

## Family Preservation and Adoption

Critics of family preservation claim that it makes it harder to free children for adoption. Once again, they are wrong. Not only does family preservation not impede adoption, family preservation can speed the process of terminating parental rights when necessary.

The federal law that effectively abolished the reasonable efforts requirement, the so-called Adoption and Safe Families Act (ASFA), also requires states to seek termination of parental rights for many children in foster care for 15 of the most recent 22 months. Yet in many jurisdictions it can take at least 12 months for a judge to decide if the initial placement was justified in the first place.

Thus, while some children in foster care do indeed need to be adopted, ASFA encourages the indiscriminate adoption of children without regard to whether they could have remained safely in their own, loving homes.

And this influx of new termination cases comes despite increasing evidence that the system can't cope with the thousands of children legally free for adoption right now.

After three years of modest increases in the raw number of annual adoptions, the number remained stagnant at about 50,000 per year, until 2009 when it reached 55,000.<sup>1</sup>

This is all states can manage, even though the federal government offers them a huge financial incentive – bounties of \$4,000 to \$12,000 or more for every adoption over a baseline number -- and political and media pressure for adoption is enormous. In contrast, between 1983 and 1999, the foster care population more than doubled. The real message from the so-called surge in adoptions is that the problems of foster care can never be solved through adoption alone.

Furthermore, the figures include only finalized adoptions, not the number of cases in which parental rights were terminated, but no adoptive home was found.

In the early 1990s, NCCPR's President, Prof. Martin Guggenheim of New York University Law School, examined two states which expedited termination proceedings. He found that as the number of children freed for adoption soared, the number of actual adoptions increased far more slowly. The result: A generation of legal orphans, who have no ties whatsoever to their birth parents, but aren't being

placed for adoption either. Guggenheim found that, contrary to the unsupported rhetoric of critics of family preservation, the one reform taken most seriously since the 1970s has been termination of parental rights.<sup>2</sup>

The study was prescient. Nationwide, every year since ASFA was passed, terminations have far outrun adoptions.<sup>3</sup> As a result, the number of children aging out of foster care with no permanent home has soared by 70 percent.<sup>4</sup>

Furthermore, although abuse in adoptive homes is rare – like abuse in birth parent homes – ASFA's encouragement of quick-and-dirty, slipshod placements increases that risk.

Even the group that calls itself Children's Rights, a group which favors ASFA and has been hostile to family preservation, says "... **Congress should realize that far too many states ... when they do, for example, raise their adoption numbers, are doing so by including many clearly inadequate families ... along with the genuinely committed, loving families who want to make a home for these children, just to 'succeed' by boosting their numbers.**"<sup>5</sup>

Even if all the children now awaiting adoption could be placed, that doesn't mean the placements will last. Current efforts to plunge headlong into adoption are being undertaken in the absence of any reliable data about how often placements "disrupt" when parents who adopt a child – especially a "special needs" child – change their minds. But the evidence we do have is alarming.

Even before the effects of ASFA were felt, it was estimated that 10 to 25 percent of so-called "forever families" don't turn out to be forever after all – the adoptive parents change their minds.<sup>6</sup> That number is only likely to increase as states increase pressure to place more children in order to obtain the bounties handed out under ASFA – bounties which are paid whether the adoption actually lasts or not.

As adoptions level off, the pressure to increase them again – and cash in on the bounties – is likely to have another pernicious effect. It is likely to prompt agencies to target the children most in demand by prospective adoptive parents: healthy infants from poor families. Agencies will rationalize that the parents really are "unfit" even as they continue to

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## Adoption (continued)

turn their child welfare systems into the ultimate middle-class entitlement: Step right up, and take a poor person's child for your very own.

For examples of such targeting, see The *Pittsburgh Post-Gazette* series, "When The Bough Breaks," available online at <http://bit.ly/fU1JdT>, and the scandal in Kentucky where even an organization which once zealously supported a take-the-child-and-run approach has reversed itself and condemned what it calls "quick trigger adoptions."<sup>7</sup>

**Says the former head of Los Angeles County's child welfare system: "What you have now is an incentive to initially remove the child, and an incentive to adopt them out. I think when you put those two together, there is a problem."**<sup>8</sup>

Family preservation not only does not impede adoption, it can expedite the process of termination of parental rights by allowing workers to find out more quickly when a family *can't* be preserved -- and giving judges the confidence to make a termination decision knowing that the agency really did try to keep the family together.

The argument that there are children trapped in foster care who should be adopted and the argument that there are children trapped in foster care who should be in their own homes are not mutually exclusive. There are children in foster care who should be exiting in both directions.

But the claim that family preservation

impedes adoption is nonsense. So is the claim that it was extremely difficult to terminate parental rights before the law was changed. All that is needed is minimal competence on the part of child protective workers.

This was demonstrated by an American Bar Association project in Upstate New York. The ABA's National Center for Children and the Law taught lawyers and workers how to present a decent case in court. Without offering one iota of additional help to families before moving to terminate, the termination rate soared.<sup>9</sup>

We have always believed there is a place for efforts to increase the number of adoptions as part of child welfare reform. But as long as the rush to cash in on adoption bounties causes a further neglect of efforts to keep families in their own homes, it will only make things worse.

Contrary to critics' claims, most people in child protection work are almost obsessed with a substitute care fantasy, in which children are rescued from their "evil" birth parents and placed in substitute settings, which, in the imagination of the workers, are always ideal.

For most workers and most agencies, termination of parental rights is the dessert in the child welfare meal, family preservation is the broccoli. ASFA gives workers and agencies all the dessert they want without ensuring that they eat their broccoli first.

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1. Between 1997 and 2000 adoptions of foster children increased from 31,030 to 51,000. They stayed at about 50,000 per year until 2008. (1997 to 2003: U.S. Department of Health and Human Services, *Adoptions of Children with Public Child Welfare Agency Involvement By State FY 1995-FY 2003*, available online at [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/adoptchild03b.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/adoptchild03b.htm), 2004 to 2009: U.S. Dept. of Health and Human Services, *Trends in Foster Care and Adoption*, chart available online at [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/trends.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/trends.htm)) //2. Martin Guggenheim, "The Effects of Recent Trends to Accelerate the Termination of parental Rights of Children in Foster Care - An Empirical Analysis in Two States," *Family Law Quarterly*, p.139. //3. Trends, note 1, supra. //4. 1998: Jim Casey Youth Opportunities, *Time for Reform: Aging Out and On Their Own*, May, 2007, available online at <http://www.kidsarewaiting.org/tools/reports/files/0006.pdf> 2009: U.S. Department of Health and Human Services *The AFCARS Report: Preliminary FY 2009 Estimates as of July 2010*, available online at: [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/tar/report17.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report17.htm) //5. Statement of Marcia Robinson Lowry, Executive Director, Children's Rights, Testimony Before the Subcommittee on Human Resources of the House Committee on Ways and Means, November 06, 2003. //6. National Adoption Information Clearinghouse *Disruption and Dissolution*, [http://naic.acf.hhs.gov/pubs/s\\_disrup.cfm](http://naic.acf.hhs.gov/pubs/s_disrup.cfm) //7. Valarie Honeycutt Spears, "Report: State unjustly terminates parental rights for federal money," *Lexington Herald-Leader*, April 16, 2006, and numerous other stories. //8. Troy Anderson, "Government Bonuses Accelerate Adoptions," *Daily News of Los Angeles*, December 8, 2003. //9. Debra Ratterman of the ABA's National Legal Resource Center for Child Advocacy and Protection described the project at the 1991 Annual Conference of the New York State Citizens Coalition for Children.