

Intentions and Results

A Look Back at the Adoption and Safe Families Act

Framework Paper

The Adoption and Safe Families Act (ASFA)

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Introduction

In November 1997, President Clinton signed into law Public Law 105-89, the Adoption and Safe Families Act (ASFA). Members of both parties in Congress, working closely with the Executive Branch, played a part in developing the legislation, which nonetheless sparked considerable controversy. Now, more than a decade later, is a good time to assess the progress our society has made toward realizing ASFA's ambitious goals. These include making the child welfare system responsive to "a child's sense of time," ending children's experience of "drifting" in foster care so they may grow up in permanent families, and ensuring that children's safety is paramount in case decision making. This also seems an important moment to review outcomes in light of critics' concerns, especially that the new law might break up families and leave children disconnected from those they love.

This series of papers brings together distinguished experts writing on all aspects of child welfare. The common purpose is to review what we know about ASFA's accomplishments and shortcomings, to tease out the lessons learned from this history, and most importantly to suggest implications of these findings for the future. This framing paper initiates the series by setting out the following components:

- 1 **Introduction:** Begins with an overview of the legislation's goals.
- 2 **Provisions of ASFA:** Examines the provisions of the ASFA legislation and the administrative Final Rule (2000), organizing discussion around the four key goals of permanence, safety, well-being, and accountability.
- 3 **State Implementation:** Reviews the evidence on states' experience and progress in implementing ASFA.
- 4 **Effects on Service Delivery and Agency Culture:** Examines ASFA's effects on practice and culture in child welfare agencies.
- 5 **Child and Family Outcomes:** Explores trends in outcomes for children and families since ASFA's inception.
- 6 **Conclusion:** Summarizes the evidence and highlights selected insights on ASFA's impact to date.

Rather than taking a particular position on ASFA, this paper seeks to frame the major controversies and identify alternative points of view. The remaining papers in the series will offer individual perspectives and provide recommendations for the future.

Much of the debate surrounding ASFA has focused on striking the balance in child welfare between protecting children's safety and respecting the integrity of the family and the rights of parents. To proponents, ASFA restored a balance, which had tilted too far towards parents' autonomy and away from the needs of children, causing them to be left at home with adults who injured or even killed them. To opponents, ASFA opened the door to arbitrary government intervention in families, tearing children away from parents who were capable of caring for them and imposing the unnecessary trauma of removal and foster care on these children. In an effort to articulate this balance, ASFA itself included a provision entitled "Preservation of Reasonable Parenting," which clarified that nothing in the Act was intended to disrupt the family unnecessarily, intrude upon family life inappropriately, prohibit reasonable parental discipline, or prescribe a method of acceptable parenting.

This paper marshals the available evidence on ASFA's effects on these dimensions of child welfare and on other goals such as ensuring children's well-being and their prompt movement towards permanence. Both the legislative history and the body of evidence presented here suggest that a dichotomy between child safety and family integrity is an incomplete framework for capturing the complexity of ASFA's provisions and motivations. Neither does this simple opposition account for its range of effects, both positive and negative, on child welfare systems and, most crucially, on families and children themselves.

It is also noteworthy that the effects of changes in child welfare policy and systems can be very different for children of color than for white children. In particular, researchers have documented the disproportionate representation of African American children in the child welfare system and have begun to disentangle the ways that disparities in treatment based on race may be embedded in child welfare services (Hill 2006; Barth 2005). While the field has grappled with multiple perspectives on racial disproportionality for years, the issue has recently moved to the forefront of concerns in child welfare. Wherever possible, both in this and other papers in the series, the authors will break down the analysis of ASFA's effects to identify differences according to race. Available research offers

only limited hints as to the workings of both positive and negative effects, so the challenge of understanding racial imbalances is also a rich area for future study.

ASFA: History and Context

Before ASFA was signed into law in 1997, there had been no comprehensive congressional attention to child welfare since Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980. As a result, the bill's authors and other contributing parties brought numerous concerns as well as hopes to its drafting. Several congressional authors were above all worried about children's safety, fearing that the federal "reasonable efforts" requirement—namely, that states must make reasonable efforts to keep families together—was interpreted in practice in ways that endangered children by keeping them with parents who harmed them. At the same time, others who worked on the bill wanted to make sure that the law would not go too far and reverse the federal government's historic role in protecting children and parents from arbitrary removals. And a broad group—members of Congress, the Clinton administration, and many outside observers—expressed concern about the growth in foster care caseloads, a pattern of children lingering in care too long, and the obstacles to adoption that prevented children who could never go home from ever achieving a place within a permanent family. Finally, many participants saw the bipartisan interest in child welfare as presenting a rare opportunity to comprehensively address problems facing the system; as a result, people with different views looked hard for common ground and accepted compromises that they believed would lead to better results overall.

Given this complex history, ASFA is a multifaceted piece of legislation with many moving parts and diverse goals. These diverse goals are well illustrated by the arguments of the bill's several sponsors in urging their fellow senators to pass the legislation in November 1997. On the one hand, Senator Mike DeWine (R-OH) argued that the bill's clarification of reasonable efforts was "especially important" because it "will save the lives of many children":

[O]ver the last 17 years, since...[reasonable efforts] became part of our Federal law, this law, tragically, has often been seriously misinterpreted by those responsible for administering our foster care system. Too often, reasonable efforts...have come to mean unreasonable efforts. It has come to mean efforts to reunite families which are families in name only. I

am speaking now of dangerous, abusive adults who represent a threat to the health and safety and even the lives of these children. Senator DeWine (OH), Congressional Record 143, p. S12669.

Senator Jay Rockefeller (D-WV), on the other hand, framed the key provisions of ASFA slightly differently:

While this legislation appropriately preserves current Federal requirements to reunify families when that is best for the child, it does not require the States to use reasonable efforts to reunify families that have been irreparably broken...Most significantly, the legislation takes the essential first step of ensuring ongoing health coverage for all special-needs children who are adopted...I am delighted to see that medical coverage, which has always been a vital part of any program that substantively helps children, is also a key component of this bipartisan package. Senator Rockefeller-(WV), Congressional Record 143, p. S12671.

The Department of Health and Human Services (DHHS) final regulation for the statute (Final Rule), published in January 2000, brought together these complex threads as well as the implementation aspects of other child welfare statutory changes into a single regulatory package. The regulations framed the overall purpose of ASFA as achieving safety, permanency, and well-being. They also integrated the accountability, monitoring, and information systems requirements necessary to implement ASFA's outcome provisions with like requirements necessary to implement a statutory change aimed at reforming federal reviews of state performance.² Other important statutory, regulatory, and practice changes that affected or built on ASFA include the Court Improvement Program, the implementation of state waiver provisions allowing subsidized guardianship, the continued development of state information systems using an enhanced federal match enacted before ASFA, and the very recent Fostering Connections to Success and Increasing Adoptions Act (FCSIAA) Public Law 110-351. 110th Cong., 2d sess., signed into law by President Bush on October 7, 2008. This paper and others in the series describe more fully the important intersections between ASFA and these related changes.

The Provisions of ASFA: Four Key Goals

In the tables on the following pages, we summarize the provisions of the ASFA legislation, organizing them around its four primary goals: moving children promptly to permanent families, ensuring that safety is a paramount concern, elevating well-being as a major focus of child welfare system efforts, and improving innovation and accountability throughout that system.³ For each goal, we highlight the provisions that have been most commented on and have most affected changes in practice. We also weave in the regulations of the Final Rule, which articulated in more detail the first three goals of permanency, safety, and well-being, and implemented provisions of ASFA and of other contemporary child welfare legislation. Specifically, the Final Rule established procedures for the Child and Family Services Reviews (CFSRs), specified implementing regulations for the MultiEthnic Placement Act, and updated the eligibility review process for Title IV-E foster care (DHHS 2000b). Finally, where relevant, we bridge descriptively from ASFA provisions and Final Rule regulations to recent significant legislative changes, specifically the 2008 Fostering Connections to Success and Increasing Adoptions Act (FCSIAA).

Goal 1

Move children promptly to permanent families (“a child’s sense of time”)

A major goal of ASFA was to speed a child’s time to permanency. Table 1 explains the key provisions designed to move children promptly to permanent families. The more notable features include the requirement to terminate parental rights if the child has been in foster care 15 out of the most recent 22 months, the authorization of adoption incentive payments, and the provision that required permanency hearings to be held within 12 months of the child’s entering care, while also intending to eliminate long-term foster care as a potential permanency goal.

Table 1: ASFA Provisions to Move Children Promptly to Permanent Families

REQUIREMENT TO TERMINATE PARENTAL RIGHTS:

The state must file a petition to terminate parental rights (TPR) of the child’s parents and concurrently seek to find a qualified family to adopt the child in three circumstances:

- the child has been in foster care for 15 out of the most recent 22 months;
- the court determines the child to be an abandoned infant, as defined by state law;
- the parent has committed murder or voluntary manslaughter of another of his or her children; attempted, conspired, or solicited to commit or aided and abetted in the murder or voluntary manslaughter of another of his or her children; or committed felony assault that resulted in serious bodily injury to the child or to another of the parent’s children.

There are three exceptions when this requirement does not apply:

- the child is being cared for by a relative;
- the state documents a compelling reason that filing for TPR would not be in the best interests of the child;
- the state has not provided necessary services for the safe return of the child to the child’s home, if “reasonable efforts” were required.

The Final Rule provided guidance to states on how to calculate the stipulated 15 months of foster care and gave examples of compelling reasons for not filing a petition to terminate parental rights, including the following: adoption is not the appropriate permanency goal; no grounds exist for filing a TPR petition; the child is an unaccompanied refugee minor, and there are international legal obligations or compelling foreign policy reasons to preclude TPR. The Final Rule also clarifies that there are no automatic exceptions for groups of children but that exceptions must be made on a case-by-case basis.

DOCUMENTATION OF ADOPTION/PERMANENCY EFFORTS:

For children whose permanency plan is adoption or placement in another permanent home, states must document in the case plan the steps being taken to secure this arrangement as part of their reasonable efforts toward permanency. The legislation specified that at a minimum, documentation should give evidence of child-specific recruitment efforts such as use of state, regional, and national adoption exchanges.

ADOPTION INCENTIVE PAYMENTS:

The legislation authorized incentive payments to states that increased adoptions from foster care, relative to a baseline number of adoptions. The baseline for each state in 1998 was calculated as the average of a state’s finalized adoptions for 1995, 1996, and 1997. For subsequent years, the baseline is the greatest number of adoptions in any fiscal year from 1997 on. States were eligible to receive \$4,000 for each child adopted from foster care above the foster care adoptions baseline and \$6,000 for each special needs child adopted above the special needs adoptions baseline. To qualify for the latter disbursement, states must provide health insurance coverage of special needs children for which they have an adoption assistance agreement with the adoptive parents.

