



# Child Welfare: Implementation of the Adoption and Safe Families Act (P.L. 105-89)

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## Summary

In response to rising numbers of children in foster care and concerns about the safety of children that remain with or return to their families after placement in foster care, the 105<sup>th</sup> Congress enacted the Adoption and Safe Families Act of 1997 (ASFA, P.L. 105-89) with two primary goals: (1) to ensure that consideration of children's safety is paramount in child welfare decisions, so that children are not returned to unsafe homes; and (2) to ensure that necessary legal procedures occur expeditiously, so that children who cannot return home may be placed for adoption or another permanent arrangement quickly. ASFA is considered the most sweeping change in federal child welfare law in nearly 20 years.

Most provisions in the 1997 law amended Titles IV-B or IV-E of the Social Security Act, which authorize grants to states for child welfare activities, including foster care and adoption assistance. In FY2004, Titles IV-B and IV-E received appropriations totaling \$7.6 billion. As enacted in 1980 (P.L. 96-272), the underlying law requires states to make "reasonable efforts" on behalf of abused and neglected children or children at risk of abuse and neglect, to ensure that services are provided to their families so they can remain safely at home or return home if they have been placed in foster care. States also must conduct administrative and court hearings on every child's case according to a prescribed timetable and establish a permanent placement plan for each child.

Periodically since P.L. 96-272 was enacted, concern arose that some states and judges interpreted the federal child welfare laws as requiring family preservation and reunification at all costs, including in cases where the child's health or safety was in jeopardy. ASFA was intended to clarify federal policy to ensure safety for children who come into contact with the child welfare system. Moreover, ASFA was intended to expedite permanency for foster children and to promote adoption for those children who cannot safely return home.

Since 1997, all states have enacted their own laws to implement parts of ASFA, and the federal Department of Health and Human Services (HHS) has issued regulations to implement certain provisions of the 1997 law. Acting on a 1994 legislative directive (P.L. 103-432), HHS also initiated a review system in 2001 to monitor state compliance with federal child welfare laws, including the provisions of ASFA. HHS also issued several reports as mandated by ASFA.

Finally, ASFA authorized annual incentive payments to states that exceeded their highest previous number of foster child adoptions in a given year, with larger payments for adoptions of children with special needs. Congress reauthorized and revised this program in 2003 (P.L. 108-145), to create separate incentives for adoptions of older children. For adoptions in FY1998-FY2003, states "earned" a total of \$178 million (of which \$17.9 million were earned by 31 states and Puerto Rico for adoptions finalized in 2003). HHS data indicate approximately 52,500 children were adopted with the involvement of public child welfare agencies in 2002, for an increase of nearly 70% since 1997. This report will not be updated.

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## Introduction

In the mid-1980s, the number of children in foster care began to climb sharply, while the number of children who were adopted from foster care remained static. Most children who enter foster care eventually return to their families, but concern developed in the 1990s about the growing number of children who did not return home and were remaining in foster care for long periods of time. At the same time, there was a growing perception that federal law needed clarification regarding the importance of child safety. These factors prompted the 105<sup>th</sup> Congress to enact legislation with two primary goals: (1) to ensure that consideration of children's safety is paramount in child welfare decisions, so that children are not returned to unsafe homes; and (2) to ensure that necessary legal procedures occur expeditiously, so that children who cannot return home may be placed for adoption or another permanent arrangement quickly.

The Adoption and Safe Families Act (ASFA, P.L. 105-89) was enacted in November 1997, and is considered the most sweeping change in federal child welfare law since 1980, when the current configuration of federal child welfare programs was established. Since 1997, all states have enacted their own laws to implement parts of ASFA. In January 2000, the federal Department of Health and Human Services (HHS) issued regulations to implement certain provisions of the 1997 law and, acting on a 1994 congressional directive (P.L. 103-432), to establish a review system to monitor state compliance with federal child welfare laws, including ASFA provisions. HHS also has issued several reports that were mandated by ASFA and has awarded six rounds of annual incentive payments, also authorized by ASFA (and subsequently reauthorized in 2003), to states that increased their numbers of foster child and special needs child adoptions.

This report provides background information and a description of ASFA, with references to implementation by states and HHS and related actions that occurred after the law's enactment.<sup>1</sup> This report is current as of the cover date and will not be further updated. References to additional CRS reports are provided where relevant. For information on child welfare issues in the 108<sup>th</sup> Congress, see *Child Welfare Issues in the 108<sup>th</sup> Congress*, CRS Report RL31746, by Emilie Stoltzfus, and for information on the Adoption Incentives program created by ASFA, see CRS Report RL32296, *Child Welfare: The Adoption Incentives Program*, by Kendall Swenson.

## Background and Legislative History<sup>2</sup>

In December 1996, President Clinton directed HHS to develop recommendations that would result in a doubling of the number of foster child adoptions by 2002. In response, HHS released a report, *Adoption 2002*, on February 14, 1997. At the same time, related proposals were being developed in Congress. In April 1997, the House passed the Adoption Promotion Act (H.R. 867) by a vote of 416-5, and a bipartisan group of Senators introduced the Safe Adoptions and Family Environments (SAFE) Act (S. 511) in March 1997. The SAFE Act was superseded by another bipartisan package—the Promotion of Adoption, Safety, and Support for Abused and Neglected

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<sup>1</sup> See also *Foster Care: States' Early Experiences Implementing the Adoption and Safe Families Act*, HEHS-00-1, U.S. General Accounting Office, Dec. 1999 and *Foster Care: Recent Legislation Helps States Focus on Finding Permanent Homes for Children, but Long-Standing Barriers Remain*, GAO-02-585, U.S. General Accounting Office, June 2002.

<sup>2</sup> For a detailed discussion of issues that led to enactment of the Adoption and Safe Families Act, see *Adoption, Foster Care, and Child Welfare: Issues for Congress*, CRS Report 97-256, by Karen Spar, Feb. 5, 1997 (archived, available upon request).

Children (PASS) Act (S. 1195)—that was introduced in the Senate on September 18. The PASS Act, with some changes from the introduced version, was approved by the full Senate on November 8 as a substitute for the House-passed version of H.R. 867. Differences between the House and Senate were resolved, and a final, amended version of H.R. 867—renamed the Adoption and Safe Families Act—was passed on November 13 by a vote of 406-7 in the House and by unanimous consent in the Senate. President Clinton signed the bill into law (P.L. 105-89) on November 19, 1997.

