

Intentions and Results

A Look Back at the Adoption and Safe Families Act

Adoption and Safe Families Act

No Second Chances?

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Introduction

ASFA established for the first time within federal policy the principle that maltreated children must be “the paramount concern” of the child protection system. At the same time, ASFA recognized that parents of abused children are seriously troubled and overwhelmingly plagued by mental illness, drug addiction, or criminal behaviors that lead to imprisonment. ASFA did not change the requirement that “reasonable efforts” be made to keep families together and the mandate that services be provided to these parents. However, this law unequivocally puts the child’s safety, permanency, and well-being above all other concerns of the foster care system.

Child Abuse Has Lifelong Impacts

Research has shown that maltreatment has a lifelong impact on the abused child. The damage is irreversible, and affects the child’s socio-emotional, physical and intellectual growth. Attachment and bonding with safe, responsive adults are essential to healthy development. A child’s growth depends greatly upon receiving “good enough” parenting to successfully meet the increasingly complex developmental challenges that he or she will face at different ages.

According to mid-twentieth century theorists Erik Erikson and Jean Piaget, a sequence of “critical periods” characterizes child development. How children resolve successive challenges is based on their own interactions with and experience of the world. Children in responsive circumstances with a parent who provides a stable, caring environment grow up learning to trust, to feel loved, to be independent, to acquire language skills, and to think clearly and confidently. Conversely, children who are abused or neglected learn to mistrust, to feel unloved, to view the world as unpredictable and unsafe, and to struggle with cognitive concepts. There is no doubt that children recreate their world based on their own

experiences, and maltreated children are no different.

Recent neurobiological literature on brain development indicates that the brain is not “hard wired” at birth, but instead has a “plasticity” or “adaptability” that is highly dependent on environmental and parental input at specific “critical periods.” For example, evidence shows that the simple act of singing to a six-month-old baby significantly stimulates both the auditory and visual areas of the brain, whereas the lack of such stimulation can lead to delayed language development and compromise the brain’s ability to respond to auditory stimuli (Neville, 1995).

Abused and neglected children suffer from an impoverished environment due to the absence of a loving, responsive parent. There are strong correlations between maltreatment and a host of poor outcomes for children, including cognitive impairment, school failure, lack of self-control, behavioral disorders, and juvenile delinquency. Affected children run the risk of becoming the next generation of substance abusers, criminals, violent partners, and child abusers themselves (Ondersma 2007; National Survey of Child and Adolescent Well-Being [NSCAW], 2005; cited in Dwyer 2008.) Poor child outcomes are associated with a pervasive failure of services for parents—services that are either lacking, of low

quality, or of insufficient intensity to rehabilitate parents enough to safely return the child. At the same time, too many parents do not comply with service plan requirements, such as mandatory attendance at a parenting or anger management class.

There are no national, comprehensive figures on the number of children in foster care with substance-abusing, mentally ill, or incarcerated parents, mostly single mothers. Experts estimate that the proportion of foster children with substance-abusing parents ranges from about half to 80 percent of the total (Berrick et. al 2008). Research has shown that when parents abuse drugs or alcohol, they are more likely to neglect and to be physically abusive toward their children (Zuckerman 1994; CASA 1999).

Scant research exists on what services offered to these families are effective in rehabilitating a long-time addict or stabilizing a parent with mental illness, nor is it clear what policy to establish when a mother is sentenced to a prison term that will outlast her offspring's childhood. This is not to say that further research on prevention, intervention, and treatment for seriously troubled families should not be fully supported. But it is to suggest that at this point to over-rely on these strategies can put children's safety at risk. ASFA is not an anti-family piece of legislation, as some critics argue. Instead, it is a law based on the reality that research has yet to develop successful prevention, intervention or treatment models that will end the maltreatment of children, avert foster care placement, or ensure safe family reunification.

Some key questions arise: without evidence that services will keep children safe, how can determinations be made about the level of risk associated with making permanency plans for the child? How does a permanency plan for a child take into account the relapses that are often part of the process, according to substance-abuse treatment providers? What happens to the stability that children need in their lives during these periodic, to some degree predictable relapses? Some treatment programs call it a successful outcome when an addict has abstained from using drugs for six months. What happens to those children who have been reunited with their parents and siblings, but may then have to re-enter foster care in six months or so? ASFA was established to shorten the length of time that children were spending in foster care while waiting for anger management or parenting classes to make it safe to return home. ASFA promotes adoption as a better option for ensuring the safety, permanency, and well-being of many children lingering in foster care.

