

**CHAPTER 2**  
**RESOURCE MATERIALS**



# **Introducing the Law, the Child Protection System & the Courts**

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# The Real Story of Mary Ellen Wilson

*The sufferings of the little girl Mary Ellen led to the founding of the New York Society for the Prevention of Cruelty to Children, the first organization of its kind, in 1874. In 1877, the New York SPCC and several Societies for the Prevention of Cruelty to Animals from throughout the country joined together to form the American Humane Association.*

*The following is Mary Ellen's story, which marked the beginning of a worldwide crusade to save children.*

Over the years, in the re-telling of Mary Ellen Wilson's story, myth has often been confused with fact. Some of the inaccuracies stem from colorful but erroneous journalism, others from simple misunderstanding of the facts, and still others from the complex history of the child protection movement in the United States and Great Britain and its link to the animal welfare movement. While it is true that Henry Bergh, president of the American Society of the Prevention of Cruelty to Animals (ASPCA), was instrumental in ensuring Mary Ellen's removal from an abusive home, it is not true that her attorney—who also worked for the ASPCA—argued that she deserved help because she was “a member of the animal kingdom.”

The real story—which can be pieced together from court documents, newspaper articles, and personal accounts—is quite compelling, and it illustrates the impact that a caring and committed individual can have on the life of a child.

Mary Ellen Wilson was born in 1864 to Francis and Thomas Wilson of New York City. Soon thereafter, Thomas died, and his widow took a job. No longer able to stay at home and care for her infant daughter, Francis boarded Mary Ellen (a common practice at the time) with a woman named Mary Score. As Francis's economic situation deteriorated, she slipped further into poverty, falling behind in payments for and missing visits with her daughter. As a result, Mary Score turned two-year-old Mary Ellen over to the city's Department of Charities.

The Department made a decision that would have grave consequences for little Mary Ellen; it placed her illegally, without proper documentation of the relationship, and

with inadequate oversight in the home of Mary and Thomas McCormack, who claimed to be the child's biological father. In an eerie repetition of events, Thomas died shortly thereafter. His widow married Francis Connolly, and the new family moved to a tenement on West 41st Street.

Mary McCormack Connolly badly mistreated Mary Ellen, and neighbors in the apartment building were aware of the child's plight. The Connollys soon moved to another tenement, but in 1874, one of their original neighbors asked Etta Angell Wheeler, a caring Methodist mission worker who visited the impoverished residents of the tenements regularly, to check on the child. At the new address, Etta encountered a chronically ill and homebound tenant, Mary Smitt, who confirmed that she often heard the cries of a child across the hall. Under the pretext of asking for help for Mrs. Smitt, Etta Wheeler introduced herself to Mary Connolly. She saw Mary Ellen's condition for herself. The 10-year-old appeared dirty and thin, was dressed in threadbare clothing, and had bruises and scars along her bare arms and legs. Ms. Wheeler began to explore how to seek legal redress and protection for Mary Ellen.

At that time, some jurisdictions in the United States had laws that prohibited excessive physical discipline of children. New York, in fact, had a law that permitted the state to remove children who were neglected by their caregivers. Based on their interpretation of the laws and Mary Ellen's circumstances, however, New York City authorities were reluctant to intervene. Etta Wheeler continued her efforts to rescue Mary Ellen and, after much deliberation, turned to Henry Bergh, a leader of the animal humane movement in the United States and founder of the American Society for the Prevention of Cruelty to Animals (ASPCA). It was Ms. Wheeler's niece who convinced her to contact Mr. Bergh by stating, “You are so troubled over that abused child, why not go to Mr. Bergh? She is a little animal surely.”<sup>1</sup>

Ms. Wheeler located several neighbors who were willing to testify to the mistreatment of the child and brought written documentation to Mr. Bergh. At a subsequent court hearing, Mr. Bergh stated that his action was “that of a human citizen,” clarifying that he was



not acting in his official capacity as president of the NYSPCA. He emphasized that he was “determined within the framework of the law to prevent the frequent cruelties practiced on children.”<sup>2</sup> After reviewing the documentation collected by Etta Wheeler, Mr. Bergh sent an NYSPCA investigator (who posed as a census worker to gain entrance to Mary Ellen’s home) to verify the allegations. Elbridge T. Gerry, an ASPCA attorney, prepared a petition to remove Mary Ellen from her home so she could testify to her mistreatment before a judge. Mr. Bergh took action as a private citizen who was concerned about the humane treatment of a child. It was his role as president of the NYSPCA and his ties to the legal system and the press, however, that [would] bring about Mary Ellen’s rescue and the movement for a formalized child protection system.