Table 1: ASFA Provisions to Move Children Promptly to Permanent Families (continued)

The recent FCSIAA legislation expanded this incentive system. First, it renewed the incentives program for five more years and set the baseline as 2007. Second, it doubled the incentive payments for older child adoptions and for adoptions of children with special needs. Third, it gives states 24 months to use the incentive payments. Finally, it creates an additional payment for states where the adoption rate exceeds its highest rate since 2002. Prior to FCSIAA, the Adoption Promotion Act of 2003 Public Law 108-145, 108th Cong., 1st sess. (2003), provided additional incentives for adoption of older children, defining older children as 9 years of age or older.

ADOPTION TECHNICAL ASSISTANCE:

The legislation also authorized the Secretary of DHHS to provide technical assistance to states or localities through grants or contracts that help them reach their targets for increased numbers of adoptions and alternative permanent placements.

PERMANENCY HEARINGS:

ASFA required that each child in foster care receive a “permanency” hearing (formerly called the dispositional hearing) no later than 12 months after the date at which the child entered foster care (shortened from 18 months under prior law). ASFA also required that the permanency hearing determine a permanency plan for the child, addressing the question of whether the child will be returned home, placed for adoption with a filing of termination of parental rights, or referred for legal guardianship. Further, the law covers cases in which the state agency documents to the state court a compelling reason that it is not in a child’s best interests to return home, to be referred for TPR, or to be placed either for adoption, with a fit and willing relative, or with a legal guardian. In such instances, the child would be placed in “another planned permanent living arrangement” or APPLA. This provision intended to eliminate long-term foster care as an acceptable permanency goal.

The Final Rule further established that the state must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan within twelve months of the date on which the child entered foster care and at least once during every 12-month period thereafter. This “reasonable efforts” determination must be made on a case-by-case basis, explicitly documented, and stated in a court order within the specified timeframes. Without this order, a child would not be eligible for Title IV-E foster care maintenance payments.

The Final Rule required that if the state concludes after considering all other permanency options that the most appropriate placement for the child is APPLA, then it must document to the court the compelling reason for this alternative plan. The Final Rule provides examples of such a compelling reason: an older teen specifically requests emancipation; an American Indian tribal authority identifies APPLA for the child; or the parent and the child have a significant bond but the parent is unable to provide care, and the foster parents are committed to raising the child while maintaining the child’s relationship with the birth parent.

CROSS-JURISDICTIONAL RESOURCES:

ASFA requires that state plans for child welfare services address ways to effectively use cross-jurisdictional resources to facilitate timely adoptions or permanent placements for children awaiting them. ASFA also required a study by the Comptroller General of the United States to consider improved procedures and policies for facilitating cross-jurisdiction adoptions. Results of the study, with recommendations on how to improve procedures, were to be provided in a report to Congress.

Table 1: ASFA Provisions to Move Children Promptly to Permanent Families (continued)**KINSHIP CARE:**

ASFA required that the Secretary of DHHS prepare a report on the extent to which children are placed in the care of a relative, consult with the Chairman of the House Committee on Way and Means and the Chairman of the Senate Committee on Finance to convene a Kinship Care Advisory Panel to review the report, and submit the final report to the respective Committees.

HEARING NOTIFICATION FOR CAREGIVERS:

ASFA required that foster parents, pre-adoptive parents, or any relative providing care for the child be notified of reviews and hearings with respect to the child and given the opportunity to be heard on such occasions. The recent FCSIAA legislation expands notification provisions to involve relatives early on in a child's case. Specifically, the new law requires states to exercise "due diligence" to identify and provide notice to grandparents and other adult relatives within 30 days after the child is removed from the home.

ADOPTION ASSISTANCE PAYMENT FOR SPECIAL NEEDS CHILDREN WHOSE INITIAL ADOPTION DISSOLVED:

ASFA extended eligibility for adoption assistance payments for special needs children who had been eligible when adopted (on or after October 1, 1997), but whose adoption later dissolved and the adoptive parents' rights were terminated or the adoptive parents died. The recent FCSIAA took another step in making adoption assistance payments available to more children with special needs by "de-linking" a child's eligibility for these federal payments from Aid to Families with Dependent Children (AFDC), Public Law 74-271, 49 stat. 620, income requirements. The provision will take effect on a phased-in basis from 2010 to 2018.

LEGAL GUARDIANSHIP:

The law also clarified the definition of "legal guardianship" to mean "a judicially created relationship between child and caretaker, which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making." FCSIAA provides further support for these care arrangements by giving states the option to use federal Title IV-E funds for kinship guardianship payments. The payments will go toward foster children being raised by relative caregivers who are committed to caring for them when they leave foster care. These children must be eligible for federal foster care maintenance payments while in the care of the relative and must have resided with that relative for at least six consecutive months.

PARENT LOCATOR SERVICES:

ASFA allows child welfare agencies to use the parent locator service to search for absent parents. FCSIAA further allows agencies to use this service in efforts to find other relatives of the child as well.

STANDBY GUARDIANSHIP:

ASFA indicated it was the sense of Congress [s/c] that states should have laws and procedures that allow a parent who is chronically ill or near death to designate a standby guardian for his or her minor children, without surrendering parental rights.

Goal 2

Ensure that safety is paramount

ASFA emphasizes the vital importance of safety in child welfare decisions. Table 2 explains the provisions designed to support this goal. One key provision was greater specification of “reasonable efforts.” The legislation clarified that reasonable efforts were important to preserve and reunify families but specified exceptions (and allowed states to identify further exceptions)—where the child’s safety could be at risk and reasonable efforts were not required. To balance its focus on safety, ASFA also included a provision entitled “Preservation of Reasonable Parenting,” which clarified that nothing in the Act was intended to disrupt the family unnecessarily, intrude into family life inappropriately, prohibit reasonable parental discipline, or prescribe a method of parenting. Another key change related to safety (included in the DHHS final regulations) was the requirement that kin and non-kin foster parents must be licensed and approved using the same process in order for a state to receive federal reimbursement under Title IV-E for foster care maintenance payments.

Table 2: ASFA Provisions to Ensure Safety is Paramount

REASONABLE EFFORTS:

States must continue to make reasonable efforts to preserve and reunify families prior to placement or to allow the child to return safely home, but in determining what is “reasonable,” ASFA required that the child’s health and safety should be the paramount concern. ASFA also specified that these efforts were not required when:

- Parent subjected child to aggravated circumstances, as defined by state law. (ASFA gives examples such as abandonment, torture, chronic abuse, and sexual abuse but leaves the determination to state law beyond the four federally defined circumstances immediately below.)
- Parent has:
 - ① committed murder of another child of the parent;
 - ② committed voluntary manslaughter of another child of the parent;
 - ③ aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent; or
 - ④ committed felony assault that resulted in serious bodily injury to the child or another child of the parent.
- Parental rights with respect to a sibling have been terminated involuntarily.

In these cases, states could bypass the reasonable efforts requirement. When a state chooses to bypass this requirement, a permanency hearing is to be held for the child within 30 days after the determination. Also, in these cases and in cases where reasonable efforts are held to be inconsistent with the permanency plan for the child, states are to place the child in a timely manner in accordance with the permanency plan and to complete the necessary steps to finalize the child’s permanent placement. The law also specified that reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with efforts to reunify the child with his or her family.

The Final Rule further regulated that to satisfy reasonable efforts requirements, states were to provide judicial determination that services had been provided to prevent removal or to reunify the child with his or her family, or that reasonable efforts were not required due to one of the exceptions.

Table 2: ASFA Provisions to Ensure Safety is Paramount (continued)**SAFETY IN CASE PLANNING:**

ASFA amended the Social Security Act as it pertains to case planning to ensure that safety is considered in developing case plans and subsequent decision making. The Final Rule underscored this requirement when providing guidance on the content of case plans.

SAFETY IN THE “PROMOTING SAFE AND STABLE FAMILIES” PROGRAM:

ASFA revised language covering this program in the Social Security Act to emphasize safety as a paramount concern.

CRIMINAL RECORD CHECKS FOR PROSPECTIVE FOSTER PARENTS:

The legislation requires states to have procedures for conducting criminal records checks on prospective foster or adoptive parents before they are approved for placement of children for whom foster care maintenance payments or adoption assistance payments will be made. Final approval cannot be granted if the prospective foster or adoptive parent has a felony conviction for child abuse or neglect, spousal abuse, a crime against children, or a crime involving violence other than physical assault or battery. Felony convictions for physical assault, battery, or a drug-related offense will result in non-approval if the act was committed within the preceding five years. A state can make this entire provision of ASFA inapplicable if the governor notifies the secretary of DHHS in writing that it elects to do so or if the state legislature passes a law declaring the provision inapplicable.

The Final Rule specified that for states that opt out of this requirement of routine criminal records checks, the licensing file for such families must contain documentation verifying that safety considerations regarding the caregiver have been addressed.

SUBSTANCE ABUSE AND CHILD PROTECTION SERVICE COORDINATION:

ASFA required that the secretary of DHHS submit a report describing the scope of the problem of substance abuse for child welfare families, the range of services provided to these families, the outcomes of these services, and any recommendations for legislation needed to improve coordination of services. In preparing the report, the Secretary was to draw on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families.

FINAL RULE ON KIN LICENSING:

In the Final Rule, DHHS required that states have the same licensing and approval process for relative foster homes as for non-relative foster homes in order to receive federal reimbursement under Title IV-E for foster care maintenance payments. DHHS did allow some exceptions, as long as they did not affect child safety. While this regulation was not part of ASFA's provisions, it was motivated by the law's focus on safety. Prior to the Final Rule, many states had developed separate licensing or approval tracks for relative caregivers (Leos-Urbel et al. 2002). With ASFA's emphasis on safety, DHHS no longer thought that difference could be justified.

FCSIAA clarified that states could waive non-safety-related licensing standards for relative homes on a case-by-case basis. The legislation also requires that DHHS submit a report to Congress that examines licensing standards, studies the use of waivers and their effect on children in foster care, and recommends administrative or legislative action needed to help more children be safely placed and eligible for federal foster care maintenance payments.

Goal 3

Elevate well-being as a third focus of the child welfare system

ASFA also strove to make children’s well-being a central focus, along with safety and permanency. Table 3 explains the provisions advancing the importance of child well-being. One key change in the Final Rule notes that ASFA reinvigorates a concentration on safety, permanency, and well-being that was first introduced in broad-based child welfare legislation in 1980. The Final Rule used the safety, permanency, and well-being framework to shape and guide the process for the Child and Family Services Reviews (CFSRs) and the regulations implementing ASFA.

