

Intentions and Results

A Look Back at the Adoption and Safe Families Act

“Twenty” Years with the Adoption and Safe Families Act

John B. Mattingly

*Commissioner, New York City Administration
for Children Services*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

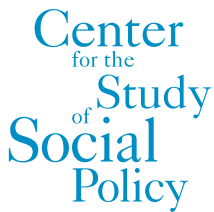
- ▷ In addition, ASFA has helped some of the country’s family courts (in Los Angeles, Pittsburgh, Chicago, San Jose, and Louisville, to name but a few venues) to take up their appropriate role as protectors of the parents’ and children’s rights in child welfare cases—especially in terms of timely action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

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

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

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

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



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