Legislative History of ASFA

The origins of ASFA (Public Law 105-89) can be traced to the Republican "Contract with America" in 1994 and the "Adoption 2002" directive of President Bill Clinton in 1996. The "Contract" included four pro-adoption provisions, including one calling for a reduction in the length of time that foster children waited for permanency. Too many children suffered too many placements waiting for years for a family. Many children "aged out" of the system at 18, literally growing up with no more than "three hots and a cot." The "Adoption 2002" initiative pursued the goal of doubling the number of adoptions out of foster care by the year 2002.

The legislation was developed by a bipartisan group of members of Congress and their staff, as well as officials from the Clinton administration. Taking the lead on the House Committee on Ways and Means were Representatives Dave Camp (R-MI) and Barbara Kennelly (D-CT); and on the Senate Finance Committee, were Senators John D. Rockefeller, IV (D-WV), Mike DeWine (R-OH), John Chaffee (R-RI) and Charles E. Grassley (R-IA).

During the 104th and 105th Congresses, the House Committee on Ways and Means held eleven hearings focused on adoption. Witnesses painted a tragic portrait of the near doubling of children in care from roughly 1983 to 1993. Over the same period, adoptions out of foster care remained fairly level at around 15,000 children a year. Patrick T. Murphy testified that the foster care system was worse in 1995 than in 1980, in part because it too often assumes that "there is no such thing as a bad parent" (Murphy 1995, p. 120). Albert J. Solnit stated that the child welfare system should "respect the child's sense of time" and "develop a fast track" to permanency to avoid poor child outcomes (Solnit 1995, pp. 95-96). Richard Gelles asserted that the main goal of a child-centered welfare system should be to act as expeditiously as necessary to achieve permanency, so that children can have a nurturing relationship with an adult during the critical period of development (Gelles 1995, p. 60).

I also testified at the hearings that "child protection not family preservation or family reunification must be the guiding principle of any child welfare reform" (Bevan 1995, p. 108). Shortly afterward, I joined the House Ways and Means Committee staff to help set in motion the drafting of a bill that would meet children's developmental needs by putting child protection first, reducing the average length of time spent in

foster care, and increasing the number of adoptions out of foster care.

Policy: What ASFA Did

For the first time in federal child welfare policy, deadlines were put into the statute to clearly establish that foster care was a temporary placement for children. The making of “reasonable efforts” to keep families together was clarified by requiring that such efforts must maintain the child’s health and safety as “the paramount concern.” This provision aimed at reducing length of stay for children in foster care and at expediting the movement of more children toward adoption. Toward this latter end, the statute mandated (with certain exceptions) a deadline for the termination of parental rights and placement into adoption if the child has been in care for 15 out of the past 22 months. Clarifying reasonable efforts and the 15/22 standard was geared toward respecting the child’s sense of time and recognizing the great harm that can be done to a child living in a setting designed to be temporary.

As a result of the enactment of ASFA, adoptions out of foster care went from 15,000 children in 1988 to a high of 53,000 children in 2002, maintaining nearly equally high numbers (51,000 to 52,000) over the following four years (Maza 2008). ASFA’s provisions dramatically doubled the number of children adopted out of foster care, changing the lives of tens of thousands of children (Maza 2008). Since the passage of ASFA, there has been a significant decline in the average time between removal of a child from his/her home and termination of parental rights (TPR), going from more than three years down to two years (Maza 2008). There has been an equally significant decline in the average time period between removal from the home and adoption, from more than four years to about three years (Maza 2008). Maza’s analysis of AFCARS data indicates that children who were removed before the age of seven account for most of the reduction in average waiting-time for adoption. On average, then, it is likely that abused children will spend one less year in a temporary placement, without a family and a place to call home.

These significant achievements, produced by ASFA’s requirements to impose a deadline on the length of time a child spends in the limbo of foster care and to provide incentives for states to move more children into adoptive families, represent life-altering “second chances” for children who have been abused

and cannot safely return to their families. The increase in adoption out of foster care means that tens of thousands of children will, as a result of ASFA, have the opportunity to form attachments to loving, responsive parents and grow up in stable and permanent families.