Most of the provisions in the 1997 law amended Title IV-B or IV-E of the Social Security Act, which authorize grants to states for child welfare activities. The majority of these grants are permanent authorizations and received appropriations totaling \$7.6 billion for FY2004.<sup>3</sup> As enacted in 1980 (P.L. 96-272), these provisions require states to make “reasonable efforts” on behalf of abused and neglected children or children at risk of abuse and neglect, to ensure that services are provided to their families so they can remain safely at home or return home if they have been placed in foster care. States also must conduct administrative and court hearings on every child’s case according to a prescribed timetable and establish a permanent placement plan for each child.

Periodically during the years since P.L. 96-272 was enacted, there was concern that some states and judges interpreted the federal child welfare laws as requiring family preservation and reunification at all costs, including in cases where the child’s health or safety was in jeopardy. The Adoption and Safe Families Act was intended to clarify federal policy to ensure safety for children who come into contact with the child welfare system. Moreover, in response to concern about the growing numbers of children in foster care, starting in the late 1980s and continuing through the 1990s, ASFA was intended to expedite permanency for foster children and to promote adoption for those children who cannot safely return home.

The 1997 law established significant new procedural requirements to promote safety and expedite permanency, which the Congressional Budget Office (CBO) estimated would save federal money by shortening the time that some children spend in foster care. At the same time, the new law also contained some spending provisions. These included financial incentive payments to states that increased their numbers of adoptions from foster care; a requirement that states provide health insurance coverage to special needs adopted children who are not eligible for federal subsidies; a provision that continued eligibility for federal subsidies to special needs children whose adoptions are disrupted; and a reauthorization and expansion of the family preservation program under Title IV-B. CBO estimated the net cost of P.L. 105-89 at \$40 million over a five-year period. To offset these costs, the law reduced spending for the contingency fund under the Temporary Assistance for Needy Families (TANF) block grant.

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<sup>3</sup> Title IV-B consists of two subparts: grants to states for child welfare services and training, and grants to states for activities that promote safe and stable families (formerly known as the family preservation and support program), and grants to eligible public or private entities for mentoring children of prisoners. Title IV-E authorizes matching payments to states for foster care and adoption assistance provided on behalf of certain children, including related administrative and training costs. Title IV-E also authorizes grants to states for independent living services and educational vouchers for older foster children. For additional program information, see Section 11 of the House Ways and Means Committee *Green Book*, WMCP: 108-6, Mar. 2004; available through the House Ways and Means Committee website, at <http://waysandmeans.house.gov/Documents.asp?section=813>.

## **Provisions of the Adoption and Safe Families Act**

### **Child Safety Provisions**

The Adoption and Safe Families Act amended the existing federal child welfare law to require that a child's health and safety be of "paramount" concern in any efforts made by the state to preserve or reunify the child's family, and to provide new assurances that children in foster care are safe.

#### *"Reasonable Efforts" to Preserve Families*

States continue to be required to make "reasonable efforts" to avoid the need to place children in foster care and to return them home if they are removed, but ASFA established exceptions to this requirement. Specifically, states are not required to make efforts to preserve or reunify a family if a court finds that a parent has killed another of his or her children, or committed felony assault against the child or a sibling, or if his or her parental rights to another child were previously involuntarily terminated. According to the National Conference of State Legislatures (NCSL), which tracked the enactment of state laws to implement ASFA, most states incorporated these exceptions in their statutes.<sup>4</sup>

In addition, the federal law established that efforts to preserve or reunify a family are not required if the court finds that a parent has subjected the child to "aggravated circumstances." Each state may define these circumstances in its own laws, although ASFA cites abandonment, torture, chronic abuse, and sexual abuse as examples. Moreover, P.L. 105-89 states that it does not preclude individual judges from using their discretion to protect a child's health and safety in any case, regardless of whether the specific circumstances are cited in federal law. At the same time, the federal law does not *prohibit* states from making efforts to preserve or reunify a family in any case.

According to NCSL, the aggravated circumstances most typically included in state definitions are those listed in the federal law. As of August 1999, some states also included other circumstances, such as: physical abuse, assault or battery of child (21 states); serious or chronic neglect (14 states); discretion of the court (14 states); physical or sexual abuse or assault of another child (13 states); failure to comply with or make progress under treatment plan (7 states); parent cannot be located after diligent search (7 states); previous removal of child for physical or sexual abuse (7 states); conviction of various crimes (7 states); violent crimes against a parent of the child (7 states); parental substance abuse (6 states); and mental illness or deficiency precluding care of a child, even with services (6 states).

In final regulations issued on January 25, 2000, HHS specified that judicial findings of "reasonable efforts," including findings that reasonable efforts to prevent removal or reunification are not required, must be explicitly documented and made on a case-by-case basis. The regulations also state that such findings must be made within 60 days of the child's removal from home.

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<sup>4</sup> National Conference of State Legislatures, Adoption and Safe Families Act of 1997 Resources, at <http://www.ncsl.org/programs/cyf/asfaslr.htm>.

### ***Criminal Background Checks***

To further promote safety, the 1997 law required that states conduct criminal background checks for all prospective foster or adoptive parents and deny approval to anyone who has ever been convicted of felony child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a violent crime including rape, sexual assault, or homicide. In addition, states must deny approval to anyone with a felony conviction for physical assault, battery, or a drug-related offense, if the felony occurred within the past five years.

States may opt out of the ASFA criminal record check provisions either through a letter from the state's governor to the Secretary of HHS, or through legislation enacted by the state legislature. According to HHS, as of August 2004, three states (Idaho, Oklahoma, and Oregon) had opted out through enactment of legislation and six states (Arizona, California, New York, Massachusetts, Nebraska, and Ohio) opted out through a letter from their governors. In final regulations issued on January 25, 2000, HHS requires states to document that criminal records checks have been conducted. If the state opts out of the specific ASFA requirement, the regulations specify that licensing files for a foster or adoptive family, or for a child care institution, must document that safety considerations have been addressed with respect to the family or the staff of the institution.<sup>5</sup>

ASFA also required states to develop standards to ensure quality services that protect the health and safety of children in foster care with public and private agencies. These standards are in addition to licensing requirements that were already established under Title IV-E. Finally, the law added references to child safety in various sections of Titles IV-B and IV-E.

### **Timeframe Provisions**

ASFA requires states to meet a variety of deadlines regarding child welfare cases. These include deadlines for permanency hearings and initiation of proceedings to terminate parental rights.