Table 3: ASFA Provisions to Elevate Well-Being as a Focus of the Child Welfare System

FINAL RULE ON “SAFETY, PERMANENCY, AND WELL-BEING”:

These three goals had their origins in the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. While ASFA does not explicitly mention them, the Final Rule makes clear that the law renews a focus on their importance. The rule states that ASFA “seeks to provide states with the necessary tools and incentives to achieve the original goals of Public Law 96-272: safety; permanency; and child and family well-being. The impetus for ASFA was a general dissatisfaction with the performance of state child welfare systems in achieving these goals for children and families.” The Final Rule encapsulates the three goals into a frame for motivating the Child and Family Service Review (CFSR) process and crafting regulations for ASFA.

REAUTHORIZATION OF FAMILY PRESERVATION AND SUPPORT SERVICES:

ASFA reauthorized these services and expanded them to include time-limited family reunification services and adoption promotion and support services. The former services aim to facilitate reunification in a safe and timely manner, but only during the 15-month period after the child enters foster care. The latter encourage more adoptions out of foster care and include pre- and post-adoption services, activities to expedite the adoption process, and services to support adoptive families.

HEALTH INSURANCE COVERAGE FOR CHILDREN WITH SPECIAL NEEDS:

ASFA required states to provide health insurance coverage for children with special needs where the state has an adoption assistance agreement with the adoptive parent(s) and determines a child cannot be placed with an adoptive parent(s) without medical, mental health, or rehabilitative care to meet his or her special needs. States can make this insurance available through one or more of the state’s medical assistance programs, but benefits, including mental health benefits, must be of the same type and kind as those covered under Medicaid.

STATE STANDARDS FOR QUALITY SERVICES:

ASFA required that states develop and implement standards to ensure that children in foster care receive quality services to protect their safety and health. FCSIAA added two provisions to further guarantee the well-being of these children. First, the law requires that states develop health oversight and coordination plans for children in foster care. The plans are to be developed collaboratively with the state Medicaid agency and in consultation with pediatricians and other experts. Second, the law also requires that child welfare agencies coordinate with local education agencies to ensure children stay in the schools they are enrolled in at the time of placement in foster care, unless this continuity is deemed not to be in the child’s best interests, and requires the agency to ensure that all children receiving Title IV-E assistance are full-time students or have completed secondary school.

CLARIFICATION OF ELIGIBILITY FOR INDEPENDENT LIVING SERVICES:

ASFA allowed youth who are not eligible for federal foster care assistance because their assets and savings exceed \$1,000 to be eligible for independent living services, as long as their assets do not exceed \$5,000.

Goal 4

Improve innovation and accountability

ASFA also sought to stimulate creative change and to improve accountability for child welfare outcomes. Table 4 summarizes the provisions developed to support this goal. One key provision called for devising outcome measures under which state performance would be assessed; another, elaborated in the Final Rule, laid out the process and standards governing the Child and Family Services Review (CFSR). Funding for ten state-level demonstration projects annually further encouraged innovations in pursuit of better child welfare outcomes.

Table 4: ASFA Provisions to Improve Innovation and Accountability

STATE PERFORMANCE:

ASFA required the secretary of DHHS—working together with state legislators, state and local child welfare officials, and child welfare advocates—to develop a set of outcome measures to assess states’ performance in operating child protection and child welfare programs. The new system would rate states’ performance on the outcome measures, maximizing use of the Adoption and Foster Care Analysis and Reporting System (AFCARS). The new system would prescribe regulations, tying funding to compliance, to ensure that states provided data needed for assessment and rating. DHHS would prepare an annual report to Congress detailing each state’s performance in meeting different outcomes measures.

FINAL RULE ON THE CHILD AND FAMILY SERVICES REVIEW (CFSR) PROCESS:

The Final Rule set up a new process governing the CFSR process. These reviews were established under the 1994 Amendments to the Social Security Act and authorized DHHS to monitor state child welfare systems to ensure they were conforming with Titles IV-B and IV-E of the Social Security Act. Before the Final Rule, the reviews focused on assessing compliance with procedural requirements and focused heavily on case file documentation. The Final Rule shifted the focus to creating positive outcomes for children and families. The new CFSR process also integrates provisions of ASFA, gearing outcomes to the goals of permanency, safety, and well-being. The CFSRs also reinforce ASFA by encompassing systemic factors: assuring children have permanency hearings within ASFA timeframes, requiring states comply with safety requirements for foster care and adoptive placements, and guaranteeing caregivers notice of hearings and reviews and opportunities to be heard in these venues.

REPORTING REQUIREMENTS:

ASFA specified that all requisite information supplied to the secretary of DHHS meet the data-reporting requirements of the AFCARS, established in the Social Security Act. The legislation authorized the Secretary of DHHS to modify regulations dictated by AFCARS to accommodate the data collection required under this Act.

CHILD WELFARE DEMONSTRATION PROJECTS:

ASFA expanded this program begun in 1994 by authorizing up to ten state-level demonstration projects a year between 1998 and 2002 that the Secretary of DHHS finds likely to promote the objectives of part B or part E of Title IV of the Social Security Act. ASFA required consideration of proposals addressing kinship care, delays to adoptive placements for foster children, and parental substance abuse problems that put children at risk and could result in placement in foster care. To be eligible, states would have to provide health insurance coverage for those special needs children for which the state has an adoption assistance agreement with the adoptive parents.

How Have States Implemented ASFA? How Well Does State Implementation Support the Goals?

ASFA's key provisions were those requiring states to take action. Therefore, determining how states have reacted, including their choice of options or variations, is the first step in understanding the law's effects. According to several national reviews, most states have adopted ASFA's provisions in legislation with relatively modest changes and without much additional statutory language. However, some states have chosen to incorporate ASFA into administrative policy or regulations instead of statutes, while a few have put considerably more requirements into their statutes than required by federal law. States have also legislated changes independently—for example, to their adoption laws—in ways that draw on the underlying principles that inform ASFA.

Because the key statutory provisions allow states discretion in individual cases, it is difficult to assess how often states are applying these provisions in their strict form. With respect to the requirement for termination of parental rights (TPR) in cases of children in foster care 15 of 22 months, states generally report resorting to the three *exceptions* (see Table 1) more often than they do to the requirement itself. They also report using the fast-track provision—namely, the foregoing of “reasonable efforts” under certain aggravated circumstances (see Table 2)—far less often than it theoretically could apply. Whether states are relying on these provisions to the proper degree or frequency depends on the individual analyst's perspective. Some observers argue that allowing such broad discretion and variation in applying the law raises concerns about equitable handling of cases.

One additional caution is that except for an adoption study by Zielewski and colleagues (2006), national surveys of states' choices and courses of action in the wake of ASFA are by now several years out of date (Christian 1999; General Accounting Office 2002; Westat, Inc.; Chapin Hall Center for Children; and James Bell Associates 2001; and Jantz et al. 2002). Some states may have changed either statutes or practices or both with experience, so we lack an up-to-date picture of implementation on the national scale. However, individual states have been analyzed in depth more recently.

1. *What laws did states enact to implement ASFA?*

■ “15 of 22” and “Fast Track”

A review of state legislation conducted by the National Conference of State Legislatures (NCSL) after ASFA (the 1998 legislative session) found that thirty-eight states had enacted ASFA-related legislation.⁴ Of these, slightly more than half enacted each of the key ASFA provisions relating to permanence using largely the same language as in the federal law, with twenty-one states adopting the ASFA language regarding termination after 15 of 22 months and twenty-three states incorporating the three federal exceptions. Variations include four states that require termination proceedings after only twelve months in foster care, twenty-five states that include a requirement to initiate TPR for abandoned infants or children, and several states that require TPR under other conditions (for example, in cases where the court determines that reunification services are not required due to aggravated circumstances).

A few states added exceptions beyond those in federal law to the 15 of 22 months standard. For instance, California provides for an exception when the child objects to termination and Colorado when there are circumstances beyond the parent's control, such as incarceration for a reasonable period of time (Christian 1999). Separately from the ASFA exception provisions, Nebraska and New Mexico laws prohibit filing for TPR when the sole basis is a parent's incarceration.⁵

About half of the thirty-eight states enacted other ASFA provisions intended to promote permanence. Twenty states enacted the requirement for “reasonable efforts” to place children in permanent homes, most of them borrowing ASFA language without further specificity, and twenty passed legislation either requiring or permitting concurrent planning (see Table 2). Illinois' concurrent planning legislation, which dated from before ASFA, has more detailed requirements; Minnesota's 1998 legislation included both more detailed requirements and appropriated funds for concurrent planning. Thirty-four states passed laws to conform to the ASFA permanency hearing timeframes and six to codify ASFA's requirement not to delay adoptions across jurisdictions (Christian 1999; see Table 1).

Thirty-one states enacted legislation to implement the ASFA fast-track provision. In this area, three states went beyond ASFA, which simply

requires that states allow bypassing reasonable efforts, to legislate a presumption *against* reasonable efforts in certain cases: Arizona, Georgia, and Utah (California had similar provisions on the books before passage of ASFA). Thirty states addressed the four federally specified circumstances in which reasonable efforts are not required (e.g., murder of another child; see Table 2), twenty-eight states specifically enumerated one or more of the additional “aggravated circumstances” mentioned as examples in the federal law (e.g., abandonment, torture, etc.; Table 2), and a small number added other conditions that nullified the need for reasonable efforts (Christian 1999). D’Andrade and Berrick (2006) expressed concern about such additions to the four federally designated circumstances, concluding from the NCSL survey that on average states identified three further situations in which reasonable efforts might be bypassed, and that some states added as many as eight or nine further circumstances where reasonable efforts are not required. Their reservation was that “the legislation may be casting the net of reform too widely” and relieving child welfare systems of reunification efforts in too broad a range of contexts (D’Andrade and Berrick 2006, p. 37). On the other hand, six states “modified the condition regarding termination of parental rights to a sibling to allow for the possibility of parental rehabilitation,” thus narrowing the circumstances in which “reasonable efforts” may be dispensed with in such cases (Christian 1999, p. 2).