Recognizing the value of public opinion and awareness in furthering the cause of the humane movement, Henry Bergh contacted *New York Times* reporters who took an interest in the case and attended the hearings. Thus, there were detailed newspaper accounts that described Mary Ellen’s appalling physical condition. When she was taken before Judge Lawrence, she was dressed in ragged clothing, was bruised all over her body and had a gash over her left eye and on her cheek where Mary Connolly had struck her with a pair of scissors. On April 10, 1874, Mary Ellen testified:

*“My father and mother are both dead. I don’t know how old I am. I have no recollection of a time when I did not live with the Connollys. . . . Mamma (Mrs. Connolly) has been in the habit of whipping and beating me almost every day. She used to whip me with a twisted whip—a raw hide. The whip always left a black and blue mark on my body. I have now the black and blue marks on my head which were made by mamma, and also a cut on the left side of my forehead which was made by a pair of scissors. She struck me with the scissors and cut me; I have no recollection of ever having been kissed by any one—have never been kissed by mamma. I have never been taken on my mamma’s lap and caressed or petted. I never dared to speak to anybody, because if I did I would get whipped. . . . I do not know for what I was whipped—mamma never said anything to me when she whipped me. I do not want to go back to live with mamma, because she beats me so. I have no recollection ever being on the street in my life.”<sup>3</sup>*

In response, Judge Lawrence immediately issued a writ *de homine replagiando*, provided for by Section 65 of the Habeas Corpus Act, to bring Mary Ellen under court control.

The newspapers also provided extensive coverage of the caregiver Mary Connolly’s trial, raising public awareness and helping to inspire various agencies and

organizations to advocate for the enforcement of laws that would rescue and protect abused children.<sup>4</sup> On April 21, 1874, Mary Connolly was found guilty of felonious assault and was sentenced to one year of hard labor in the penitentiary.<sup>5</sup>

Less well known, but as compelling as the details of her rescue, is the rest of Mary Ellen’s story. Etta Wheeler continued to play an important role in the child’s life. Family correspondence and other accounts reveal that the court placed Mary Ellen in an institutional shelter for adolescent girls. Believing this to be an inappropriate setting for the 10-year-old, Ms. Wheeler intervened. Judge Lawrence gave her permission to place the child with her own mother, Sally Angell, in northern New York. When Ms. Angell died, Etta Wheeler’s youngest sister, Elizabeth, and her husband Darius Spencer, raised Mary Ellen. By all accounts, her life with the Spencer family was stable and nurturing.

At the age of 24, Mary Ellen married a widower and had two daughters—Etta, named after Etta Wheeler, and Florence. Later, she became a foster mother to a young girl named Eunice. Etta and Florence both became teachers; Eunice was a businesswoman. Mary Ellen’s children and grandchildren described her as gentle and not much of a disciplinarian. Reportedly, she lived in relative anonymity and rarely spoke with her family about her early years of abuse. In 1913, however, she agreed to attend the American Humane Association’s national conference in Rochester, NY, with Etta Wheeler, her long-time advocate. Ms. Wheeler was a guest speaker at the conference. Her keynote address, “The Story of Mary Ellen which started the Child Saving Crusade Throughout the World,” was published by the American Humane Association. Mary Ellen died in 1956 at the age of 92.

- 1 E. A. Wheeler, *The Story of Mary Ellen*, 3, quoted in Sallie A. Watkins, “The Mary Ellen Myth: Correcting Child Welfare History,” *Social Work* 35, no. 6 (1990), 501.
- 2 Watkins, “The Mary Ellen Myth,” 502.
- 3 “Mary Ellen Wilson,” *New York Times*, April 10, 1874, 8, quoted in Watkins, “The Mary Ellen Myth,” 503.
- 4 Watkins, “The Mary Ellen Myth.”
- 5 Ibid.

From *Helping in Child Protective Services: A Competency-Based Casework Handbook*, Oxford University Press, 2004. Used with permission from the American Humane Association.



# Federal Laws Governing Child Abuse & Neglect Cases

Though most of the law governing child protection, foster care, adoption, and juvenile court proceedings originates with state legislatures, state law is influenced significantly by several federal statutes enacted since 1974. Under these federal laws, states receive billions of dollars each year for the support of their child protective services system, foster care, and adoption services. They are required to comply with the provisions set out in the Child Abuse Prevention and Treatment Act of 1974 (CAPTA), the Adoption Assistance and Child Welfare Act of 1980 (AACWA), and the Adoption and Safe Families Act of 1997 (ASFA) as a condition of receiving these federal funds. Under AACWA, states receive federal funds to offset the costs of providing a wide range of child welfare services to families and children. These funds may be used for, among other things, family support, preservation, and reunification services. States also are reimbursed for a substantial portion of the money they pay to foster parents and other care providers for the “maintenance” (primarily room and board) of a child in foster care. Federal funds pay a portion of the staff training costs, administrative costs, adoption assistance payments to parents of special needs children, and the information systems developed by state agencies for their child welfare systems. The following federal laws will be examined in greater depth:

- The Child Abuse Prevention and Treatment Act of 1974 (amended in 1996)
- The Indian Child Welfare Act of 1978
- The Adoption Assistance and Child Welfare Act of 1980
- The Multi-Ethnic Placement Act of 1994
- The Adoption and Safe Families Act of 1997
- The Foster Care Independence Act of 1999
- The Volunteer Protection Act of 1997

## **THE CHILD ABUSE PREVENTION & TREATMENT ACT OF 1974 (PL 93-247), AMENDED IN 1996 (PL 104-235)**

### *Background*

From a historical perspective, we are still relatively new to the concepts of protecting abused and neglected children and developing appropriate systems, methods, and programs to cope with the problems of these children and their families. Although every state had enacted a child abuse reporting law by 1965, the child welfare system was not adequately protecting children and their families. During the 1970s, the United States Congress became aware of this problem and enacted the Child Abuse Prevention and Treatment Act of 1974 (CAPTA). This legislation earmarked federal funds for states to establish special programs for child victims of abuse or neglect. It also mandated the appointment of guardians ad litem to represent children. Since its enactment in 1974, CAPTA has been amended several times.