### ***“Reasonable Efforts” to Promote Adoption***

If the court finds that efforts to preserve or reunify a family are not required, ASFA specifies that a permanency hearing (formerly called “dispositional” hearing) must be held for the child within 30 days of that court finding. In these cases, or whenever a child’s permanency plan is adoption or another alternative to family reunification, the law requires states to make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, which may include placement for adoption, with a guardian, or in another planned, permanent arrangement. (HHS specified in the January 2000 regulations that states must obtain a judicial determination that such

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<sup>5</sup> In his 2000 campaign website then-candidate Bush indicated that he would propose elimination of the current law provision that allows states to opt out of the criminal record check requirement. According to HHS, all states that opt out of the provision do perform criminal background checks, but not necessarily in the way prescribed by ASFA. In general, these states allow agency or court personnel discretion to approve certain prospective caregivers with criminal histories that would preclude approval under the ASFA standards. P.L. 108-36, requires states no later than June 2005 to do criminal background checks for prospective foster and adoptive parents and other adults living in the household as a condition of receiving state grants under the Child Abuse Prevention and Treatment Act (CAPTA). This provision, however, does not prescribe when a state must deny approval of placement due to a criminal background check, and states that now opt out of the ASFA criminal background check requirement might continue to do so. For more detailed information, see *Child Care and Child Welfare: Background Checks*, CRS Report RL32430, by Kendall Swenson.

reasonable efforts were made within 12 months of the date the child entered foster care and at least once every subsequent 12 months that the child remains in care.) The law further provides that states must document specific efforts made to place the child for adoption. In enacting these provisions, Congress intended to shorten the length of time that children spend in foster care, once a court has determined that family reunification is not feasible or likely.

ASFA also specifies that efforts to preserve or reunify a family can be made at the same time as efforts are being made to place the child for adoption or guardianship. This practice is referred to as “concurrent planning” and allows states to develop a back-up plan in order to save time in the event that efforts to restore the original family are unsuccessful.

The Adoption and Safe Families Act also contains provisions intended to eliminate interjurisdictional issues as a potential barrier to a child’s adoption. First, the law requires states to assure in their Title IV-B plans that they will develop plans to make effective use of cross-jurisdictional resources to facilitate timely adoptions for waiting children. As originally enacted, the law also denied federal foster care and adoption assistance funding, under Title IV-E, to any state that is found to have denied or delayed a child’s adoptive placement if an approved family is available outside the child’s jurisdiction, or has denied a fair hearing to anyone who alleges a violation of this provision. The law was subsequently amended (P.L. 105-200) to establish a graduated series of financial penalties, rather than a complete denial of funding, in cases of such violations. HHS released a program instruction in October 2002 to further clarify the regulations on interjurisdictional adoptions, including how penalties would be assessed.<sup>6</sup> In addition, ASFA directed the General Accounting Office (GAO) to conduct a study of interjurisdictional adoption issues, including the implementation of the Interstate Compact on the Placement of Children; GAO’s report was published in November 1999.<sup>7</sup> Additional legislation was considered during the 108<sup>th</sup> Congress to improve and expedite interstate placements.<sup>8</sup>

### *Permanency Hearings*

Prior to the enactment of ASFA, federal law required that all foster children have a judicial hearing, known as a “dispositional” hearing, within 18 months of their placement in care to determine their future status. P.L. 105-89 now requires this hearing to occur within 12 months of the date the child is determined to have entered care and changed the name to “permanency” hearing. ASFA also requires that foster parents, pre-adoptive parents, and relative caregivers be given notice and an opportunity to be heard at case reviews and permanency hearings.

The law revised the list of permanency goals (which had included long-term foster care) to include returning home, referral for adoption and termination of parental rights (TPR), guardianship, placement with a relative, or, as a last resort, another planned, permanent living arrangement. In its January 2000 regulations, HHS specified that states must document a compelling reason for selecting “another planned, permanent living arrangement” and gave the following examples of such compelling reasons:

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<sup>6</sup> See HHS program instruction, ACYF-CB-PI-02-09, issued Oct. 7, 2002, available at <http://www.acf.hhs.gov/programs/cb/laws/pi/pi0209.htm>.

<sup>7</sup> *Foster Care: HHS Could Better Facilitate the Interjurisdictional Adoption Process*, HEHS-00-12, U.S. General Accounting Office, Nov. 19, 1999.

<sup>8</sup> For information on H.R. 4504, see the discussion of “Interstate Placement of Children,” in *Child Welfare Issues in the 108<sup>th</sup> Congress*, CRS Report RL31746, by Emilie Stoltzfus.

- an older teen specifically requests a permanency plan of emancipation from foster care;
- a parent and child are strongly bonded but the parent cannot care for the child because of an emotional or physical disability and the child's foster parents have agreed to raise the child to maturity and to enable visits with the natural parent;
- a tribe has identified another planned permanent living arrangement for the child.

HHS also specified in its regulations that the written case plan for a child be developed within a reasonable period established by the state, but no later than 60 days after the child's removal from home. If the child's permanency plan is family reunification, the regulations require that the case plan describe how the state will achieve a safe placement for the child in the most family-like setting in close proximity to the child's parents. For all children, the case plan must describe how the placement is consistent with the child's best interests and special needs.

### *Termination of Parental Rights*

One of the most significant provisions of the 1997 law requires states to initiate proceedings for the termination of parental rights (TPR) for certain foster children. This provision responded to concerns about the number of children who were remaining in foster care for long periods of time and who were not likely to return home. Prior to 1997, there was no comparable provision in federal law. Specifically, P.L. 105-89 requires states to initiate TPR proceedings in any case where the court has found that a parent has lost parental rights to that child's sibling; killed another of his or her children or committed felony assault against the child or a sibling, or subjected the child to aggravated circumstances (known as the fast track provision); or for infants determined under state law to be abandoned. In addition, the law requires states to initiate TPR proceedings for children who have been in foster care for 15 of the most recent 22 months (known as the 15 of 22 provision). States can opt *not* to initiate such proceedings if the child is in a relative's care, or if the state agency has documented in the child's case plan a compelling reason to determine that TPR would not be in the child's best interest, or if the state has not provided necessary services to the family.

