

SETTING THE RECORD STRAIGHT ABOUT RECENT CHILD WELFARE HISTORY

A Child Welfare Timeline, 1961 to Date

1961: Congress allows AFDC payments to follow a child into foster care. Previously, such payments were made only to children in their own homes. This makes foster care much cheaper for states and localities. The foster care population starts to increase sharply.[1]

LATE 1970s: The foster care population reaches 503,000,[2] even higher than it is now. Congress becomes concerned about large numbers of children languishing in foster care, and removal of children whose poverty is confused with child "neglect."

1980: Congress passes one of the last initiatives of the Carter Administration, the Adoption Assistance and Child Welfare Act of 1980.

THE MYTH: The claim is now made that this law promoted "family preservation at all costs" that it made family preservation "the overriding goal" that it forced states to return children to dangerous homes and led to children languishing in foster care because agencies were forced to give parents "too many chances."

THE REALITY: The words "family preservation" do not even appear in this law. In fact, this law is the first law to encourage permanence in both directions - returning children home and getting them adopted. It is the first federal law to attempt to set any time limits on how long children could stay in foster care (18 months), and the first to offer federal aid for subsidized adoption. It also required "reasonable efforts" - and nothing more - to keep families together.

Both legislative history and guidance from the federal Department of Health and Human Services make clear that "reasonable efforts" are never to be made if it would mean a child has to stay in or return to a dangerous home.[3] But the law does have one crucial flaw: It does nothing to change the way child welfare services are financed. Foster care reimbursement remains an open-ended federal entitlement for states and localities. Far less is available to prevent foster care, and those funds are "capped." (See NCCPR Issue Paper #12).

EARLY 1980s: The law works. This first federal effort to deal with foster care by encouraging permanence - including, but not restricted to keeping families together -- cuts the foster care population by more than half - to 243,000.[4] But by now the Reagan Administration is in office. They hate the law because it's seen as unnecessary federal interference in state and local decisions. They pull back proposed regulations to enforce it.[5] That sends a signal to the states: You can go back to business as usual. Since the financial incentives were never changed, business as usual - placing more and more children in foster care - is the easier course of action.

Once again, children are taken from homes that are safe or could be made safe with the right kind of services. Once taken, the children are filed away and forgotten as overwhelmed workers rush on to the next case. The "reasonable efforts" requirement is ignored. Children again languish in foster care - not because of "reasonable efforts" but because of the lack of reasonable efforts. So the foster care population begins to rise again. The increase doesn't stop until 1999.

1992: The U.S. Supreme Court rules that individuals cannot sue to have the "reasonable efforts" requirement enforced.[6]

1992: Congress begins talking about putting serious money into family preservation. It passes the Family Preservation and Support Act. President Bush vetoes it. It passes again in 1993 and President Clinton signs it.

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A CHILD WELFARE TIMELINE/2

THE MYTH: In subsequent years this law would be described as "spending \$1 billion on family preservation."

THE REALITY: The \$1 billion is over five years, and it's for a huge range of child welfare services - including foster care, adoption, and even things like after school recreation programs. None of the money has to be spent on family preservation, and very little actually has been. (The legislation has been reauthorized several times since. It's now known as the Promoting Safe and Stable Families Act).

But even the prospect of putting federal money into family preservation scares a child welfare establishment that is invested - literally and figuratively -- in foster care. They begin attacking family preservation at every opportunity. Any death of any child "known to the system" is blamed on "family preservation" even if the child was nowhere near a real family preservation program - and even when it was a family preservation worker who warned that the child was in danger in the first place. Ignored, amid all the hype, is the fact that real family preservation programs actually have a better track record for safety than foster care. (See NCCPR Issue Paper #1).

1997: The twin myths - that family preservation supposedly is unsafe and leads to children languishing in foster care - lead Congress to pass the so-called Adoption and Safe Families Act. This law blows huge holes in what little was left of "reasonable efforts." Backers claim it makes exceptions only for extreme cases but, in fact, the law is filled with broad, vague "catch-all" clauses that effectively make reasonable efforts optional in every case. The law also demands that, with limited exceptions, states seek termination of parental rights whenever a child has been in foster care for 15 of the previous 22 months - even if the child should not have been taken away in the first place. Even more important than any specific provision is the general message to the states: You've been doing too much to keep families together, you need to take away more children.

2008: Small increases in adoptions occur until 2000, but then the increases stop until 2008, when the number inches up again.[7] The average annual increase in adoptions attributable to ASFA equals less than 2.5 percent of the number of children in foster care on any given day.[8] The small increase in adoptions is outweighed by the children coming into care because ASFA encourages so many more children to be taken in the first place. As a result, during a time when crime went down and child abuse itself went down, and despite the fact that many foster children "aged out" of the system without ever finding a permanent home, the total number of children in foster care on any given day actually increased until 1999.[9] It wasn't until 2003 that this number finally fell below where it was when ASFA became law - six years earlier.[10]

Worse, until 2006, the number of children taken from their parents over the course of a year increased every year but one since ASFA passed, with a record 307,000 children torn from their homes in 2005.[11] Because ASFA was built on a foundation of false premises, it has backfired.

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1. Marguerite Rosenthal and James A. Louis, "The Law's Evolving Role in Child Abuse and Neglect," in Leroy Pelton, ed., *The Social Context of Child Abuse and Neglect* (New York: Human Sciences Press, 1985), pp. 62-64.

2. Leroy Pelton, *For Reasons of Poverty: A Critical Analysis of the Public Child Welfare System in the United States* (New York: Praeger, 1989), Chart, p.6.

3. Testimony of MaryLee Allen, Director, Child Welfare and Mental Health division Children's Defense Fund, before the House Ways and Means Committee Human resources subcommittee, April 8, 1997.

4. Pelton, Note 2, *Supra*.

5. Allen, Note 3, *Supra*.

6. *Suter v. Artist M.*, 112 S. Ct. 1360 (1992)

7. U.S. Department of Health and Human Services, Trends in Foster Care and Adoption, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/trends.htm For data before 2000 see U.S. Department of Health and Human Services, *Foster Care FY1999-FY2004 Entries, Exits, and Numbers of Children In Care on the Last Day of Each Federal Fiscal Year*, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2004.htm

8. Penelope L. Maza, Adoption Data Update, presentation to Child Welfare and Mental Health Coalition, Washington, DC, May 13, 2003.

9. HHS, note 7, *supra*.

10. *Ibid*.

11. 1997 through 2001: HHS, note 7, *Supra*., 2002 through 2007: U.S. Department of Health and Human Services, Trends in Foster Care and Adoption, available online at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/trends.htm