Policy: What ASFA Did Not Do

While ASFA recognizes the child’s needs as overriding, it does not relieve states of the duty to provide services to parents. In fact, lack of service provision to parents can qualify as a “compelling reason” for the state not to move toward TPR and adoption. Under ASFA, states receive an illustrative list of the types of services that could meet this requirement, including 24-hour emergency caretaker and homemaker services, crisis counseling, home-based family services, and mental health, drug and alcohol abuse counseling (Greenbook 2004).

ASFA did not specifically address the effectiveness of treatment services for parental substance abuse. The congressional committees heard scant research findings as to how parental readiness to change might be determined, which factors were relevant to successful rehabilitation (e.g., length of drug use, specific drug use in question, ages of children involved), which treatment programs were most likely to work for which type of client, or whether rehabilitation can take place within a timeframe that respects the child’s sense of time.

ASFA did not specifically address parental mental health or imprisonment issues, since strategies for meeting these challenges were not available in the evidence-based research literature. ASFA does not require that termination of parental rights automatically take place after a child has been in care for 15 of the last 22 months. Rather, ASFA allows states to use three reasons they consider “compelling” for not moving to TPR: (1) if the child is living with kin; (2) if a determination is made that TPR is not in the “best interest of the child”; or (3) if timely family services were not provided.

ASFA does allow states to bypass reasonable efforts to preserve and reunify families when a parent has subjected the child to “aggravated circumstances” as defined by the state, which may include but are not limited to abandonment, torture, chronic abuse, and sexual abuse (Sec. 101 (a)(D)(i)). Efforts to preserve and reunify families are not required when the parent has committed the murder of another child of the parent; committed voluntary manslaughter of another child of the parent; attempted to commit the murder

or manslaughter of another child; or committed a felony assault that results in serious bodily injury to the child or another child of the parent. Such efforts may also be bypassed when the parental rights of the parent to a sibling have been terminated involuntarily (Sec. 101 (a) (D) (ii) (iii)). Interestingly, it appears that states are routinely using the “compelling reasons” provision for not moving to TPR, while the “aggravated circumstances” provision to expedite TPR is rarely invoked.

Where Do We Go From Here?

The debate over ASFA continues. Members of Congress still want answers regarding how to reform what is supposed to be a system to protect children from harm. Is the financing of the child welfare system the problem? Is the system inequitable in guaranteeing room and board for the child but not drug rehabilitation or mental health services for the parent? Does the woeful lack of effective treatment for substance abusers and parents with mental illness or violent histories “cause” children to be “unnecessarily” removed and placed into adoption? Policymakers remain concerned for the instability of the foster care system, which is producing such poor outcomes for so many children.

Research on family support, family preservation, and family reunification programs since the enactment of ASFA suggests that these services alone are unlikely to be effective in protecting abused children from harm. An evaluation by Westat, Chapin Hall, and Bell Associates (2002) found these programs to be only “marginally beneficial” and argued that they should not be solely relied upon to keep families safely together and avoid foster care placement (Green Book 2004). Another study by Abt Associates (2001) cited the effectiveness of these programs as “mixed” (Green Book 2004). In the decade since passage of ASFA, there are still no better answers on how to protect children from harm. Thus, the best policy would seem to be expediting TPR and promoting adoption for more children in care who are not likely candidates to be safely returned to their families.

Research on effective family treatment modalities needs to continue and to be brought to the attention of policymakers. However, adoption must not be viewed as a last resort or an option resulting from the system’s failure to effectively preserve the biological family. This view will continue to condemn thousands of children to government care and lifelong damage. In circumstances where a sibling has already been vic-

tim to murder, manslaughter or seriously bodily harm, adoption ought to be the first option for the child removed for his or her own safety.

I do have several specific recommendations:

- 1 Recalibrate the “15/22” rule based on the age of the child: the younger the child, the shorter the timeframe to move toward TPR and adoption.
- 2 Examine states’ use of the “compelling reasons” and “aggravated circumstances” provisions to ensure that the flexibility allowed is not being used to prevent or fail to expedite adoption when it is appropriate.
- 3 Value adoption as a better option for all children in foster care, since thousands of children are growing up without permanency for almost three years on average—a protracted wait that should take into account the child’s sense of time and critical periods of development.
- 4 Encourage voluntary relinquishment, recognizing that parenting is not for everyone; this option can be positive and life-altering for both the parent and the child.
- 5 Offer upfront high-quality, intensive services to parents who indicate they are ready to change and who are complying with treatment plan requirements.
- 6 Develop risk-assessment models based on empirical data to predict the level of risk attached to the range of decisions: to remove the child, not to remove the child, to return the child to the family.