Regulations issued by HHS on January 25, 2000 require that states must file the TPR petition by the end of the child's 15<sup>th</sup> month in care and provide a methodology for calculating when this date occurs. For example, trial home visits or runaway episodes are not counted toward the 15 months. The regulation also specifies that if the state decides not to initiate TPR proceedings at the 15-month point with regard to a particular child, because an exception exists in that child's case as allowed under the law, then the state does not need to apply the 15-month TPR requirement to that child's case again.

In the case of an abandoned child, the regulations require the state to initiate TPR proceedings within 60 days of a court determination that the child is abandoned (as defined by the individual state). Likewise, in the case of a child whose parent has been convicted of a felony specified in the law, the regulations require the state to initiate TPR proceedings within 60 days of a court determination that reasonable efforts to reunite the child with that parent are not required.

As stated above, the law allows—but does not require—certain exceptions to the TPR requirement, including that there is a compelling reason for determining that such proceedings are not in the child's best interests. The January 25, 2000, regulations give the following examples of compelling reasons:

- adoption is not the appropriate permanency goal for the child;
- there are no grounds for TPR;
- the child is an unaccompanied refugee minor;
- there are international legal obligations or compelling foreign policy reasons that preclude TPR.

The law and regulations also provide that whenever a state initiates TPR proceedings, it must concurrently begin to seek and approve a qualified adoptive family for the child.

For children who entered foster care after the enactment of P.L. 105-89, states were required to comply with the TPR provision no later than three months after the end of the first state legislative session that began after the date of enactment (which was November 19, 1997). For children who already were in care on the date of enactment, states could phase in compliance with the TPR requirement but had to be in compliance for all children by no later than 18 months after the end of the legislative session. For purposes of the TPR provision and the 12-month permanency hearing, children are considered to have entered foster care on the first date that the court finds they have been subjected to child abuse or neglect or 60 days after their removal from home, whichever occurs first.

### *State Implementation of Timeframe Provisions*

In 2002, the General Accounting Office (GAO) published a report on the implementation of ASFA and its effects on the child welfare system.<sup>9</sup> The report cautioned that there was limited information on these provisions due to a lack of data.

All six states in which GAO conducted site visits reported that the ASFA timeframe provisions helped their child welfare agencies focus on more quickly finding permanent homes for children. Some child welfare agency staff stated that the timeframes helped them work more effectively with parents by being able to inform them of the steps and timelines in the reunification process. Some states and agencies expressed concern, though, that the timeframes may rush the adoption or reunification process and lead to higher re-entry rates into foster care.

The GAO study also found that few states were using the fast track provision due to a variety of court-related issues, such as judges or legal officials who are at times reluctant to approve a fast track request and difficulty in scheduling TPR hearings. Other reported difficulties in utilizing the fast track option included father's rights issues; the desire to give a parent another opportunity to demonstrate the ability to care for a subsequent child; and the length of time from a child's removal from the home to a parent's conviction of an applicable crime.<sup>10</sup> Some states reported using the fast track provision in cases of infant abandonment or cases involving serious abuse.

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<sup>9</sup> *Foster Care: Recent Legislation Helps States Focus on Finding Permanent Homes for Children, but Long-Standing Barriers Remain*, GAO-02-585, U.S. Government Accounting Office, June 2002.

<sup>10</sup> For example, Massachusetts officials reported that, in most cases, children are removed from the home after the crime is committed, but judges will not approve a fast track for these cases until the parent is convicted of the crime, which often takes at least a year after the crime was committed.

States are not required to collect data on their use of the fast track provision, and most states are not collecting this data.

Similarly to the fast track provision, states are not required to collect data on the 15 of 22 provision, and few states collect it. In its report, GAO recommended to HHS that it review the feasibility of collecting—in a cost-efficient manner—data on state usage of the fast track and 15 of 22 provisions, including the number of children exempted and reasons for those exemptions. Of the nine states that did provide GAO with information on the 15 of 22 provision, most indicated there were more cases which were exempted than actually utilized it. For example, in Oklahoma, just over 1,000 TPRs were filed because the child was in care for 15 of 22 months; however, nearly 3,000 children who had been in care for 15 of 22 months were exempted from the requirement to file a TPR. States provided a number of reasons as to why they might not request a TPR for a child who has been in care for 15 of 22 months. These reasons included adoption is not a realistic option; a TPR would not be in the best interest of the child; the child's parents need more than 15 months to address their problems; and court delays for hearings and appeals.<sup>11</sup>

Information on state use of the ASFA TPR provisions is collected during the on-site portion of federal compliance reviews<sup>12</sup> and beginning with the reviews conducted in FY2002, HHS standardized the way this information is provided in each state's final report. Of the 35 states reviewed in FY2002, findings from 12 states indicated that agencies are not filing for TPR in a timely manner and their reasons for not filing are not provided in the case files. In addition, 12 states said the appeals process for TPR decisions is "extremely lengthy" and therefore a challenge to achieving permanency.<sup>13</sup>

## **Eligibility for Adoption and Medical Assistance**

Under Title IV-E, states may receive open-ended federal entitlement funds for part of the costs of operating adoption assistance programs for special needs children. Under these programs, parents who adopt children with special needs may receive monthly adoption subsidies through agreements with their state. The federal government helps states with part of these costs, but only for children whose biological parents would have been eligible for the former Aid to Families with Dependent Children (AFDC) program, or who are eligible for Supplemental Security Income (SSI). Adoptive parents of children with special needs who do not meet these criteria may receive subsidies through state-funded programs.

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<sup>11</sup> In the GAO study, states and agencies reported that adoption may not be a realistic option for children with severe behavioral or medical problems, for whom adoptive parents are often difficult to find, and adoption may not be in the best interests of adolescents who are functioning well in out-of-home settings and maintaining contact with their families. With regards to services for parents, states cited access to needed services coupled with the likelihood of reunification as factors in exempting a child from the 15 of 22 provision. Several states highlighted lack of access to substance abuse services as a barrier.

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These reviews are known as Child and Family Services Reviews. They were mandated by Congress in 1994 and implemented through regulations issued in Jan. 2000.

<sup>13</sup> *General Findings from the Child and Family Services Review*, U.S. Department of Health and Human Services, Oct. 2004, available at <http://www.acf.hhs.gov/programs/cb/cwrp/results.htm>, see Summary of the Results of the 2001-2004 Child and Family Services Reviews.