### *Summary*

The federal Child Abuse Prevention and Treatment Act, along with its implementing regulations, requires states that receive federal funds for their state child protective services programs to adhere to the following requirements:

1. The state must have a statute mandating the reporting of child abuse and neglect.
2. Upon receipt of a report of suspected abuse/neglect, the state (a) must determine if the report meets the definition of child abuse/neglect under state law, (b) conduct an assessment of the safety of all children under the care of the suspected abuser, (c) begin a prompt investigation of the report, and (d) take steps to ensure the safety of all children under the care of the suspected abuser, including removal of them to a safe environment.



3. The state must have specific procedures or programs for responding to reports of medical neglect, including instances of withholding medically indicated treatment from disabled infants with life-threatening conditions.
4. The state must define “child abuse” and “neglect” in accordance with federal statutes and regulations.
5. The state must submit a state program plan to the federal government every five years to remain eligible for federal funding.
6. The state must provide a guardian ad litem to every abused or neglected child whose case results in a judicial proceeding. The guardian ad litem may be an attorney or CASA (or both) whose responsibilities include completing an independent investigation of the child’s situation and needs, determining what actions are in the best interest of the child, and making recommendations to the court.
7. The state must maintain the confidentiality of child protective services records but make them available to persons who are the subject of the report, government agencies overseeing the state’s child protective services program, child abuse citizen review and fatality review panels, a grand jury or court, and other agencies or persons authorized by state law. The state may refuse to disclose the identity of the person who made the report of suspected abuse unless a court has found that the reporter knowingly made a false report.
8. State law must provide immunity from prosecution for persons who make good faith reports of suspected abuse/neglect.
9. Records of false or unsubstantiated reports of suspected abuse must be deleted from any database accessible to the public or used for employment or background checks. However, a child protective services agency may keep this information in its files for use in risk and safety assessments.
10. State law must not require reunification of a surviving child with a parent who is convicted of murder of one of his/her children or an assault resulting in serious bodily injury to a child. In addition, state law must provide that conviction of one of these crimes against children is sufficient grounds for terminating parental rights.
11. State law must establish at least three citizen review panels whose role is to determine if state and local agencies are carrying out their responsibilities for child protection under state law and professional standards.
12. State law must provide a procedure whereby persons with an official finding of substantiated or founded abuse can appeal that finding.
13. State law must require the disclosure to the general public of information about individual cases of child abuse or neglect that resulted in a child’s death or near death.

Synopsis prepared in October 1995 by Jill Moore,  
UNC law student. Updated in May 2000 by William L. Grimm,  
staff attorney, National Center for Youth Law.

## **THE INDIAN CHILD WELFARE ACT OF 1978 (PL 95-608)**

### ***Background***

The Indian Child Welfare Act (ICWA) was a response to Congressional findings that there was a need for a federal law to prevent state courts and social workers, as well as private agencies, from further destruction of the American Indian family caused by unwarranted removal of Indian children from their tribes and families. ICWA acknowledges the loss of Indian culture resulting from historical government policies, such as separating Indian children completely from their tribe, placing them in boarding schools, and forbidding them to speak their native language. In an effort to “civilize” and assimilate Indians into the mainstream, a decision was reached in the early 1800s to start with the children. Bureau of Indian Affairs (BIA) agents and social workers were given cash incentives based on the head count of children taken away from their tribes and placed in non-Indian institutions and adoptive homes—usually far from home. The Indian Civilization Act was passed in 1810 to facilitate the removal of children in an attempt to assimilate them into Anglo-America. Subsequently, non-Indian caseworkers, courts, and agencies continued to see the Indian family structure as alien, foreign, and undesirable, so the process of adoptions by non-Indians occurred in wholesale numbers. The sense of loss and devastation not only tore away the child’s heritage and foundation, it nearly destroyed the Indian family unit and the tribal government structure.



The Indian Child Welfare Act was established to strengthen the participation by Indian tribes when placement of Indian children is being considered. It establishes requirements for child-placing agencies to follow when placing Indian children.

### **Summary**

Children who are members of an Indian tribe, or who are the biological children of a member of an Indian tribe and are eligible for membership in the tribe themselves, may only be placed in foster care or for adoption according to the requirements of the Indian Child Welfare Act. The child's tribe is the final determinant of who is a member of the Indian community entitled to ICWA coverage. When ICWA coverage applies in a child's case, it takes precedence over other federal or state legislation.

If a state agency initiates an Indian child custody proceeding on the reservation, jurisdiction belongs exclusively with the tribe. When the proceeding is off-reservation, the case must be transferred to the tribe upon the request of the tribe unless there is "good cause to the contrary," as set forth in the Department of the Interior's 1979 BIA "Guidelines for State Courts," Indian Child Custody Proceedings. Some of the reasons not to transfer include the following: parents object; child is over twelve and he/she objects; or the case is at an advanced stage and all witnesses are off-reservation. The state court cannot look at the economics of the family or tribe in making the decision not to transfer. Likewise, the state court cannot look at what it might deem "in the best interest of the child," since the law presumes that it is always in the best interest of an Indian child to have his/her own people determine what is proper for his/her future.