■ Kinship care provisions

Many states have also acted, through legislation or regulations, to implement ASFA’s provisions regarding the role of kin. With regard to the goal of permanence, almost all states allow children to remain in long-term foster care with kin under at least some circumstances. ASFA allows such a long-term placement with a “fit and willing” relative, a term defined by fewer than half of the states (19). By 2001, Jantz and colleagues found that thirty-five states offered subsidized guardianship to at least some kinship caregivers, up from twenty-five in 1999.⁶ (Subsidized guardianship is not required by ASFA but is one strategy for achieving the long-term placements with relatives that ASFA envisions.)⁷

With respect to the goal of safety, many states tightened their licensing provisions in keeping with the ASFA regulations. As of 2001, fifteen states

required all kin foster parents to meet the same standards as non-kin, and another thirteen offered that possibility to at least some kin parents. All twenty-eight of these states offer all services and resources to kin foster parents that they do to non-kin, and some offer kin-specific services. Twenty-three states apply the same standards to kin and non-kin but will waive certain standards for kin foster parents that cannot be waived for non-kin parents. Whereas in 1999 many waived standards for kin as a class, by 2001—probably as a result of ASFA—all had switched to waivers made only on a case-by-case basis. The most commonly waived requirement is that concerning available space; others are those with respect to the age, training, or income of the kin foster parents, as well as miscellaneous standards such as possession of a car. Finally, as a related index to greater uniformity of licensing procedures, only twenty states still offered the option of a separate approval process for kin in 2001, down from thirty-two states in 1999 (Jantz et al. 2002).

In most but not all states, higher payment has followed higher standards. All states except California and Oregon provide the full foster care payment to kin who meet the full licensure standards. California and Oregon, however, “deny foster care payments to kin who do not care for Title IV-E eligible children, regardless of how they are licensed” (Jantz et al. 2002, p. 20). In all states, many kin do not in practice get full payments, for example, because they are in a pre-approval status or because they are not fully licensed (possibly because they have had standards waived in their cases).

■ Adoption

A 2006 study found that states were continuing to enact adoption legislation. Some new laws sought to remove barriers to adoption and to support post-adoptive services. Other legislation pending at the time would potentially have created barriers—for example, by placing new restrictions on becoming an adoptive parent. The study’s authors see this widespread activity as reflecting the extent to which states are independent actors, with authority over family law including adoption, and are doing far more than simply reacting to federal legislation such as ASFA (Zielewski et al. 2006).

2. Use of the Legislative Provisions

Information about states' actual implementation of the legislative provisions described previously is somewhat out-of-date and incomplete. DHHS does not collect data on how states apply the ASFA provisions, including the TPR and fast-track provisions. The only 50-state survey available is that conducted by the General Accounting Office (GAO [2002]), which also conducted six in-depth site visits. In addition, as part of the National Survey of Child and Adolescent Well-Being (NSCAW), researchers collected information from a national sample of local agencies in 1999 and 2000 (Mitchell et al. 2005).

The GAO studied both TPR provisions (TPR after 15 out of prior 22 months spent in foster care) and fast-track provisions (reasonable efforts not required) and found that states make a variety of exceptions to both precepts and do not implement either under a narrow construction. For TPR, the states surveyed and visited said that they exempt many children from the ASFA standard. For almost all states responding, "the number of children exempted from the provision greatly exceeded the number of children to whom it was applied..." (GAO 2002, p. 27). (Based on the GAO data table, Mississippi appears to be the one exception.) States offered the GAO a range of reasons to explain this exemption ratio: children's needs make finding adoptive families unrealistic; adolescents have strong ties to family or don't want to be adopted; parents need more time to get their lives together; substance abuse services are not available in a timely enough manner; delays in court scheduling make the timeframes unrealistic; and it is difficult to find adoptive parents in general.

At the same time, the GAO survey suggests striking and hard-to-explain differences among the states. For example, Minnesota estimated that, among children in care for 15 of the previous 22 months who were exempted from TPR, forty-five percent were exempted because the child would not consent to adoption and another forty-five percent because the child was placed with relatives. By contrast, Oklahoma's numbers broke down as follows: no cases were exempted because the child would not consent to adoption, thirty-three percent were exempted because the child was placed with relatives, and twenty-four percent because the state did not provide needed services. In a further variation, Mississippi reported that three percent of its exemptions came about because the child would not consent, twenty-five percent because the child was placed with

relatives, fifty-seven percent because the parents may voluntarily relinquish the child, and nine percent because the state did not provide needed services (GAO 2002, p. 31). These differences between states could reflect different statutes, the implementation of different policies and practices, different approaches to filling out the GAO survey, or some combination of these factors.

As for the fast-track provisions, the four states that provided data on these provisions "indicated that they do not use this provision frequently" (GAO 2002, p. 23). For FY 2000, Maryland reported fast-tracking only 36 of 3928 children who entered care; Massachusetts 25 of 7381; Vermont 0 of 788; and West Virginia 41 of 2392. In GAO's site-visit states, officials also cited only a small number of children involved. States said that instances are rare for many reasons: the reluctance of judges to use the provision, court scheduling delays, the length of time before a felony conviction is secured and triggers the fast-track option, or a state's assessment that fast-tracking may not be in a child's best interest (for example, where a mother's circumstances and parenting capacity have improved since she lost custody of a previous child). Court delays have an effect because TPR may take so long to schedule that a child will not reach permanence any earlier through a fast-track approach than through the alternative approach, providing services first and then determining the need for TPR; states noted that appeals are more likely if the case is fast-tracked. States also pointed out that a child's birth father might not be the same as in the case of a previous child (i.e., a half-sibling) who had experienced the serious abuse that triggered the fast-track criterion. In such an instance, states would provide services to the father in lieu of fast-tracking.

Other sources also suggest that fast-track provisions are infrequently used, although substantial differences in use between jurisdictions may raise worries about equity. The NSCAW study of local agencies asked about families that received no reunification services and found that twenty-eight percent of the agencies reported an increase in such families. Researchers viewed this increase as a relatively small effect, smaller than critics of the law might have feared, since the other three quarters of the agencies apparently did not note an increase (Mitchell et al. 2005).

Another way to estimate state reliance on the fast-tracking provision is to work from data about families rather than systems. While not ideal for understanding caseload dynamics, NSCAW data from a sample of children in foster care show that one year after children

entered foster care, only eight percent had neither been reunified nor had a reunification plan (DHHS 2003).⁸ Of course, children may lack reunification plans for reasons besides fast-tracking (e.g., agency ineffectiveness) and this statistic does not have a “before ASFA” counterpart for comparison purposes; yet it does offer a ballpark estimate of the proportion of affected children. Mitchell et al. (2005) believe this estimate should reassure those who worried that many families would go without services; they also find it consistent with local agency reports (described above) that do not reflect a large increase in fast-tracking under ASFA.

And at the state level, a study of California’s use of fast-tracking illustrates the great variation from county to county in how such complicated provisions are interpreted and applied. D’Andrade and Berrick (2006) summarize a study of California’s exceptions to reunification, which pre-date ASFA. California now has fifteen exceptions, including more “conditions neither mandated nor suggested by ASFA” than any other state (p. 38), and a presumption against services in the case of all but two of these exceptions. They elaborate:

[While] recommendations to bypass services were relatively infrequent overall (about 5% of all parents in the study), significant differences were found between counties: In one county, it was almost impossible for a family not to receive services (only 1.5% of eligible parents were recommended for a bypass), whereas in another, well over a third of parents eligible for bypassed services (36.9%) were recommended to the courts. (p. 41)

The authors conclude from this survey that inequity of decision making within California is worrying, and that inequity is almost certainly a problem from state to state as well.

How Has ASFA Affected Service Delivery and Agency Culture?

The path to improving or damaging outcomes for children runs not only through state legislation or administrative codes but also through changes in the day-to-day practice and culture of child welfare agencies and their many partner organizations. Changing culture and practice was certainly a goal of ASFA. One study’s reflection on its implications for New York State suggests that such influence was more important than any specific provisions: “ASFA has been marginal in the larger scheme of forces that shape the lives of

New York’s children and families... Nonetheless, ASFA’s grandest idea—that permanent and secure homes matter for children—remains intact” (White 2008, p. 2).

This section reviews the evidence, limited as it is, on practice and culture change. Sources include the national surveys described earlier; studies of particular states and localities before and after ASFA; and the analyses that will be offered in greater detail by other papers in this series. The eight findings below start with the goal of permanence, where the evidence base is strongest, and end with the goals of safety and well-being, where the evidence of meaningful changes in culture or practice is much weaker.

■ As intended, ASFA has prodded child welfare agency culture towards a focus on permanence and towards the timely decision making required to accomplish it.

The evidence suggests that ASFA’s clearly expressed goal that children should move promptly to a permanent family has influenced agency culture and practice. State and local agency leaders perceive a major change in this respect, as do other key participants such as the courts. Although self-reporting has limitations, one study asked agencies to compare the impact of ASFA with that of other laws affecting them and learned that it was much larger. Considerable evidence of concrete changes in practice and policy bears out these perceptions. Of course, the fact that practice and culture have changed does not mean either that they have changed sufficiently or that they have changed in the best ways; nor does it mean that the results are yet where they might have been anticipated to be.

In 2002, state leaders told the GAO during its six site visits 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” (GAO 2002, p. 28). Examples ranged from developing procedures to review children’s situations more promptly to better up-front work by child welfare staff in giving parents information about deadlines. Shortly before the GAO study, Westat, Inc. surveyed administrators from twenty-five states and found that they were “focused on ways to abide by the timelines for permanency... Instituting and adapting to shortened timelines was a dominant topic of our discussions with administrators” (Westat, Inc. et. al 2001, Executive Summary p. 2).

Likewise, local agencies sampled in the NSCAW study reported ASFA's large effect on local service delivery, citing a much greater impact than that stemming from welfare reform or from the MultiEthnic Placement Act (MEPA), Public Law 103-382 [42 USC 622]. Most agencies reported effects on permanency-related activities, specifically: shortened timeframes for decision making (ninety-three percent of agencies surveyed), "increased emphasis on adoption for children living in kinship care" (seventy-four percent of agencies), more prevalent concurrent planning (eighty-seven percent), and greater emphasis on adoption for older children (more than fifty percent). Not surprisingly, sixty percent of these agencies also said that ASFA had increased the number of hours spent on individual child welfare cases and almost all reported more paperwork (Mitchell et al. 2005, p. 13).

■ **Child welfare agencies have developed new practices and strategies in response to the goal of timely movement toward permanence.**

Reports of policy and practice innovations yield more specific evidence of changes in pursuit of the permanency goal. According to the 25-state study (Westat 2001), state administrators focused primarily on "concurrent planning, guardianship, and adoption" (Westat, Inc. et al. 2001, Chapter 2, p. 3), a list comparable to the adaptations and innovations highlighted in the GAO and state-specific studies.