Children who are eligible for federal adoption assistance are also deemed eligible for Medicaid. States have the option to provide Medicaid coverage to special needs adopted children who do not meet the income eligibility criteria for federal adoption subsidies. However, ASFA requires states to provide health insurance coverage to these children if they have special needs for medical, mental health, or rehabilitative care. This health coverage may be through Medicaid or another program, as long as benefits are comparable. According to the American Public Human Services Association (APHSA), all states are in compliance with this provision; 46 states and the District of Columbia provide coverage to these children through Medicaid, and the remaining four states provide coverage through a fully state-funded program.<sup>14</sup>

In addition, to be eligible for adoption incentive payments (described below) in FY2001 or FY2002, states were required to provide health coverage to *any* special needs child living in their state whose adoptive parents had entered into an adoption assistance agreement with *any other* state.<sup>15</sup> (When Congress reauthorized the adoption incentives program in 2003, this requirement was extended through FY2007.) States also must comply with this provision to be approved for a child welfare demonstration project (or waiver). HHS reported that it had received certification from all states that they provide such coverage.

The Adoption and Safe Families Act also contains a provision intended to ensure that children who had once been eligible for federally subsidized adoption assistance will continue to be eligible in a subsequent adoption if their initial adoption is disrupted or their adoptive parents die, regardless of whether they would have qualified for AFDC or SSI based on the income and assets of their first adoptive family.

### **Reauthorization and Renaming of Family Preservation Program**

The 1997 law reauthorized and changed the name of the former family preservation program, which is a capped entitlement under subpart 2 of Title IV-B and was originally scheduled to expire at the end of FY1998. Under P.L. 105-89, the program was renamed Promoting Safe and Stable Families and reauthorized through FY2001; legislation (P.L. 107-133) to extend the program through FY2006 was enacted in the 107<sup>th</sup> Congress.<sup>16</sup> The entitlement ceiling was set at \$240 million in FY1997 and \$255 million in FY1998, and was reauthorized under P.L. 105-89 at \$275 million in FY1999; \$295 million in FY2000; and \$305 million in FY2001. The currently authorized annual entitlement ceiling is \$305 million, plus an additional \$200 million in discretionary funds. The FY2004 appropriation for PSSF was \$404 million.<sup>17</sup>

As enacted in 1993, the former family preservation program required states to devote significant expenditures to each of two types of services: family preservation and community-based family support. The Adoption and Safe Families Act added two more categories: time-limited family reunification services (limited to the 15-month period that begins after a child is determined to have entered foster care), and adoption promotion and support services. Program instructions

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<sup>14</sup> *Report on the Interstate Movement of Children Receiving Adoption Assistance*, by Elizabeth Oppenheim and Shannon Guiltinan, American Public Human Services Association, Washington, D.C., Dec. 1998.

<sup>15</sup> HHS reminded states of this requirement in information memorandum, ACYF-CB-IM-01-03, issued Mar. 7, 2001.

<sup>16</sup> See *Child Welfare: Reauthorization of the Promoting Safe and Stable Families Program*, CRS Report RL30894, by Emilie Stoltzfus and Karen Spar.

<sup>17</sup> Of this amount, \$305 million was appropriated in mandatory dollars and \$99 million was appropriated in discretionary funds.

issued by HHS specify that states must have a “strong rationale” for spending less than 20% of funds on each of the four current categories of activities. In the GAO (2002) study, states reported they most commonly used their PSSF adoption promotion and support funds to recruit adoptive parents and to provide post-adoption services.

A study by James Bell Associates found that the percentage of PSSF funds allocated for adoption promotion and support increased from 15% in FY1999 to 20% in FY2002 and for time-limited family reunification increased from 16% in FY1999 to 21% in FY2002. The percentage allocated for family support decreased from 40% in FY1999 to 29% in FY2002, and the percentage of funds allocated for family preservation increased slightly from 29% to 30%.<sup>18</sup>

### **State Accountability for Performance**

The Adoption and Safe Families Act also aimed to increase the accountability of states for the performance of their child welfare programs. The legislation required HHS, in consultation with public officials and child welfare advocates, to develop outcome measures in various categories (i.e., number of foster care placements and adoptions, length of stay in foster care) and to rate state performance according to these measures in an annual report. HHS published the final list of outcome measures in the *Federal Register* on August 20, 1999, and has subsequently issued four annual reports on child welfare outcomes by state, for the years 1998 through 2001.<sup>19</sup>

In addition, the 1997 law directed HHS to conduct a study and develop recommendations for a performance-based financial incentive system under Titles IV-B and IV-E. The law stated that, to the extent feasible, this system should be based on the annual performance report described above. HHS was required to submit a progress report to Congress within six months of the new law’s enactment and a final report within 15 months. Although a progress report was submitted, no final report has been released.<sup>20</sup>

### **State Innovation and Demonstration**

Legislation enacted in 1994 authorized HHS to approve up to 10 states to receive waivers from Title IV-B and IV-E rules in order to conduct demonstration projects. The Adoption and Safe Families Act allowed HHS to approve an additional 10 demonstrations in each of FYs 1998 through 2002. Federal law does not mandate specific goals for these demonstrations. However, the 1997 law directed the Secretary to give consideration to any applications received with the following purposes: (1) to identify and address barriers to adoption for foster children; (2) to identify and address parental substance abuse problems that result in foster care placement for children, including through placement of children together with their parents in appropriate

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<sup>18</sup> *Analysis of States’ Annual Progress and Services Reports and Child and Family Services Plans (1999-2002)*, James Bell Associates, Arlington, VA, Apr. 5, 2002.

<sup>19</sup> These reports are available on the Children’s Bureau website, at <http://www.acf.hhs.gov/programs/cb/publications/cwo.htm>.

<sup>20</sup> *Progress Report to the Congress on Conducting a Study of Performance-Based Financial Incentives in Child Welfare*, U.S. Department of Health and Human Services, Children’s Bureau, at <http://www.acf.hhs.gov/programs/cb/publications/congress/>.

residential treatment facilities; and (3) to address kinship care. Between 1996 and 2001, a total of 25 demonstration project components were approved and implemented in 17 states.<sup>21</sup>

The authorization for new waiver projects expired at the end of FY2002, but was extended through September 30, 2004, and subsequently through March 30, 2005, under temporary reauthorizations of Temporary Assistance for Needy Families (TANF) and related welfare reform programs. In November 2003, HHS solicited new proposals from the states and, in September 2004, announced approval of two new waiver projects.<sup>22</sup> A long-term welfare reauthorization, H.R. 4 (108<sup>th</sup> Congress), which passed the House in February 2003 and the Senate Finance Committee in October 2003, would amend and reauthorize the waiver authority through FY2008. The House-passed version of H.R. 4 also would remove the limit on project approvals for a fiscal year; prohibit HHS from refusing to grant a waiver to a state because of the project's similarity to another or from imposing limits on the number of waivers or demonstration projects undertaken by a single state; direct HHS to develop a streamlined process for consideration of extensions and amendments of demonstration projects; and require HHS to make available to interested parties any evaluation report provided to, or made by, HHS with respect to demonstration projects.