ICWA sets forth the following requirements:

1. State court proceedings for foster care placement or termination of parental rights that involve an Indian child must be transferred to the jurisdiction of the tribe unless they meet one of the exceptions outlined in the 1979 BIA "Guidelines for State Courts."
2. A state court faced with pending proceedings for the foster care placement of an Indian child or the termination of parental rights must notify the child's parent, custodian, or tribe of the proceedings.
3. An Indian child may not be placed in foster care unless there is a determination, supported by clear and convincing evidence, that the child will likely suffer serious emotional or physical damage if left in the custody of his/her parent or Indian custodian.
4. An Indian child's parents may not have their parental rights terminated unless there is a determination, supported by evidence beyond a reasonable doubt, that the child is likely to suffer serious emotional or physical damage if left in the custody of his/her parent or Indian custodian.
5. Voluntary consents to foster care placement or termination of parental rights that involve Indian children are not valid unless executed in writing before a judge and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained to and fully understood by the parent or Indian custodian.
  - Voluntary consents to foster care placement may be withdrawn at any time.
  - Voluntary consents to termination of parental rights or adoption may be withdrawn at any time before the final decree of termination or adoption is issued—and up to two years thereafter upon a showing of fraud or duress.
6. In adoptions of Indian children, preferences for placement must be accorded as follows: (1) to a member of the child's extended family; (2) to other members of the child's tribe; and (3) to other Indian families.
7. In foster care or preadoptive placements of Indian children, preferences for placement must be accorded as follows: (1) to a member of the child's extended family; (2) to a foster home licensed or approved or specified by the child's tribe; (3) to an Indian foster home licensed or approved by an authorized non-Indian licensing authority; and (4) to an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suited to the child's needs.

Synopsis prepared in October 1995 by Jill Moore, UNC law student. Updated in May 2000 by Evelyn M. Stevenson, tribal attorney, Confederated Salish and Kootenai Tribes of the Flathead Nation.



## THE ADOPTION ASSISTANCE & CHILD WELFARE ACT OF 1980 (PL 96-272)

### Background

This law is a blueprint for combined efforts to preserve families and, if necessary, to build new families for children. It was adopted because insufficient services were being provided to keep families together, inappropriate placements of children were being made, disincentives for adoption existed, foster care was prolonged resulting in a lack of permanency for children, and there was a lack of information about children in foster care. The intention of the law was to prevent the breakup of families and provide permanency planning for children.

### Summary

The federal Adoption Assistance and Child Welfare Act, along with its implementing regulations, requires states that receive federal funds for assistance with foster care maintenance and adoption assistance to adhere to the following requirements:

1. The state must have a plan for child welfare services that:
  - Provides for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of the children needing such care
  - Describes the measures taken by the state to comply with the Indian Child Welfare Act
  - Provides assurances that: (1) the state has completed an inventory of all foster children who have been in care for six months or more; (2) the state is operating a statewide information system regarding children in foster care; (3) the state is operating a case review system for children in foster care; (4) the state is operating a service program to help children return to their families or be placed permanently; (5) the state is operating a program designed to help children at risk of being placed in foster care remain with their families; and (6) the state has reviewed its policies and procedures for children abandoned at or shortly after birth
2. The state agency administering the state plan must report known or suspected cases of abuse or neglect among children receiving foster care maintenance payments or adoption assistance aid to the appropriate state agency.
3. The state must establish standards for foster family homes and review the standards periodically.
4. In its state plan, the state must set specific goals as to the maximum number of children who will be in foster care for more than twenty-four months, and describe the steps it will take to meet the goal of decreasing the length of stay for children in care.
5. The state must make “reasonable efforts” (a) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his/her home, and (b) to make it possible for the child to return to his/her home. There is a greater burden to prove “reasonable efforts” when the Indian Child Welfare Act applies. (*Note: Under the Adoption and Safe Families Act of 1997, the safety of the child must be of paramount concern when making decisions regarding reasonable efforts.*)
6. The state must develop a case plan for every child in foster care who receives foster care maintenance payments and must provide a case review system.
7. Under the case review system, the status of each child must be reviewed at least every six months, either by a court or by administrative review.
8. The state must have a procedure or system by which parents may revoke voluntary placement agreements and the child may be returned to them.
9. The state must provide a dispositional hearing for every child in foster care no later than eighteen months after the original placement and every twelve months thereafter while the child’s foster care continues. (*Note: Under the Adoption and Safe Families Act of 1997, the hearings are called permanency hearings and must be held within twelve months after the date of the initial order removing custody and at least every six months thereafter.*)
10. The state must have a data collection and reporting system that includes information about children in foster care and children placed for adoption.

Synopsis prepared in October 1995 by Jill Moore, UNC law student. Updated in May 2000 by William L. Grimm, staff attorney, National Center for Youth Law.



