

Intentions and Results

A Look Back at the Adoption and Safe Families Act

Adoption from Foster Care

A Chronicle of the Years After ASFA

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

Background: Key provisions of ASFA

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

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

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

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

What Has Followed Upon Enactment of ASFA

1. Changes in adoption and related outcomes for children

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

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

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

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

■ Child and Family Services Reviews and adoption indicators

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

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

■ More TPR than adoptions

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

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

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

2. *Changes in Practice and Policy*

■ Reunification bypass

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

■ Services reconfigured to meet timelines

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

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

■ Concurrent planning

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

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

The Post-Permanency Era

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

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

Adverse Adoption Outcomes: Disruption, Displacement, and Dissolution

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

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

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

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

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

Future Directions

■ Improvements in monitoring and data

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

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

■ Termination of Parental Rights

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

■ Subsidies

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

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

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

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

■ Post-adoption services

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

■ Title IV-E waivers and adoption services research

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

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