Conclusion

Maltreatment has a lifelong, deleterious, and irreversible impact on the child. The child has an inherent right to grow up free from abuse. Parental rights are not inalienable and children are not property. ASFA recognizes these facts by its policies of expediting the legal decisions surrounding the placement of a maltreated child. Adoption is a “second chance” for the child to grow up healthy and emotionally stable.

Researchers must be funded to develop effective prevention, intervention, and treatment services to demonstrate to policymakers and providers-at-large

that there are some substance abusers, parents with a mental illness, and incarcerated parents who have the will and determination to put their child ahead of their own needs. These parents can change, given their own second chances.

ASFA is a highly successful law, meeting the expectations of both the “Contract with America” and the “Adoption 2002” directive. With its provisions that led to Child and Family Service Reviews—the ongoing evaluation of state foster care programs in achieving permanency, safety, and well-being—there is every reason to be optimistic about identifying what is working or not working to make children “the paramount concern” of the system.

References

- Abt Associates. (April 2001). National evaluation of family support programs: final report. Washington, DC: U.S. Department of Health and Human Services.
- Adoption and Safe Families Act of 1997, Public Law 105-89.
- Berrick, Jill Duerr, Young Choi, Amy D’Andrade, and Laura Frame. “Reasonable Efforts? Implementation of the Reunification Bypass Provisions of ASFA,” *Child Welfare*, May/June 2008, Vol. 87, Issue 3, pp. 163-182.
- Bevan, Cassie Statuto. Congressional Testimony. “Federal Adoption Policy,” House Committee on Ways and Means, Serial 104-33, May 10, 1995, p. 129.
- Committee on Ways and Means. U.S. House of Representatives. Background Material and Data on the Programs within the Jurisdiction of the Committee on Ways and Means. Green Book, March 2004.
- Gelles, Richard. Congressional Testimony. “Federal Adoption Policy,” House Committee on Ways and Means, Serial 104-33, May 10, 1995, p. 60.
- Maza, Penelope. “Using AFCARS Data to Explore the Outcomes for Youth for Whom Parental Rights Have Been Terminated.” Presentation: 11th National Child Welfare Data and Technology Conference. Washington, DC, 2008.
- Murphy, Patrick. Congressional Testimony. “Federal Adoption Policy,” House Committee on Ways and Means, Serial 104-33, May 10, 1995, p. 120.
- National Center on Addiction and Substance-Abuse. “No Safe Haven: Children of Substance Abusing Parents,” 1999.
- Neville, H. J. “Developmental Specificity in Neurocognitive Development in Humans.” In M. Gazzanign (ed). *The Cognitive Neurosciences*, Cambridge, Mass: MIT Press, 1995.
- Office of Planning, Research, and Evaluation, U.S. Department of Health and Human Services, Abuse, Neglect, Adoption and Foster Care Research: National Survey of Child and Adolescent Well-Being (NSCAW) 1997-2010. 2005.
- Ondersma, Steven J. “Introduction to the First of Two Special Sections on Substance Abuse and Child Maltreatment,” 12 *Child Maltreatment* (1) 3, 4, 2007.
- Solnit, Albert J. Congressional Testimony. “Federal Adoption Policy,” House Committee on Ways and Means, Serial 104-33, May 10, 1995, p. 95.
- Westat, Chapin Hall Center for Children, James Bell Associates. Evaluation of family preservation and reunification programs final report. Washington, DC: U.S. Department of Health and Human Services, 2002.
- Zuckerman, Barry. “Effects on Parents and Children.” In Besharov, Douglas J., (ed) *When Drug Addicts Have Children: Reorienting Child Welfare’s Response*. Washington, DC: Child Welfare League of America and the American Enterprise Institute, 1994.

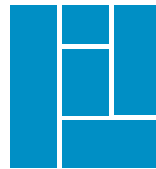


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