## **Kinship Care**

The Adoption and Safe Families Act also required HHS to submit a report to Congress on the issue of kinship care, including recommendations for policy in this area. This report, which was developed with the assistance of an advisory panel mandated in the statute, was submitted by HHS in June 2000.<sup>23</sup>

## **Adoption Incentive Program**

ASFA established a new program of incentive payments to states to increase their number of foster child adoptions, with additional incentives for the adoption of children with special needs. This adoption incentive program was a key recommendation in the Clinton Administration's *Adoption 2002*. As reauthorized in 2003 (P.L. 108-145), the program continues to provide incentive payments for increased adoptions of foster children, with additional incentives for the adoption of children with special needs *who are under age nine*, and provides a separate incentive payment for increased adoptions of children *age nine and older*.

## ***Adoption Incentive Legislation***

As in the adoption assistance program under Title IV-E, which provides ongoing subsidies to adoptive parents of eligible special needs children, the definition of "special needs" for purposes

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<sup>21</sup> For a summary of these demonstrations, see the HHS website, at <http://www.acf.hhs.gov/programs/cb/initiatives/cwwaiver.htm>. Also see *Summary of the Child Welfare Waiver Demonstration Projects and Profiles of the Child Welfare Waiver Demonstration Projects*, James Bell Associates, Arlington, VA, Feb. 2003; Cornerstone Consulting Group's "Child Welfare Waiver Watch" on the website of the American Public Human Services Association, at <http://www.aphsa.org/Policy/ChildWelfare.asp>; and *Child Welfare Waiver Demonstrations*, CRS Report RL31964, by Matthew Shuman.

<sup>22</sup> See the discussion of "Waivers" in *Child Welfare Issues in the 108<sup>th</sup> Congress*, CRS Report RL31746, by Emilie Stoltzfus.

<sup>23</sup> *Report to the Congress on Kinship Foster Care*, U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, June 2000, available at <http://aspe.hhs.gov/hsp/kinr2c00/>.

of the adoption incentives program is determined by each state and may include age, ethnicity, or membership in a sibling group, in addition to disability or a medical condition that makes a child difficult to place for adoption.

The Adoption and Safe Families Act originally established incentive payments equal to \$4,000 for each foster child whose adoption was finalized over a certain base level and \$6,000 for each special needs adoption above the base level. The law authorized \$20 million annually for these incentive payments for FY1999 through FY2003. In addition, the law provided for an automatic adjustment to discretionary budget caps, to help ensure that these funds would actually be appropriated. For adoptions finalized in 1998, the baseline was the average number of adoptions in 1995 through 1997. For adoptions finalized in 1999 through 2002, the baseline was the highest number of adoptions in any preceding year, beginning with 1997.

The 1997 legislation also authorized HHS to provide technical assistance to help states increase their number of foster child adoptions and authorized appropriations of \$10 million annually for this purpose for each of FY1998-FY2000. HHS was required to use half of any funds appropriated under this provision to provide technical assistance to the courts; however, no funds were appropriated.

### ***Reauthorization Legislation of 2003***

The original adoption incentives program expired at the end of FY2003 and was reauthorized with the Adoption Promotion Act of 2003 (P.L. 108-145). Under the reauthorization, states continue to receive credit for all increased adoptions of foster care children and receive additional incentive payments for increases in adoptions of children with special needs. However, the special needs payment is now limited only to adoptions of special needs children who are under age nine at the time the adoption is finalized. The Adoption Promotion Act created a third incentive payment, equal to \$4,000, for increased adoptions of children who are age nine or older at the time of adoption. Like the original two incentive payments, states have to exceed their baseline number of such “older child” adoptions to earn this payment. For all three incentive payments, the baseline that states must exceed is revised each year to the highest annual total of such adoptions since FY2002. P.L. 108-145 also reauthorized for FY2004 through FY2006 the provisions concerning technical assistance to states and localities (including the language reserving 50% of appropriations for assistance to courts) to help increase adoptions or other permanent placements for children.<sup>24</sup>

### ***Appropriations***

The history of appropriations for adoption incentive payments is somewhat complicated because states—as a group—exceeded lawmakers’ expectations and finalized more adoptions in the early years of the program than Congress had anticipated. P.L. 105-89 originally authorized appropriations of \$20 million annually for FY1999 through FY2003 for adoption incentive payments (for adoptions finalized in fiscal years 1998 through 2002). In addition, the law provided for an automatic increase in discretionary budget caps (up to \$20 million) to help ensure

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<sup>24</sup> For more details, see *Child Welfare: The Adoption Incentives Program*, CRS Report RL32296, by Kendall Swenson. This report also contains state-by-state data on performance and payments under the Adoption Incentives program since the program’s inception.

that these funds were actually appropriated for each year. However, in some years, the amount of incentive payments that states actually “earned” exceeded the \$20 million level. As a result, Congress, when necessary, provided additional amounts (above the \$20 million), usually in subsequent years’ appropriations bills, to enable HHS to pay states the full amount of incentive payments earned. (See Error! Reference source not found., below.) Also in each year’s appropriations law, Congress has limited the availability of these funds to certain years, even though the authorizing law provides that appropriated amounts shall remain available for allocation to the states until expended.

### ***State Implementation***

A GAO (2002) report and a Cornerstone Consulting Group study indicate that states most commonly use their incentive awards to fund the recruitment of adoptive families and provide post-adoptive services.<sup>25</sup> Some states reported using their incentive funds for one-time expenses, such as studies, training, events, and the purchase of legal services, due to the uncertainty of receiving future adoption incentive awards. Additionally, states reported that, because the awards were relatively small compared to their overall child welfare budgets, they were able to use their funds in innovative and flexible manners. No state reported that the adoption incentive bonus was the primary motivator for improving its adoption system. The primary concerns of states regarding the incentives were that they may give the impression that adoption is the best plan in all cases, that states with increased adoptions before ASFA may have trouble exceeding their baselines (this concern was expressed before the 2003 reauthorization updated the baselines), and that the law did not make further changes in the structure of federal funding for child welfare.