Concurrent Planning. Administrators in the 25-state survey said that some states had used concurrent planning before ASFA, but "that there has been a greater acceptance of the practice since ASFA implementation" (Westat, Inc. et al. 2001, Chapter 2, p. 5). However, other studies found obstacles to carrying out concurrent planning, including worker frustration with the additional workload involved (Chinball et al. 2003; D'Andrade and Berrick 2006; Olen 2008). For example, researchers studying its implementation in California counties found that "over half reported that they are having difficulty recruiting foster-adopt caregivers" (D'Andrade and Berrick 2006, p. 47).

Kin and Guardianship. States have also dramatically increased their attention to the role of relatives. In the 25-state study, administrators reported renewed attention to guardianship policy and broader support for relatives, including efforts to

involve them earlier in the process: "it is clear that states are focused on encouraging and supporting relatives as caregivers" (Westat, Inc. et al. 2001, Chapter 2, p. 4). The striking increase in subsidized guardianship programs, noted earlier in the context of state legislation, will be discussed more fully in MaryLee Allen and Beth Davis-Pratt's paper, "The Impact of the Adoption and Safe Families Act on Family Connections for Children." As mentioned, the 2008 FCSIAA incorporated subsidized guardianship into federal policy as well.

Adoption. Most pervasive is the heightened attention to adoption:

- ▷ In the GAO survey, states reported employing new strategies to promote adoption of special needs children (GAO 2002).
- ▷ Local agencies in the NSCAW survey pointed to an increased emphasis on adoption for older children.
- ▷ State administrators in the 25-state survey cited a variety of initiatives such as recruiting more adoptive parents, expanding public awareness, and broadening the geographic area for adoptions. As for larger-scale practice implications, they also noted "the need for adoption expertise, increasing adoption services and the size of adoption units, and budget changes to address adoption needs" (Westat, Inc. et al. 2001, Chapter 2, p. 5).

■ **To some degree, ASFA has prompted innovation across systems to promote timely movement toward permanence, particularly in relationships between child welfare and substance abuse agencies and between child welfare agencies and the courts.**

For ASFA to work as planned, state agencies found out quickly, the child welfare system could not be the only party charged with responding to "a child's sense of time." The most complaints about barriers to speedy movement center on the child welfare system's partnerships with substance abuse services and the courts, yet these partnerships are also the locus of the greatest optimism about change. The enclosed paper "ASFA Twelve Years Later: The Issue of Substance Abuse," by Nancy Young and Sid Gardner, provides a more detailed look at the first of these relationships, so here we concentrate on the second.

The Courts. In the national surveys, child welfare agencies identified many complications in working with courts, but both they and the judges interviewed also saw much progress toward resolutions stemming from ASFA. State agencies told the GAO that court barriers to achieving ASFA goals included scheduling delays, a lack of resources and training, and some judges' lack of support for ASFA. Solutions to these problems came from increased use of mediation as an alternative to the courts, ongoing court-agency joint committees, and the devising of strategies for restructuring court processes (GAO 2002). A 2005 American Bar Association (ABA) report, based on five state case-studies and surveys of more than 350 judges and community professionals, looked for court reforms for responding better to substance-abusing parents under ASFA, but in the end identified a broader range of improvements: "Many judges have developed strategies to meet ASFA requirements for *all* cases, not just for those with substance abusing parents" (Smith, Elstein, and Klain 2005, p. 3). These innovations occurred in the area of case handling and review, multi-disciplinary teams, mediation, and family conferencing. The ABA report also highlighted family drug courts as a promising new way of addressing the needs of families involved with child welfare and struggling with substance abuse: "Family drug courts can provide an extensive foundation for implementing ASFA. They set in motion an expedited process for identifying eligible parents for treatment, and have mechanisms for expedited screening, assessment and service delivery" (Smith, Elstein, and Klain 2005, p.12).

■ **ASFA's financial resources and incentives related to adoption appear to be working largely as planned.**

ASFA provided a new financial incentive for states to increase adoption, through bonuses for states that increased special needs adoption over a base year. (The Fostering Connections to Success Act of 2008, Public Law 110-351. 110th Cong., 2d sess. (2008) expanded this incentive system, renewing it for five more years and doubling incentive payments for older children and children with special needs.) States also had a financial incentive that pre-dates ASFA: the federal government shares in the cost of subsidies to families who adopt special needs children. Thus as adoptions have increased greatly, so have federal adoption subsidies and total state-federal spending on adoption.

Analyzing state action that led to these results, Hansen (2007) concludes that states responded as predicted to federal incentives, identifying more children with special needs and using the promise of federal dollars to increase adoptions, even though this strategy increased state costs as well. Hansen worries that states could react to fiscal stress by cutting back support for adoption and suggests that a careful analysis of adoption's costs and benefits will project a strong return on continuing investment. Richard Barth's paper, "A Chronicle of the Years After ASFA," explores and makes recommendations on this topic.

■ **States report far less innovation in regard to reunification, compared to changes in adoption and guardianship.**

From the limited evidence available, states are less likely to focus on reunification than other aspects of permanence. When asked a broad question about new initiatives related to permanence, child welfare administrators interviewed for the 25-state survey were most likely to mention initiatives targeting adoption, concurrent planning, and guardianship (Westat, Inc. et al. 2001, Chapter 2, pp. 5-6). Similarly, when asked about the effect of ASFA on their agency, most put forward an increased emphasis on adoption, quicker timelines for decision making, more emphasis on relatives as caregivers, or an upswing of concurrent planning. Only "a few brief comments" addressed changes in services offered to birth families (Westat, Inc. et al. 2001, Chapter 2, p. 5).

That said, when interviewers probed with a question *specifically* aimed at innovative reunification strategies, many states identified either statewide or specialized programs working toward this end. The researchers narrowed down this list to the most innovative and presented case studies of four such initiatives: Mothers Making a Change, a program for mothers with substance abuse problems in Cobb and Douglas Counties, Georgia; the Natural Parent Support Program in New Jersey, an "intermediate intensive family reunification program"; the Community Development Department within the children's services agency in Lucas County, Ohio, which provides services through parent educators, community liaisons, and community advocates; and the Wraparound Service Program in Santa Clara County, California. Based on the researchers' historical account, ASFA might

have influenced the New Jersey and Lucas County projects (in combination with state-specific forces), but the Santa Clara County and Cobb/Douglas County programs started well before ASFA (Westat, Inc. et. al 2001, Appendix D).

■ **ASFA-driven changes in state philosophies and practices regarding permanency may pose specific challenges for particular groups of families, including those in which parents suffer from mental illness or have been incarcerated.**

Three papers in this series explore how the ASFA provisions interact with other service and enforcement systems—criminal justice, mental health treatment, immigration enforcement—and with the particular circumstances of parents involved with these respective systems. Barbara J. Friesen, Joanne Nicholson, Katharine Kaplan, and Phyllis Solomon address “Parents with a Mental Illness and Implementation of the Adoption and Safe Families Act”; Martha L. Raimon, Arlene F. Lee, and Philip Genty offer “Sometimes Good Intentions Yield Bad Results: ASFA’s Effects on Incarcerated Parents and Their Children”; and Yali Lincroft and Bill Bettencourt discuss “The Impact of ASFA on Immigrant Children in the Child Welfare System.” Each paper tackles distinct issues—and recommends possible solutions—at the intersection of ASFA, other policy systems, and special family circumstances.

■ **ASFA has the potential for both positive and negative effects on minority children and on child welfare practice as it affects them, but the evidence is still very limited.**

Two studies have explored the perceptions of child welfare workers, supervisors, and administrators as to ASFA’s effect on disproportionate representation of minority, particularly African American, children in the child welfare system. While an incomplete form of evidence if considered alone, studies of perceptions are a good place to start (outcomes section is below). In one study, researchers surveyed workers in family preservation and intensive family support programs (Curtis and Denby 2004); in the other, researchers conducted case studies and interviews in nine child welfare agency sites engaged in initiatives to meet the needs of families of color (Chinball et al. 2003). According to both, child welfare staff worried that ASFA’s tight timeline could disadvantage families with substantial needs, particularly those with substance abuse problems,

and thereby increase the disproportionate representation of children of color within the system. Workers also expressed concerns about concurrent planning and, in one of the studies, wondered whether pressing kin for a commitment to permanence might actually undercut their willingness to provide a home for children. On the other hand, child welfare workers involved in both studies identified positive effects of ASFA for children of color: services were getting to families more quickly, workers were using the ASFA timelines for TPR more effectively to motivate parents, better service plans resulted from a focus on safety rather than on more subjective aspects of family life, and greater use of permanent relative placements and (according to some interviewees) quicker adoptions were expediting permanency for children of color.

In addition, as noted earlier, researchers who studied the inconsistency with which fast track provisions were applied in California worried about the implications of such a high degree of local discretion. They feared that this environment of extreme variation could open the door to unsupported assumptions about families that might then influence decision-making in ways adverse to families of color (D’Andrade and Berrick 2006).

■ **The evidence on whether ASFA has changed agency culture and practice in regard to safety is mixed.**

Even though children’s safety is a central goal of ASFA, and making safety paramount is a core provision, the evidence that this signal has actually changed agency culture and practice is mixed. About sixty percent of local officials in the NSCAW sample reported that they placed a greater emphasis on child safety after passage of ASFA. This is a substantial figure, but far less than the ninety-three percent who said they had increased their focus on meeting permanency timelines. In addition, our review found little evidence of active innovation toward the goal of ensuring safety. This could in fact register a lack of innovation, yet it could also indicate that researchers have not looked for such evidence, studying children’s movement to permanence rather than strategies to reduce re-abuse or re-entry into care that may have grown out of ASFA. One exception to this deficit is in the area of substance abuse, and Young and Gardner’s paper treats the innovative example of co-locating substance abuse experts with child welfare workers for purposes of safety and risk assessments.

How Have Child and Family Outcomes Changed in the Decade Since ASFA?

As a result of recent improvements in state data collection, many prompted by ASFA, national administrative data are available to look at trends in outcomes over time. We draw heavily on data provided in the annual reports of the DHHS Adoption and Foster Care Analysis and Reporting System (AFCARS), which offer essential information on the numbers and characteristics of children in foster care and adopted children. We also incorporate data from the annual DHHS Child Welfare Outcomes Reports, which track state achievement with respect to ASFA's goals of permanency, safety, and child well-being. We also incorporate other relevant national survey data and state-level analyses of administrative data.