## THE MULTI-ETHNIC PLACEMENT ACT OF 1994 & INTER-ETHNIC ADOPTION PROVISIONS

### *Background*

Increasing awareness of the damage done to children when they are moved from one non-permanent placement to another brought attention to children whose placements were determined solely, or primarily, on the basis of race. Additionally, public attention was focused on the high percentage of children of color who come into care and who remain in care for long periods of time. Federal law set out guidelines meant to respect the importance of a child's culture and heritage while reducing the time that children wait for homes. This legislation also focused on increasing the numbers and diversity of the pool of available foster and adoptive families.

### *Summary*

The Howard Metzenbaum Multi-Ethnic Placement Act of 1994 (MEPA) prohibits denial or delay of placement for foster care or adoption by any agency that receives federal funds because of the child's or foster/adoptive parent's race, color, or national origin. The law was intended to:

- Decrease the time children wait to be adopted
- Prevent discrimination in the placement of children on the basis of race, color, or national origin
- Prevent discrimination on the basis of race, color, or national origin when selecting foster and adoptive placements
- Facilitate the development of a diverse pool of foster and adoptive families

In August 1996, Congress amended MEPA with the Inter-Ethnic Adoption Provisions (IEP) in order to strengthen its nondiscriminatory provisions and to provide stiff penalties for violation of the act. The antidiscrimination provisions of MEPA-IEP now state that any public or private agency or entity that receives federal assistance cannot:

- Deny to any person the opportunity to become an adoptive or foster parent on the exclusive basis of the race, color, or national origin of the adoptive or foster parent or the race, color, or national origin of the child involved in the foster or adoptive placement

- Delay or deny the placement of a child for adoption or into foster care on the basis of the race, color, or national origin of the adoptive or foster parent or the race, color, or national origin of the child involved in the foster care or adoptive placement

MEPA was enacted to encourage transracial placements of children when appropriate same-race placements are not available. The act specifically permits the consideration of a child's cultural, ethnic, or racial background and the ability of a potential foster parent to meet the child's related needs as one of many factors to consider in determining the best interest of a child. The Department of Health and Human Services published a policy guideline in the Federal Register on April 25, 1995, to be used as guidelines for compliance by agencies. An updated policy guideline related to the amendment was made available in June 1997.

Noncompliance with this act is a violation of Title VI of the Civil Rights Act of 1964. Any person who believes that he/she has been a victim of a violation of the act has a right to bring an action for relief in the appropriate U.S. district court. Any entity found in violation of the law will lose considerable federal matching funds. MEPA does not affect the Indian Child Welfare Act of 1978.

Summary prepared for the Alaska Citizens' Foster Care Review Board. Author unknown. Updated in May 2000 by William L. Grimm, staff attorney, National Center for Youth Law.

## THE ADOPTION & SAFE FAMILIES ACT OF 1997 (PL 105-89)

### *Background*

While major provisions of federal child welfare law were enacted in 1980 (AACWA) and 1997 (ASFA), there were important amendments to the federal law in the interim. An Independent Living Initiative was added in 1986, which was then replaced with the John Chafee Foster Care Independence Program in 1999. In 1989, as part of the Omnibus Budget Reconciliation Act, the definition of "case plan" was modified to require that health and education records be included in the case plan and shared with the child's foster parents. As part of the welfare reform act (the Personal Responsibility and Work Opportunities Reconciliation Act) of 1996, states were directed to consider giving preferences to relatives over a non-



related caregiver when placing a child in foster care. That same act contained a provision allowing federal funds to be used to pay for the care of children in private, for-profit institutions.

### Summary

The Congressional mandates, which states must follow in order to receive federal funds for child welfare services, are found in several sections of the United States Code. They include Titles IV-B and IV-E of the Social Security Act. Title IV-B allots funds to states for a wide range of services whose purposes include protecting and promoting the welfare of homeless, handicapped, or neglected children; preventing the breakup of families; placing children in adoptive homes; and assuring adequate care of children placed outside the home. It also funds the Promoting Safe and Stable Families Program, which funds family preservation services (including services to adoptive, extended, and foster families), community-based family support services, time-limited (i.e., within fifteen months after the child enters care) reunification services, and adoption promotion and support services. Title IV-B requires a state to submit a plan outlining how it will use those funds and guaranteeing that it meets certain conditions, including a statewide information system, elimination of barriers to timely adoptions across state lines, a case review system, prompt decisions about permanent placement for children abandoned at birth, a plan to comply with the Indian Child Welfare Act, and a plan that ensures that the safety of children is the paramount concern for all service programs supported by these funds. Title IV-E attaches additional conditions with which states must comply in order to receive federal funds for their foster care and adoption assistance programs. Many of these provisions were first enacted as part of AACWA.

Several new conditions were added, timelines changed, and other provisions substantially modified by the Adoption and Safe Families Act of 1997 (ASFA). Foremost among the changes made in 1997 was the declaration that a child's health and safety must be the paramount concern in all decisions, the creation of exceptions to the requirement of reasonable efforts, and the mandatory filing of a petition to terminate parental rights for a child in care for fifteen months (of the most recent twenty-two months). The conditions imposed upon the states now include:

1. **Reasonable Efforts:** This mandate was part of the 1980 act. It requires states to make reasonable efforts (a) prior to the placement of a child in

foster care to prevent or eliminate the need for removal from his/her home, and (b) to make it possible for him/her to return home from foster care. Its misinterpretation or misapplication by agencies provided much of the impetus for the overhaul of federal law in 1997.