**Table 1. Amounts Appropriated and Awarded for Adoption Incentive Payments to States**  
(in millions)

<b>Amounts Appropriated</b>			<b>Amounts Awarded</b>
P.L. 105-277 (FY1999 appropriations)	\$20.0	For adoptions finalized in 1998 (35 states)	\$42.5
P.L. 106-113 (FY2000 appropriations)	41.8 <sup>a</sup>	For adoptions finalized in 1999 (43 states and D.C.)	51.5
P.L. 106-554 (FY2001 appropriations)	43.0	For adoptions finalized in 2000 (35 states and D.C.)	33.2
P.L. 107-116 (FY2002 appropriations)	43.0	For adoptions finalized in 2001 (23 states and Puerto Rico)	17.6
P.L. 108-7 (FY2003 appropriations)	42.7 <sup>b</sup>	For adoptions finalized in 2002 (25 states and Puerto Rico)	15.0

<sup>25</sup> The Cornerstone study showed that states used funds in the following areas: post adoption services (16 states); recruitment of adoptive families (11); legal services to expedite adoption (5); contract enhancements for case management, recruitment, home studies, etc. (7); training (9); subsidy increases (4); adoption awareness (6); staff (2); general child welfare services (3); and distribution to county child welfare services, in some cases based on performance (11). *A Carrot among the Sticks: The Adoption Incentive Bonus*, Cornerstone Consulting Group, Inc., 2001.

<b>Amounts Appropriated</b>		<b>Amounts Awarded</b>
P.L. 108-199 (FY2004 appropriations)	7.5 <sup>c</sup>	For adoptions finalized in 2003 (31 states and Puerto Rico) 17.9 <sup>d</sup>

**Source:** Compiled by the Congressional Research Service from data available from the U.S. Department of Health and Human Services

- a. Amount shown reflects 0.38% across-the-board reduction.
- b. Amount shown reflects 0.65% across-the-board reduction.
- c. Amount shown reflects 0.59% across-the-board reduction.
- d. These funds were awarded under the revised adoption incentives program, which established three baselines for foster child adoptions, adoptions of special needs children under age nine, and older child adoptions.

### **Additional ASFA Provisions**

Additional provisions in P.L. 105-89: gave child welfare agencies access to the Federal Parent Locator Service; clarified eligibility for the independent living program;<sup>26</sup> established a sense of Congress in favor of standby guardianship laws; and made a statement of intent about “reasonable” parenting. The law required HHS to prepare a report on the relationship between substance abuse and child welfare, based on information from the Substance Abuse and Mental Health Services Administration within HHS, as well as the Administration for Children and Families; the report was submitted to Congress in April 1999.<sup>27</sup> Unless specified otherwise, the law took effect upon enactment (November 1997), except that, where enactment of new state laws was required, states had until three months after their first legislative session to comply.

### **Effects of ASFA Legislation**

Though numerous changes to state and federal laws and programs have been amended and developed as a result of the Adoption and Safe Families Act, researchers have had difficulty judging ASFA’s effects on the child welfare system. Many states had already begun to make adjustments to their systems before 1997 and some had previously enacted laws similar to ASFA. This has made it difficult to determine how much of the shift in child welfare outcomes and data was due to ASFA or other state and federal laws and programs.<sup>28</sup>

The lack of comparable and reliable pre- and post-ASFA data also limits the analysis of ASFA’s effects. For example, GAO (2002) noted that the University of Chicago collected pre-ASFA child welfare data for several states, but this data cannot be matched with data from HHS because of differences in the measurement techniques. Additionally, children often remain in foster care for several years before being adopted, and, therefore, evidence of the effects of the 1997 enactment of ASFA were not necessarily immediately apparent. Nonetheless, current data can provide useful

<sup>26</sup> This program was completely revised in the 106<sup>th</sup> Congress. See *Child Welfare: The Chafee Foster Care Independence Program*, CRS Report RS20230, by Emilie Stoltzfus.

<sup>27</sup> *Blending Perspectives and Building Common Ground*, U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Apr. 1999, available at <http://aspe.hhs.gov/hsp/subabuse99/execsum.htm>.

<sup>28</sup> *A Carrot Among the Sticks: The Adoption Incentive Bonus*, Cornerstone Consulting Group, Inc., 2001.

information on the characteristics and experiences of the child welfare population after the enactment of the 1997 law.

## **Demographics of Child Welfare System**

The number of public child welfare agency adoptions began to rise before enactment of ASFA but rose more sharply after the law's passage, from approximately 31,000 children in 1997 to more than 52,500 in 2002. (See **Figure 1.**) HHS analysis of data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) has revealed various characteristics of children in the public child welfare system.<sup>29</sup> Children in care are increasingly being adopted by relatives (from 15% of adoptions in FY1998 to 24% in FY2001). Black non-Hispanic children comprised 43% of adoptions in FY1998 and 35% of adoptions in FY2001; Hispanic children were 12% of adoptions in FY1998 and 16% in FY2001; and white non-Hispanic children were 37% of adoptions in FY1998 and 38% in FY2001.<sup>30</sup> Among children *waiting for* adoption (defined as children with a goal of adoption and/or a TPR issued), their average age at the time of removal from home increased during the FY1998-FY2001 period, from 4.1 years to 4.7 years. The average age of waiting children at a given point in time also rose, from 7.7 years at the end of FY1998 to 8.4 years at the end of FY2001.