Positive trends emerge in all three outcome areas. For safety, there appear to have been declines in the recurrence of abuse (a newly substantiated case within six months of a prior substantiation) and possibly declines in abuse of children by a provider while in care. Looking at permanency, the number of children adopted or exiting to guardianship increased substantially, both in absolute numbers and as a portion of children exiting care (reunification is discussed below). Research also suggests an increased likelihood that children will be adopted since ASFA (Wulczyn, Chen, and Hislop 2006). Additionally, there is some evidence that the time in care for children who exit to adoption may be lessening, although as movement toward adoption accelerates, the likelihood of reunification may decrease. Finally, while data on well-being are limited, and the DHHS reports do not cover this domain, other studies using national survey data suggest improvements since ASFA for children living with kin.

Although cumulatively these data help to illustrate plausible trends, there are important data limitations or qualifications to keep in mind (see Box for a detailed description).

Notable Data Limitations

Cohort Bias: Several indicators drawn from the AFCARS and Child Welfare Outcomes reports rely on “exit” or “point-in-time” cohorts that researchers have noted as introducing bias (Courtney, Needell, and Wulczyn, 2004). Specifically, exit cohorts are biased toward persons with shorter stays in a system. So, for example, the percentage of children who exit care as a result of reunification is likely to be overstated with an exit cohort, as children who leave quickly are more likely to have reunified. Cross-sectional (point-in-time) cohorts are biased toward children with particularly long stays. For example, the proportion of children abused while in care could be overstated because the point-in-time sample includes more children who have been in care longer, increasing the chances of their experiencing abuse. An entry cohort is the preferred sample because every child has an equal chance of being included in the sample. For example, there are critical policy questions pertinent to ASFA that only entry cohort data can answer, such as: what is the likelihood that a child will be adopted from foster care? All types of cohorts, though, are subject to changes in caseload dynamics and shifts in which children are entering or exiting a system in a particular year. Because the data presented in this section use the same indicator over time, it is likely that any trend observed is real, but the trend line overall may be high or low depending on the cohort used and the bias it introduces.

Data Improvements: DHHS and the states have made significant advances in improving the quality of child welfare data. A decade ago, as ASFA was being implemented and states were developing their State Automated Child Welfare Information System (SACWIS), many states could not provide accurate information on several indicators. So it is important to note that data from these earlier years are not typically based on the full sample of states, and should be interpreted with caution. And given the many changes in the child welfare landscape since the late 1990's, interpretation becomes more complicated. Yet most trends go in directions expected as a result of ASFA, are confirmed by more detailed and methodologically precise studies of individual states, and tend to be fairly gradual, so we think these trends are worth presenting.

State Variation: Mapping national trends can mask significant state-to-state variations. Where one state might have dramatic increases in adoptions, another might make strong advances in increasing guardianships. The DHHS Child Welfare Outcomes reports carefully document variations across states; we encourage readers interested in state differences to refer to these.

Attribution to ASFA: The data we provide suggest potential changes in outcomes for children and families over time. These changes, however, cannot necessarily be attributed to ASFA. Many other changes in child welfare in the decade very likely contributed, such as the CFSR process, to improvements in court systems, and enhanced data systems. It is also impossible to know which trends would have occurred even in the absence of particular policy changes.

Goal 1: Permanency

Consistent with the goals of ASFA, the numbers of children who exited foster care to adoption or guardianship increased dramatically in the last decade. In 1998 there were about 38,000 adoptions from foster care (see Figure 1). By 2002, that number had grown to over 50,000 adoptions, a level that states have maintained to date. This pattern also holds when looking at adoptions as a proportion of exits from care, increasing from fifteen percent in 1998 to a level of eighteen percent in 2002, and seventeen percent in 2006. Adoptions for children with special needs also grew substantially right after implementation of ASFA, from about 25,000 in 1998 to almost 37,000 in 2000 (U.S. GAO, 2002).

Research suggests that since ASFA the likelihood that children entering foster care will be adopted has also improved. Using entry cohort data from six states for the period 1990-2002, Wulczyn, Hislop, and Chen (2006) found that cohorts entering post-ASFA had a higher probability of adoption than pre-ASFA cohorts. They noted that despite positive changes seen in all six states, caseload dynamics differed markedly by state, warranting further study to tease out the role of state context in ASFA implementation. A smaller-scale study of mothers struggling with substance abuse in Oregon also found that children were more likely to be adopted than remain in long-term foster care after ASFA (Rockhill, Green, and Furrer 2007).

Guardianships also increased substantially in the decade since ASFA—more than doubling from about 5,900 in 1998 to over 15,000 in 2006 (see Figure 2). As with adoptions, guardianships as a proportion of exits from foster care grew from two percent in 1998 to five percent by 2006.

AFCARS data also depict trends in adoption by race (see Figure 3). For black non-Hispanic children, the number adopted grew from approximately 16,000 in 1998 to about 20,000 in 2000 and then declined to a total of 14,000 for 2006. Expressed as a portion of all adoptions, the percentage of black non-Hispanic children fell steadily between 1998 and 2006. Adoptions of Hispanic children doubled during this period, from about 5,000 in 1998 to 10,000 in 2006, and also grew as a portion of all adoptions. Adoptions also rose in both overall number and proportion for white non-Hispanic children, from 14,000 in 1998 to 23,000 by 2006. Numbers of adoptions from foster care can be driven, however, by changes in the racial/ethnic composition of groups of children entering

foster care, but AFCARS reports suggest the racial/ethnic composition of children entering care did not change substantially between 1998 and 2006.⁹ However, the number and portion of Hispanic children entering care increased steadily after 2000, which could be related to the increase in adoptions of Hispanic children. The number and portion of African American and white children entering foster care dipped slightly between 1998 and 1999, but thereafter was relatively steady.

Some studies (though not designed to compare pre- to post-ASFA) have found that African American children are less likely to be adopted from foster care than white children (Barth 1997; Westat, Inc. et al. 2001). However, Wulczyn et al. (2006) used data from six states on children who entered foster care for the first time between 1990 and 2002 to discover that twenty-four percent of African American children in this sample were adopted, and that African American children were the most likely to leave foster care to be adopted. By contrast, sixteen percent of white and Hispanic children who entered foster care during this period were adopted by 2002. At the same time, the researchers find that adoptions of black children tend to occur after a longer time in care than for white children.

Further study of how adoption trends vary according to race or ethnicity is needed, given the widening gap in the number of adoptions between African American and white children since 2002 (AFCARS). In addition, past research suggests Hispanic children are most likely to reunify with their families (Westat, Inc. et al. 2001), yet according to AFCARS adoptions of Hispanic children appear to be on the rise (Figure 3).

Also of note are trends in transracial and trans-ethnic adoptions. Hansen and Simon (2004) used AFCARS data to conclude that transracial adoptions did not increase nationally after ASFA, although they did increase in six states. The authors also found that children of Hispanic origin are most likely to be adopted by parents who are not of their race/ethnicity. In 2001, for instance, thirty-eight percent were placed with white, non-Hispanic parents. Of African American children adopted in 2001, seventeen percent were placed with white, non-Hispanic parents.

While some feared that many adoptions, being done so quickly, would be at risk of dissolving, it appears this is the case for very few children adopted since ASFA. In a GAO survey of forty-six states,¹⁰ only about one percent of adoptions finalized in 1999 and 2000 were later legally dissolved. States also reported that about 1 percent of children who were adopted in these years

Figure 1
Number of Children Adopted from Foster Care by Year

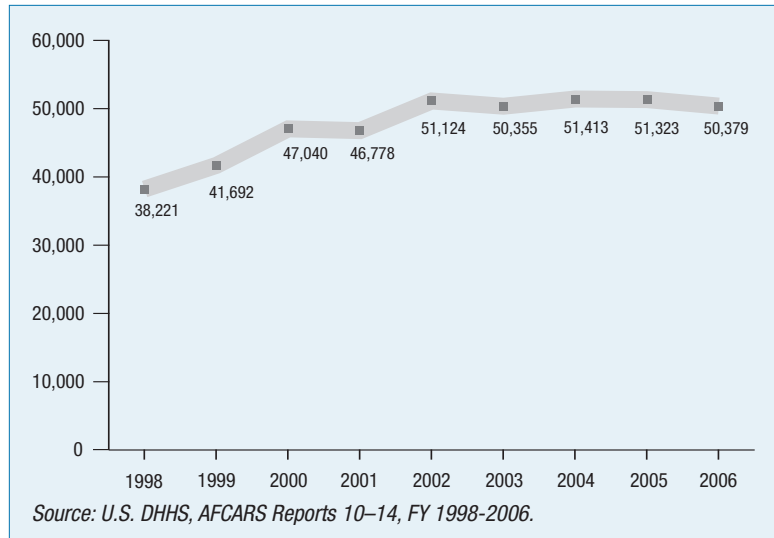


Figure 2
Number of Children Exiting to Guardianship by Year

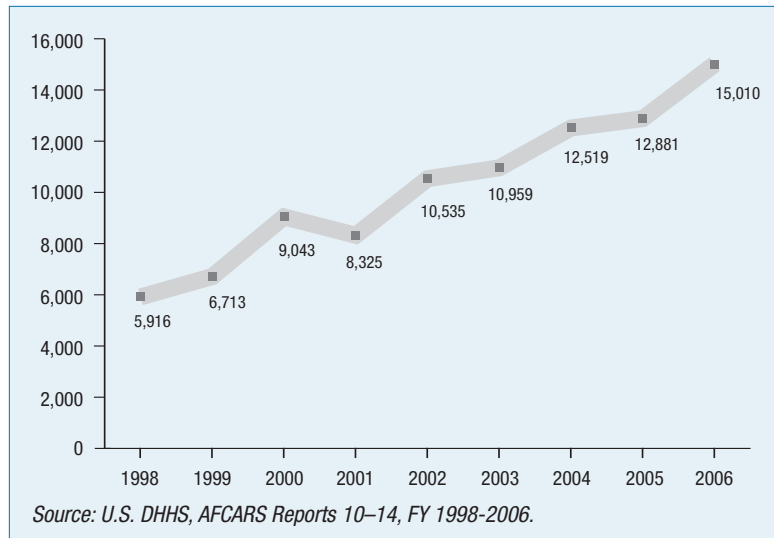
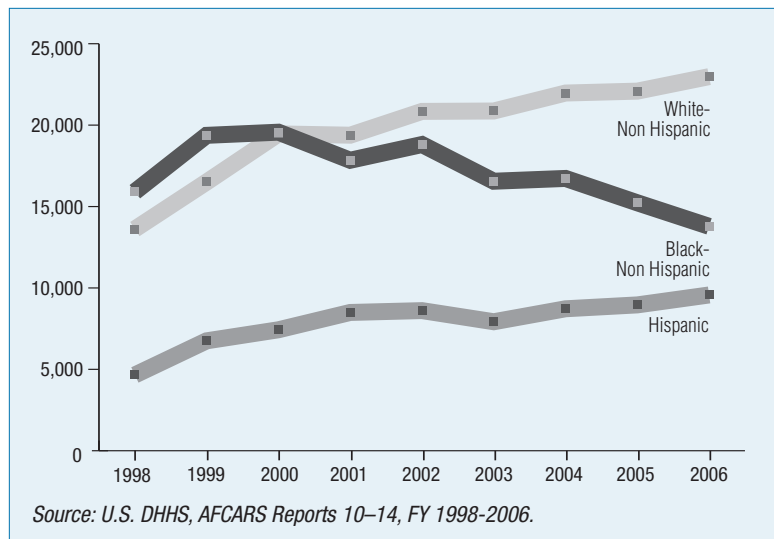


Figure 3
Number of Children Adopted by Race by Year



subsequently returned to foster care. The GAO also cites DHHS findings that about 1 percent of children entering foster care each year have been previously adopted (GAO 2002). Causes included abuse/neglect by adoptive families, behavior problems too difficult for adoptive families, or the child's need for residential care. Another study in Illinois suggests progress toward limiting disruptions since ASFA; Smith et al. (2006) found that the risk of adoption disruption was eleven percent less for placements occurring in the three years after ASFA versus the three years prior.

