported in forming meaningful collaborations with substance abuse, mental health, and criminal justice agencies to ensure that these programs are readily accessible to families involved in the child welfare system; case workers and courts understand and can support the program's treatment modalities; and outcome data can be collected, analyzed, and shared so that programs can be evaluated for effectiveness.
- ▷ **Reassessing the ASFA timelines so that parents are provided adequate opportunity and support to change and reunify their families and that children do not languish in foster care.** Several authors made recommendations on allowing for exceptions to the ASFA timelines due to the needs of parents. Examples include providing exceptions in complicated immigration cases, in cases where a parent with a mental illness is making substantial progress, and in cases where an incarcerated parent has a strong relationship with the child. Currently, systems struggle with wanting to use a standard to determine at what point parental rights should be terminated, but having the flexibility to account for the unique circumstances of families. The current construct of ASFA does not provide sufficient flexibility so that child welfare workers and judges can apply a more nuanced approach to accommodate the unique situation of a family while keeping the short- and long-term needs of a child paramount.
- ▷ **Analyzing current child welfare legislation and practices for fairness towards the unique needs of immigrant families and children.** The issues faced by immigrant families involved in the child welfare system have increased and changed since the implementation of ASFA. Continued analysis is needed to determine how the child welfare system can provide appropriate services and supports to immigrant families, coordinate responses with the interventions of immigration agencies and deportation decisions and timelines, and work with families where parents may be undocumented residents and their children are legal citizens.

- ▷ **Committing to widely available and effective post-permanency supports for children and youth in both adoptive and legal guardianship placements.** Post-adoption services remain underfunded and poorly designed despite the fact that twice as many children receive federally supported adoption subsidies than receive federally supported foster care. Children in foster care, some of whom will later be adopted or enter into permanent legal guardianships, have high rates of behavior problems that often continue after adoption. As systems focus on finding permanent homes for older youth who have been in foster care for long periods of time, post-permanency supports will be even more critical to supporting the long-term stability of the placements and addressing the needs of youth who were once in care. Currently states bear the sole burden for funding post-permanency supports. Federal funding is needed to ensure that post-permanency supports are widely available and accessible to families.

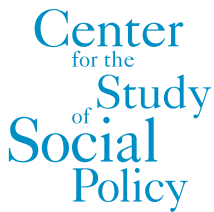
These individual reform efforts will be insufficient without an accompanied focus on improving the infrastructure of the child welfare system. A highly qualified and productive workforce is critical to effective work with families. Child welfare agencies must be able to hire quality workers and supervisors, train them adequately and regularly, and pay them sufficiently well.

Ultimately, reform efforts should result in improved outcomes for children, youth, and their families. As is evident from the testimonials offered in this series, youth and parents are often-ignored experts on which policies, practices, and supports are helpful and those which are not. Their voices and insights must be routinely solicited and incorporated into any agenda for reform.

CENTER FOR THE STUDY OF SOCIAL POLICY

Footnotes

- 1 States are required under ASFA to file for TPR if a child has been in out-of-home placement 15 out of the most recent 22 months with limited exceptions. Courts are also required to conduct a permanency hearing after 12 months of out-of-home placement to determine a permanent plan for the child, whether it is return home, filing of termination of parental rights and adoption, legal guardianship, or other appropriate plan. See Golden and Macomber, *The Adoption and Safe Families Act Framework Paper*, for a more detailed examination of state variation in adapting these ASFA provisions.
- 2 Specifically, children must have been cared for by this relative provider for six consecutive months and must be eligible for federal foster care payments in the home of the relative.
- 3 See www.cssp.org for publications, including Frank Farrow, *Building Community Partnerships for Child Protection: Getting from Here to There*, Center for the Study of Social Policy for the Executive Session on New Paradigms for Child Protective Services, March 4, 1997; *Child Welfare Summit: Looking to the Future: An Examination of the State of Child Welfare and Recommendations for Action*, Center for the Study of Social Policy and its Center for Community Partnerships in Child Welfare, April 2003; *Lesson Learned from the Field—For the Field: A cross-site reflection on 10 years of partnership*, Center for the Study of Social Policy/Center for Community Partnerships in Child Welfare, December 2005; *Protecting Children by Strengthening Families—A Guidebook for Early Childhood Programs*, Center for the Study of Social Policy.



CENTER FOR THE STUDY OF SOCIAL POLICY

1575 Eye Street, NW
Suite 500
Washington, DC 20005
202.371.1565 phone

55 Exchange Place
Suite 404
New York, NY 10005
212.979.2369 phone

www.cssp.org



URBAN INSTITUTE

2100 M Street, NW
Fifth Floor
Washington, DC 20037
202.833.7200 phone

www.urban.org