- **Health and Safety the Paramount Concern:** In determining what efforts are "reasonable" and in implementing services that are part of the reasonable efforts, the paramount concern governing the agency's actions must be the health and safety of the child.
  - **Exceptions:** Reasonable efforts are not required if any one of the following three conditions exists: (a) the parent has subjected a child to an aggravated circumstance. The federal law gives four examples—abandonment, torture, chronic abuse, or sexual abuse. However, states are free to add to the list of aggravated circumstances; (b) the parent has been convicted of murder or manslaughter or having aided, attempted, or conspired to kill his/her child, or been convicted of felony assault resulting in serious bodily injury to one of his/her children; or (c) the parent's rights to a sibling were involuntarily terminated.
  - **Expedited Permanency Hearing:** If the court determines that no reasonable efforts need be made, then a hearing to determine the permanent plan for the child must be held within thirty days and the agency must immediately begin efforts to place the child in a permanent home.
2. **Concurrent Planning:** At the same time the agency is making reasonable efforts to return a child home, it may plan for and make reasonable efforts to place the child for adoption or legal guardianship.
  3. **Judicial Determination:** Unless the child is in care as a result of a voluntary written agreement with the parents, there must be a judicial determination that the child's continuation in the home of his/her parent or guardian is "contrary to the welfare of the child" and that reasonable efforts to prevent placement or reunite the child have been made.
  4. **Case Plan:** Each child must have his/her own individualized case plan and for a child 16 or older, the plan must describe the services that will help the youth prepare for independence.



5. **Periodic Reviews:** No less frequently than every six months after a child enters care, the court or administrative agency (including a citizen review board) must review the child's case. The purpose of this review is to determine the safety of the child, compliance with the case plan, the progress made in eliminating the causes for placement, appropriateness of the placement, and a projected date for the child's return home or alternative permanent plan.
6. **Permanency Hearing:** The focus of this hearing is different from the periodic reviews. Twelve months after a child has entered foster care, a hearing to determine the permanent plan for the child must be held. In cases of children placed out of state, this hearing must also determine if that placement is still appropriate for the child and in the child's best interest. In cases of a child sixteen years old or older, this hearing must determine what services are needed to help this youth make the transition from foster care to independent living. This hearing must be held every twelve months as long as the child remains in care.
7. **Permanency Plan Options:** Congress specified four types of permanent plans that are acceptable: return to the parent, placement for adoption, legal guardianship, or planned permanent living arrangement. The latter plan may only be considered when the agency has documented for the court the reasons for eliminating the other three permanent options.
8. **Termination of Parental Rights Petitions:** The child welfare agency must file a petition to terminate parental rights for a foster child who falls within one of the following categories: (1) a child who has been in foster care for fifteen of the most recent twenty-two months; (2) a child who has been adjudicated an abandoned infant; or (3) a child whose parent was convicted of one of the crimes that create an exception to reasonable efforts.
9. **Termination of Parental Rights Petitions—Exceptions:** There are three situations in which the agency may defer filing a petition to terminate parental rights: (1) the child is being cared for by a relative; (2) a compelling reason supports a finding that termination would not be in the child's best interest; or (3) the agency has not provided the parent with the services listed in the case plan as necessary for the child's safe return home.
10. **Procedural Safeguards:** Basic procedural safeguards (i.e., notice and an opportunity to be heard) must be provided to the parent and child whenever the child is removed from the home, there is a change in the child's foster care placement, or an alteration in the visiting plan for child and parent is made.
11. **Relative Placement Preference:** The agency "shall consider" giving placement preference to a relative over a non-related foster care provider if the relative meets state child protection standards.
12. **Foster Care Standards:** Standards drawn from the standards of national organizations, which ensure that children in foster care placements with public or private agencies are provided with quality services that protect their health and safety, must be implemented.
13. **Foster Parent Criminal Background Check:** Criminal record checks must be completed before a child is placed with a foster or adoptive parent.
14. **Exclusion of Foster/Adoptive Parent Applicants:** No applicant who has a felony conviction for a crime of violence, including child abuse, spousal abuse, rape, or sexual assault, shall be approved. No applicant with a felony conviction for assault, battery, or a drug offense within the five years prior to his/her application shall be licensed.
15. **Preparation of Foster Parents:** Due to recognition that foster parents are often inadequately prepared and supported to provide care for the children placed by public agencies in their homes, this provision was added in 1999. It requires that before a child is placed with prospective foster parents, those foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child.
16. **Health Insurance for Adopted Children:** Any special-needs child who is covered by an adoption assistance agreement shall be provided with health insurance coverage that is "of the same type and kind" as that provided to children under the state's medical assistance program.

Synopsis prepared in May 2000 by William L. Grimm,  
staff attorney, National Center for Youth Law.