Since ASFA reunifications have fluctuated somewhat in number, generally totaling between 150-160,000 per year. Measured on the basis of proportion of exits, reunifications have declined somewhat, dropping steadily from sixty percent in 1998 to fifty-three percent in 2006. This decline is not surprising given the increased focus on adoptions and guardianships during this period. Wulczyn (2004), however, noted a drop in rates of reunifications even prior to ASFA using entry cohort data from twelve states between 1990 to 1997.

Race appears to be a factor in reunification rates prior to ASFA. Researchers using data from the 1994 National Study of Preventive, Protective, and Reunification Services Delivered to Children and Their Families found race to be a strong predictor in reunifications, with African American children less likely to reunify than white children, holding other factors constant. In fact, controlling for placement with kin, the study found that higher kinship placements of African American children do not explain their lower rates of reunification relative to white children (Westat, Inc. et al. 2001). Further research is needed on the relation between race/ethnicity and reunification rates in the wake of ASFA.

Some evidence indicates that children who exit to adoption are spending less time in care. One indicator looking at the median number of months between TPR and adoption, suggests a reduction of this phase of the adoption process (see Figure 4). In 1998, the national median time between TPR and adoption was just over a year. After 2003, this figure was 10-11 months. Even this small decrease could represent a real change, given ASFA's push to shorten timeframes, change casework practice, and advance recruitment of adoptive families. At the same time, as states have addressed backlogs of cases awaiting adoption, the types of cases exiting to adoption may include more children for which finding adoptive homes has become easier.

Another indicator of timeliness to adoption suggests more children exiting to adoption are doing so within two years (see Figure 5). The indicator looked at "[for] all children who were discharged from foster care to a finalized adoption during the fiscal year, what percentage were discharged in less than twenty-four months from the date of the latest removal from home?" This percentage increased from sixteen percent in 1998 to twenty-nine percent in 2005. The Child Welfare Outcomes 2002-2005 report affirms that the majority of states surveyed (sixty-three percent) showed improved performance on this measure, while only a quarter (twenty-five percent) of the states experienced a decline. Similarly, a study using entry cohort data from Oklahoma found a significant decrease in the length of time between a child's removal and adoption finalization since ASFA, especially in the latter segment from adoption placement to finalization (McDonald et al. 2007).

What happens to children who do not go on to adoption or guardianship, but remain in foster care and perhaps never achieve permanence? Jennifer Macomber's paper, "The Impact of ASFA on the Permanency and Independence for Youth in Foster Care" notes that while adoptions of youth in foster care have increased dramatically since 1998, more and more youth also emancipated from care between 1998 and 2006. She further observes that in 2006, 37,000 youth ages 12-20 were waiting to be adopted (i.e., their goal was adoption and/or parental rights had been terminated in their cases). It is unknown how many have gone on or will go on to emancipate, but many probably will, given that only 7,500 older youth were adopted from foster care in that year. These youth who enter their adult lives as legal orphans, having had their parents' rights terminated but never having reached permanency, should be of particular concern. More research is needed to understand the experiences and special service requirements of this population.

Goal 2: Safety

The research shows potential improvements in the area of safety, but also trends that are less clearly understood. With respect to one crucial indicator for ASFA's authors and supporters, incidence of child death, the trendlines suggest an increase (see Figure 6). From 1998 to 2007, it appears that the rate of child death by maltreatment rose from 1.6 per 100,000 children to 2.4 per 100,000 children. However, these counts remain uncertain inasmuch as they rely on medical

Figure 4
Median Months between Termination
of Parental Rights and Adoption

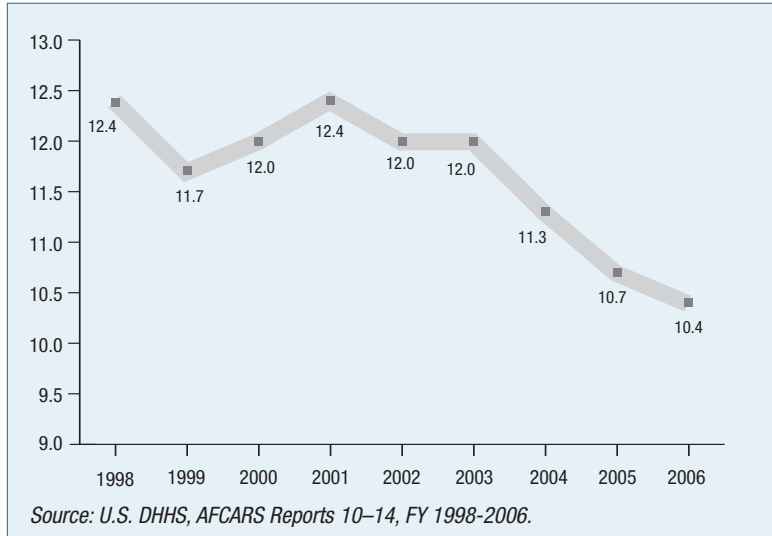
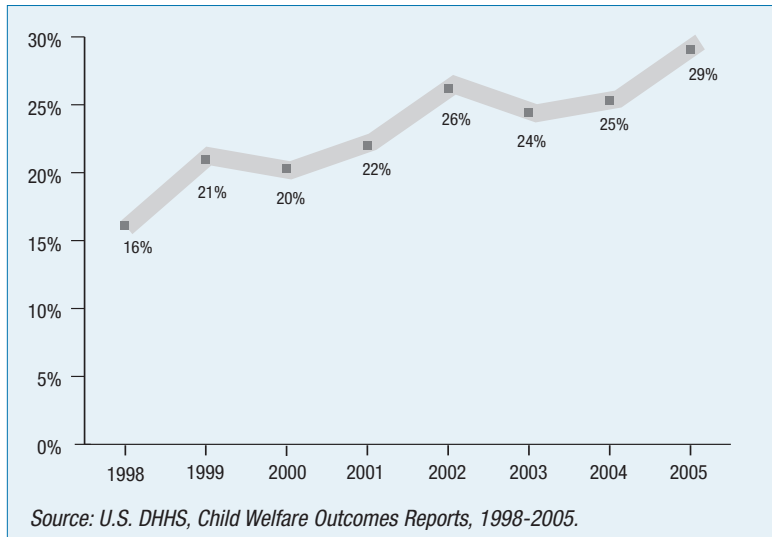


Figure 5
Percentage of Adopted Children
Who Were Adopted within Two Years
of Entering Foster Care



examiners' determinations that death was due to abuse/neglect. As a result, DHHS attributes this rise in recent years to better reporting and identification of these cases (DHHS, 2008b).

Another goal of ASFA is to prevent repeat occurrences of maltreatment after children have come to the attention of child welfare agencies. The Child Welfare Outcomes reports framed the indicator as: "of all children who were victims of substantiated or indicated child abuse and/or neglect during the first 6 months of the reporting period, what percentage had another substantiated or indicated report within a 6-month period?" Trends show a drop in this measure from 8.5 percent in 1999 to 6.6 percent in 2005 (see Figure 7). In addition, the number of states under the 6.1 percent federally designated threshold for this indicator has increased since 2000. At the same time, there is significant state variation, with percentages ranging from 1.9 to 13.4. DHHS attributes the variation to several possible reasons: from state variation in victim rates since victim rates are correlated with recurrence; to differences in state statutes, policies, and practices in defining maltreatment and evidentiary requirements for substantiation; to varied modes of decision making with respect to allegations and screening; to the use of alternative response approaches; and to the practice of not formally investigating open cases but rather referring them to the existing caseworker (U.S. DHHS 2002-2005). Given how sensitive this measure is to states' practices and policies, the perceived drop in recurrence on a national scale between 1999 and 2005 should be interpreted with caution.

Abuse by a care provider while the child is in foster care is also of major concern. The Child Welfare Outcome reports approach this indicator by asking: "of all children who were in foster care during the reporting period, what percentage were the subject of substantiated or indicated maltreatment by a foster parent or facility staff member?" Trends suggest potential improvements on this front (see Figure 7). Rates of abuse while in care dropped from 0.8 percent of children in foster care in 1998 to 0.5 percent in 2001, and have been steady at 0.4 percent since 2003.¹¹ There are significant variations among states, however. Between 2003 and 2005, 46 percent of states improved on this measure, while an equal percentage lost ground. Again, this measure is likely sensitive to state policies and practices and should be interpreted with caution.

A final standard of safety is whether cases come back into care after exiting. The concern is that if children move to permanency too quickly, it might

increase their risk of returning to care. The indicator used in the Child Welfare Outcomes reports was modified recently, making it difficult to interpret trends over time. The indicator had assessed the portion of all *discharged children* who came back into care in the last twelve months, but was changed to look at the portion of those *children who reunified* who re-entered care in twelve months. Looking at the minimal data available on the two different measures suggests that rates of recidivism remained fairly flat during the two periods for which data are available.¹² However, a study in Florida supports the concern about moving children to permanency too quickly; Yampolskaya, Armstrong, and Vargo (2007) found that Florida's Community- Based Care services were not good at ensuring safety in reunification and that faster reunification led to a greater rate of re-entry.

Goal 3: Well-Being

Child well-being is difficult to measure. Typically, administrative data do not offer useful outcome information on how children are faring, though they can illuminate changes in services that might contribute to child well-being. To date, quality data on children's and parents' receipt of services are generally not available on a national basis. We can learn from survey data, however, and one survey hints at improved well-being for children living with kin since ASFA.