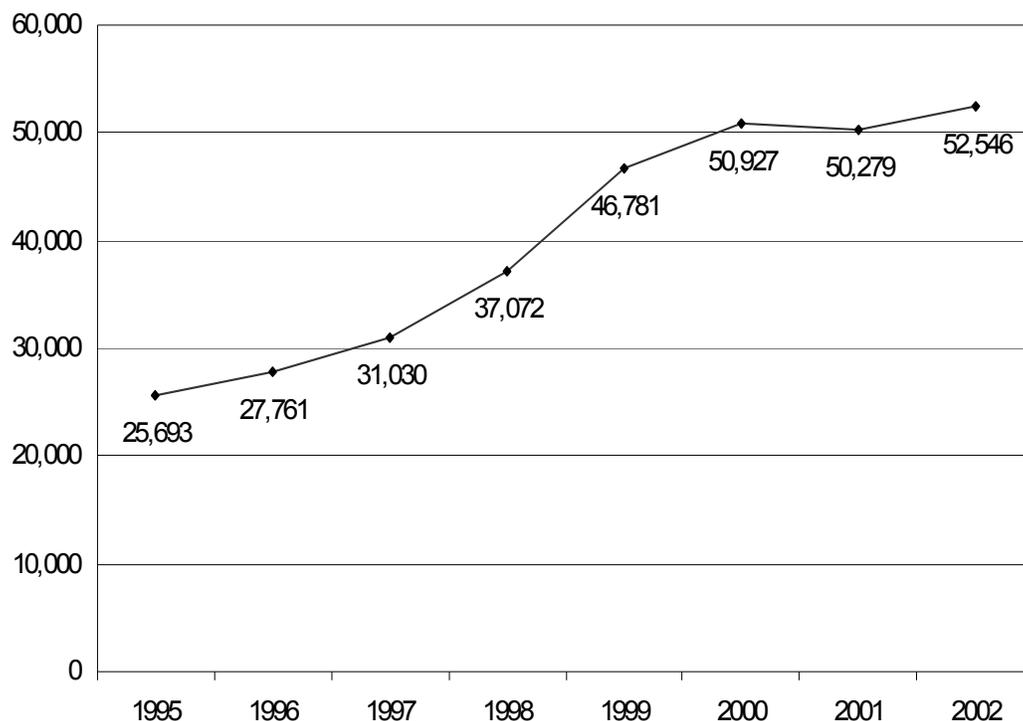
One of the primary goals of ASFA was to expedite legal proceedings so that children who cannot safely return to their families can more quickly move to adoption or another permanent placement. Several ASFA provisions were intended to expedite the process for obtaining termination of parental rights in the hopes that this would, in turn, shorten the length of time a child who could not be returned home would remain in foster care. For children who were waiting for adoption, the average time from removal to obtaining a TPR decreased from 37 months in FY1998 to 30 months in FY2001. However, for those waiting children whose parental rights had been terminated, their average time spent in foster care *since TPR was achieved* increased slightly, from 22 months in FY1998 to 24 months in FY2001. The total continuous time spent in foster care for waiting children stayed steady at an average of 44 months.

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<sup>29</sup> *The Impact of ASFA on Adoption*, a presentation by Penelope Maza, U.S. Department of Health and Human Services, Children's Bureau, Mar. 2003.

<sup>30</sup> In 2000, a multi-race category was added to AFCARS. Some children that may have been included in other categories, such as black non-Hispanic, may have been shifted to the multi-race category. Caution should be used when comparing race statistics between years.

**Figure I. Adoptions with Public Agency Involvement, FY1995-FY2002**



**Source:** Figure prepared by the Congressional Research Service based on data compiled by the U.S. Department of Health and Human Services as of Oct. 2004. The final number of adoptions for a given year may be revised.

In its annual child welfare outcomes report, HHS presented information on state performance in finalizing adoptions within 24 months of the child’s entry into foster care. For purposes of federal compliance reviews (Child and Family Services Reviews), HHS has established a national standard of 32% for this outcome; in other words, to achieve this national standard, at least 32% of adoptions must be finalized within 24 months. In FY1999, 31 states met this standard, while 27 met the standard in FY2001.<sup>31</sup>

### State and Agency Views on ASFA

A July 2002 phone poll of 41 state child welfare agency representatives conducted by the University of Southern Maine (USM) showed that child welfare agencies tended to view ASFA requirements as “good case practice” and are continuing to train staff on their implementation.<sup>32</sup> Data from the phone poll also indicate that states which have already undergone a Child and

<sup>31</sup> *Child Welfare Outcomes 2001: Annual Report*, U.S. Department of Health and Human Services, Children’s Bureau, available at <http://www.acf.hhs.gov/programs/cb/publications/cwo01/>.

<sup>32</sup> *Building the Child Welfare Team: Results of the 2002 Adoption and Safe Families Act Phone Poll*, University of Southern Maine, Edmund S. Muskie School of Public Policy, Portland ME, July 2002, available at [http://muskie.usm.maine.edu/asfa/report\\_final02.htm](http://muskie.usm.maine.edu/asfa/report_final02.htm).

Family Services Review (CFSR) have a better understanding of the requirements of ASFA and how to implement ASFA than states which have yet to undergo a CFSR.

In order to meet the requirements set forth by ASFA, states have made adjustments to their service delivery systems and administrative practices. In response to ASFA, states have improved their data systems, worked more closely with the courts, passed legislation, and hired additional staff, such as attorneys and caseworkers. Interviews with state and local agency directors in 2000, conducted as a part of the National Survey of Child and Adolescent Well-Being (NSCAW), found that states were focusing on “developing new casework strategies to promote child safety at the front end of service delivery.”<sup>33</sup> Some state administrators also noted that ASFA had an impact on permanency through reduction in time frames, the institution of concurrent planning at the front end of child welfare, reduction of time in foster care, and an increase in adoptions. State administrators also reported that they had experienced several unanticipated problems in implementing the ASFA requirements. These problems included providing substance abuse treatment to parents while maintaining the ASFA time frames; the lack of adoptive placements, especially for hard-to-place groups such as adolescents; backlogs in the juvenile courts; and child welfare staff being held accountable for time frames that were dependent on other agencies, such as the courts and mental health providers.

The NSCAW study also provided information on ASFA’s effect on local agencies. For approximately 60% of local agencies, ASFA led to a greater emphasis on child’s safety when compared to family preservation programs, and 93% reported that ASFA shortened time frames for decision making to less than 12 months. Almost three-quarters of respondents noted an increased emphasis on adoption for children living in kinship care, and 54% indicated an increased emphasis on the adoption of older children. Most agencies indicated that they experienced no change in caseload numbers, but did report an increase in the average number of hours spent on each case. Thirty-three percent of local agencies reported that access to drug treatment for clients had been expedited.

The May 21, 2003, version of this report was updated by Matthew Shuman, a Presidential Management Intern on rotation from the U.S. Department of Health and Human Services.

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<sup>33</sup> *National Survey of Child and Adolescent Well-Being (NSCAW)*, U.S. Department of Health and Human Services, Administration on Children, Youth, and Families, June 2001, at [http://www.acf.dhhs.gov/programs/core/ongoing\\_research/afc/wellbeing\\_intro.html](http://www.acf.dhhs.gov/programs/core/ongoing_research/afc/wellbeing_intro.html).