## THE FOSTER CARE INDEPENDENCE ACT OF 1999

### *Background*

After passage of the Adoption and Safe Families Act in 1997, some of the same Congressional leaders who supported or sponsored ASFA turned their attention to older youth in foster care, particularly those youth aging out of the system. Each year approximately twenty thousand children “graduate” from foster care. Many of these children are not prepared to be self-sufficient. Half have not finished high school, almost half have been homeless or incarcerated or have received public assistance after leaving care, and many have no health insurance and go without needed medical care. Confronted with these grim statistics, Congress enacted the Foster Care Independence Act of 1999.

### *Summary*

The highlights of the Foster Care Independence Act (FCIA) of 1999 include the following provisions. The act:

- Allows states to provide medical insurance coverage to youth between ages eighteen and twenty-one who were in foster care on their eighteenth birthday
- Allows states to use up to one-third of the funds they receive under this new program for room and board for youth between ages eighteen and twenty-one who are leaving foster care
- Permits states to use federal funds for a wide range of activities and services that will help youth prepare for independence (e.g., substance abuse prevention; preventive health activities; assistance in obtaining a high school diploma or preparing for college or other post-secondary education; mentors; and vocational training)
- Requires that both youth who have left foster care because they aged out at eighteen and youth likely to remain in foster care until age eighteen be provided with services under the program
- Requires that youth participate directly in selecting the activities and services they need to establish independence and accept personal responsibility for adhering to their plan
- Doubles the amount of funding for independent-living services

- Emphasizes that reasonable efforts to find adoptive homes applies to all children, including older children in care
- Requires that benefits and services must be made available to Indian children the same as other children in care
- Requires states to use training funds it receives under Titles IV-B and IV-E to provide training to help foster parents, workers in group homes, adoptive parents, and others address the problems youth face in preparing for independence
- Subjects states to greater accountability for the programs operated with these funds. The federal agency responsible for this oversight must consult with youth providers, advocates, and others in establishing outcome measures by which the effectiveness of services will be evaluated

Synopsis prepared in May 2000 by William L. Grimm, staff attorney, National Center for Youth Law.

## THE VOLUNTEER PROTECTION ACT OF 1997

### *Summary*

The federal Volunteer Protection Act of 1997 provides protection from liability for volunteers acting within the scope of their volunteer responsibilities. The volunteer must be properly authorized for the activities. Protection is not provided for willful or criminal misconduct, gross negligence, or reckless misconduct; for a conscious and flagrant indifference to the rights or safety of the individual harmed by the volunteer; for violations of federal civil rights laws; for crimes of violence or terrorism or hate crimes; for actions taken under the influence of alcohol or other drugs; or for harm caused by operating a vehicle that must be licensed. Some states have legislation that gives greater protection than this federal law. States may also pass legislation making the federal protection inapplicable. Many CASA/GAL programs purchase liability insurance to offer greater protection for their volunteers, staff, board members, and the organization. One of the best ways CASA/GAL volunteers can protect themselves from liability is to act within the prescribed CASA/GAL volunteer role and in accordance with the program’s policies and procedures.

Synopsis prepared in December 2000 by Michael S. Piraino, chief executive officer, National CASA.



# The Indian Child Welfare Act: The Need for a Separate Law

By B. J. Jones

The Indian Child Welfare Act (ICWA), which was adopted by Congress in 1978, applies to child custody proceedings in state courts involving “Indian” children—children of Native American ancestry. The provisions of ICWA represent a dramatic departure from the procedural and substantive laws that most states have enacted to govern child custody proceedings. Because Indian children are treated uniquely in the legal system, and because there is an increasing number of court proceedings involving Indian children, the need for lawyers to understand ICWA is fast becoming imperative.

## ENSURING A FUTURE

A look at history reveals why Congress determined a special law was needed to protect the rights of Indian children and their parents. Before 1978, as many as twenty-five to thirty-five percent of the Indian children in certain states were removed from their homes and placed in non-Indian homes by state courts, welfare agencies, and private adoption agencies. Non-Indian judges and social workers—failing to appreciate traditional Indian child-rearing practices—perceived day-to-day life in the children’s Indian homes as contrary to the children’s best interests.

In Minnesota, for example, an average of one of every four Indian children younger than age one was removed from his/her Indian home and adopted by a non-Indian couple. A number of these children were taken from their homes simply because a paternalistic state system failed to recognize traditional Indian culture and expected Indian families to conform to non-Indian ways.

Other children were removed because of the overwhelming poverty their families were facing. Although, admittedly, poverty creates obstacles to child rearing, it was used by some state entities as evidence of neglect and, therefore, grounds for taking children from their homes.

It was not only the high number of children being removed from their homes, but also the fact that eighty-five to ninety percent of them were being placed with non-Indians, that caught the attention of Congress. Congress was actively promoting the continued viability of Indian nations as separate sovereigns and cultures at that time. By enacting the substantive placement preferences in ICWA—which require that Indian children, once removed, be placed in homes that reflect their unique traditional values (25 U.S.C. 1915)—Congress was acknowledging that no nation or culture can flourish if its youngest members are removed. The act was intended by Congress to protect the integrity of Indian tribes and ensure their future.