Analysis of the National Survey of America's Families revealed that rates of poverty and lack of insurance declined steadily for children in kinship care between 1997 and 2002, and that these advances were even more dramatic than for children living with their parents (Main, Macomber, and Geen 2006). Specifically, the study found that by 2002, fewer than one in five children being cared for by a relative due to social services involvement was living in poverty (eighteen percent), down from thirty-five percent in 1997. Similarly, by 2002, just 6 percent of children in these arrangements were uninsured, down from twenty-three percent in 1997. The researchers noted that changes in state licensing and outreach to kin caregivers could have contributed to these gains.

Conclusion

Overall, ASFA's effects are complex and reflect the many different perspectives and compromises that went into its construction and enactment. The most substantial evidence indicates ASFA's effect on permanence,

Figure 6
Child Fatalities Due to Maltreatment
per 100,000 Children

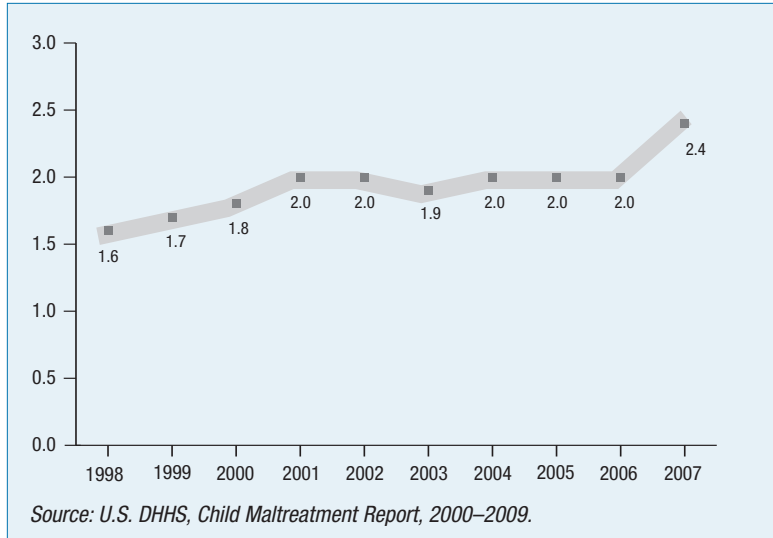


Figure 7
Percentage of Victimized Children
with Another Victimization within
Six Months

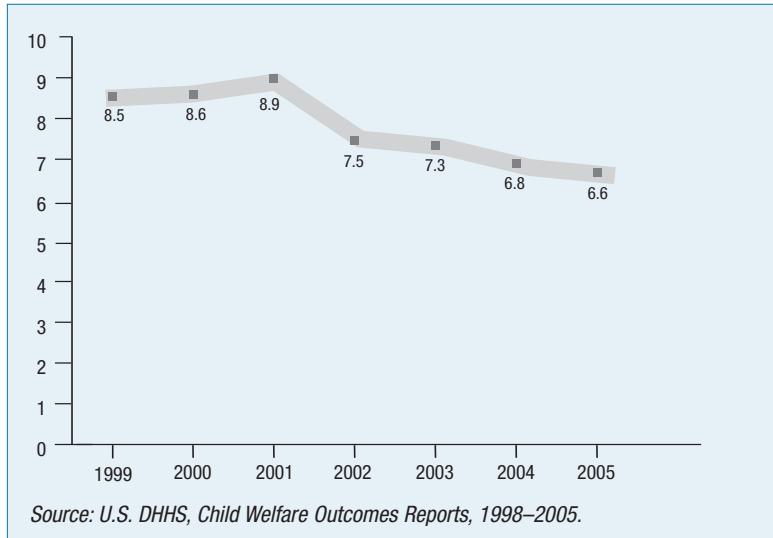
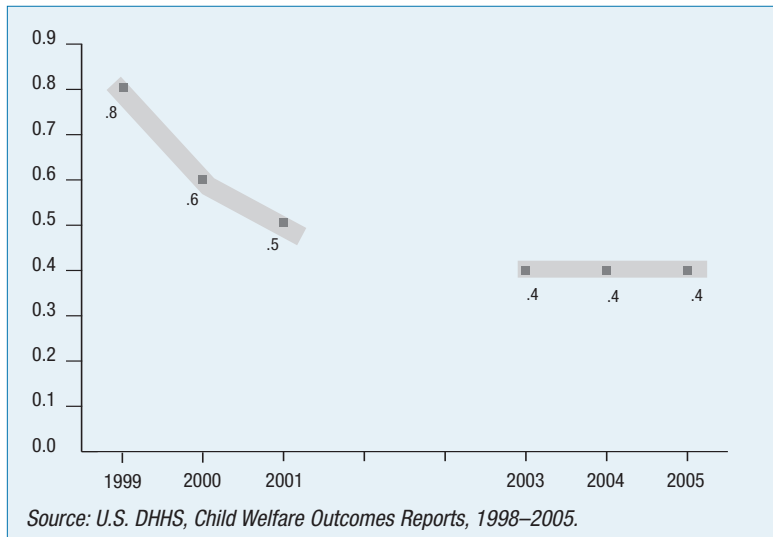


Figure 8
Percentage of Children Maltreated
in Foster Care



through adoption and guardianship, for children who cannot go home. Evidence from every angle—state enactment and implementation of laws, changes in child welfare agency culture and practice, and findings on outcomes—supports the idea that children’s prospects for adoption and guardianship improved to some degree following ASFA. However, many specifics remain unclear: for example, neither state-by-state differences nor the differential effects for children of color as compared to white children are well understood.

ASFA’s effects seem far less certain in terms of meeting its other goals and affecting the lives of other groups of children. For children who do not leave foster care for adoption or permanent guardianship, the evidence suggests limited if any improvement. States report few innovations in regard to reunification, although some workers report that services are getting to families more quickly, and some studies—particularly in relation to substance abuse—find advances in timeliness. But the outcome data indicate no improvements in the likelihood, rapidity, or safety of reunifications, although children’s safety while in care may be somewhat enhanced. The evidence is mixed in the areas of safety and well-being more broadly, but does not suggest large effects. Children living with kin caregivers seem likely to be better off in several ways.

An important insight to be addressed more fully in the papers to follow is that to achieve positive results, not only the child welfare system but other important stakeholders and service systems must reform their practices. These include the court system, substance abuse services, mental health services, and prison systems. Various provisions of international law that affect the circumstances of immigrant families also need to be fully explored for their interrelationships with ASFA.

Finally, developing this paper has underscored for us how many gaps remain in basic knowledge about the implementation and outcomes of ASFA. For one example, while the AFCARS data would enable such an analysis, no one to our knowledge has tracked the number of young people emancipating from foster care where parental rights have been terminated, leaving them “legal orphans.” For another, we have found no study of children reaching the 15 of 22 months threshold that analyzes the number whose parental rights were terminated or who are covered by each of the three exceptions. Such an analysis could be done using many state administrative data systems. Filling in these knowledge gaps would provide helpful, basic information to illuminate successes, failures, and—most important of all—desirable next steps.

Footnotes

- 1 The views expressed in this paper are solely those of the Authors, they do not represent the views of the Urban Institute, its staff, or trustees.
- 2 One of this paper’s authors, Olivia Golden, was Assistant Secretary of DHHS with the responsibility for the regulations.
- 3 There are two provisions we do not include: 1) “Contingency Fund for State Welfare Programs” made temporary adjustments to this fund and required that the secretary make recommendations to Congress for improving operations of the Contingency Fund for State Welfare Programs. We do not discuss this provision as it is not directly relevant to child welfare. 2) “Purchase of American-Made Equipment and Products” U.S. Code Title 7.7012, said it was the sense of Congress [*sic*] that to the extent possible, equipment and products purchased with funds made available under the Act should be made in America. The legislation also required that the heads of federal agencies provide this notice to entities receiving funds made available under this Act.
- 4 Of the other twelve states, six did not have regular legislative sessions that year and six had sessions but did not enact legislation related to ASFA (Christian 1999).
- 5 New Mexico’s law can be found in Chapter 32A, Children’s Code; Article 4—Abuse and Neglect, § 32A-4-28, Termination of parental rights; adoption decree, D. that states “The department shall not file a motion, and shall not join a motion filed by another party, to terminate parental rights when the sole factual basis for the motion is that a child’s parent is incarcerated.” Nebraska’s law can be found in Chapter 43, Infants and Juveniles; Article 2—Juvenile Code (G) Dispositions, § 43-292.02. Termination of parental rights; state; duty to file petition; when “(2) A petition shall not be filed on behalf of the state to terminate the parental rights of the juvenile’s parents or, if such a petition has been filed by another party, the state shall not join as a party to the petition if the sole factual basis for the petition is that (a) the parent or parents of the juvenile are financially unable to provide health care for the juvenile or (b) the parent or parents of the juvenile are incarcerated. The fact that a qualified family for an adoption of the juvenile has been identified, recruited, processed, and approved shall have no bearing on whether parental rights shall be terminated.”
- 6 This number of states is slightly higher than that given by Allen and Bissell (2004). Differences in definition likely lead to this inconsistency.
- 7 As noted, FCSIAA (2008) changes the playing field on subsidized guardianship by providing for federal reimbursement. FCSIAA also addresses kin licensing, clarifying that states can make case-by-case exceptions for kin where standards in question do not pertain to child safety.
- 8 Richard Barth noted in personal correspondence in November 2008 that the NSCAW interviewers did not have access to administrative data and obtained dates from the child welfare workers. As a result, he noted that the NSCAW was not the best source for understanding caseload dynamics and this finding should be interpreted with some caution.
- 9 U.S. DHHS, AFCARS Reports 10–14, FY 1998–2006.

- 10 Eighteen states provided data on dissolutions in 1999 and 20 provided this data in 2000. Twenty one states provided data on adopted children who returned to foster care in 1999 and 23 provided this data in 2000.
- 11 Data are not available for 2002 due to a change in the NCANDS reporting period from a calendar year to a fiscal year in 2003 that resulted in a change in the specification of this measure.
- 12 For example, the 2000 and 2001 Child Welfare Outcomes Report measured “the percentage of re-entries into foster care within 12 months of discharge from a prior foster care episode” and noted national medians of 10.3 percent and 10.0, respectively. In 2004 and 2005, the Child Welfare Outcomes Report (2002-2005) documented “of all children who were discharged from foster care to reunification in the 12-month period prior to the target fiscal year, what percentage re-entered foster care in less than 12 months from the date of discharge.” They noted a rate of 15.2 percent in 2004 and 14.8 percent in 2005.

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