## WHEN DOES THE INDIAN CHILD WELFARE ACT APPLY?

ICWA applies to four types of Indian child custody proceedings:

### 1. Foster Care Placements

ICWA applies to the temporary removal of an Indian child from his/her home for placement in a foster home or institution, when the parent or Indian custodian (defined as an Indian person with custody of the child under tribal or state law or who has the child pursuant to a parental placement) cannot regain custody upon demand (25 U.S.C. 1903[1]). The latter provision exempts ICWA application from voluntary religious or school placements, as well as voluntary placements with private or public agencies where the parent or custodian can regain custody at any time. However, ICWA would apply to a guardianship in which a child is placed with a nonparent, as this fits the definition of a foster care placement.

*(Be aware that certain state courts have limited the applicability of ICWA by holding that the law does not apply to proceedings involving the removal of*



*an Indian child from a non-Indian family (e.g., a case that involves an Indian child raised by a non-Indian mother). Known as the “existing Indian family” exception, this exception has generated some controversy. Refer to your own state’s laws to determine its status in your state.)*

## 2. Termination of Certain Parental Rights

ICWA applies to any proceeding that may result in the termination of the parental rights of the Indian child’s parent or the custodial rights of the child’s Indian custodian, including stepparent adoption proceedings and delinquency proceedings that lead to an attempt to terminate parental rights. (These generally are not governed by ICWA.)

## 3. Pre-adoption Placements

## 4. Adoption Placements

ICWA applies to proceedings that lead up to and culminate in the adoption of an Indian child. It imposes an obligation on both public and private adoption agencies to comply with its provisions.

ICWA does not apply to custody disputes between divorcing parents or custody disputes related to any other proceedings, nor does it apply to delinquency proceedings involving an Indian child who has committed an act that would constitute a crime if it were committed by an adult (except where the state is using the delinquent act as the grounds for a termination of parental rights petition). However, it would apply if the act committed by the child did not constitute a crime (e.g., an act of truancy or incorrigibility).

## IS THE CHILD AN INDIAN?

To apply the provisions of ICWA to a particular child custody proceeding, the court must first determine that the child is an Indian. Much litigation has ensued over this distinction. ICWA defines “Indian child” as a child who is a member of a federally recognized Indian tribe or is eligible for membership in such a tribe and the biological child of a member (25 U.S.C. 1903[4]). Parties to a state court proceeding must defer to Indian tribes on questions of membership.

There are a variety of ways Indian tribes determine membership, ranging from blood quantum requirements to residency requirements; no set formula applies to all tribes. At present, there are more than four hundred Indian tribes and Alaskan

native villages that are recognized by the U.S. Department of the Interior and, therefore, governed by the provisions of ICWA. (A list is published annually in the Federal Register.) Children who are members of Canadian tribes or tribes that have state-government recognition only are not governed by the act.

## PROCEDURAL RECOGNITION

The provisions of ICWA require that lawyers adhere to numerous specific procedures. First and foremost, because the act vests Indian tribal courts with exclusive jurisdiction over Indian children who live on Indian reservations (25 U.S.C. 1911[a]), state courts, with limited exceptions, cannot exercise jurisdiction over child custody proceedings that involve such children or children whose custodial parents were living on a reservation immediately prior to a foster care or adoption placement. These types of proceedings must be adjudicated through the tribal court of the relevant tribe.

If the Indian child lives off the reservation, the state court may exercise jurisdiction over the child custody proceeding, but the party invoking the state court’s jurisdiction must comply with certain procedures: if the proceeding involves the involuntary removal of a child, the petitioning party must notify the Indian child’s tribe and the Department of the Interior by certified mail of the pendency of the state court action if the party knows or has reason to believe that the child is Indian.

When a child’s tribal affiliation is unknown, the party must notify all tribes that may have some connection to the child as well as the Department of the Interior, which may have information that would help determine the child’s tribal status. If the proceeding is voluntary—for example, the mother is voluntarily seeking to terminate her rights so she can place the child for adoption—notice may not be necessary; need will be dictated by the court decisions of that particular jurisdiction.

In situations where notice is required, notice must be completed at least ten days before the state proceedings may advance and it must apprise the tribe of the following: its unconditional right to intervene in the state court proceeding, its right to examine all relevant documents, and its right to request that the start of the proceeding be delayed. Notice also must inform the tribe of its right, and the right of the child’s parent or Indian custodian, to request a transfer of the proceedings to the tribal



court. The law requires that state courts grant such requests except when one of the following occurs: one of the parents objects to the transfer, the tribal court declines the transfer, or the state court finds good cause not to transfer.

Much of the case law interpreting ICWA has arisen from situations in which one of the parties to a state court child custody proceeding claims “good cause” for not transferring the case to a tribal court. Although “good cause” is not defined under the law, its meaning is made somewhat clear in the guidelines for state courts enacted by the Department of the Interior (44 Fed. Reg. Vol. 44, No. 228, p. 67584 [Nov. 26, 1979]). The guidelines state that a party opposing a transfer to tribal court has the burden of showing good cause by clear and convincing evidence.

Examples of good cause grounds to deny a transfer request include the absence of a tribal court for the tribe in which the Indian child is a member, an objection by the Indian child to a transfer (if he/she is older than age twelve), a history of minimal contact between the child and the Indian tribe and reservation, a situation in which the request for transfer is not timely and the proceedings are at an advanced stage, and evidence that a transfer would impose hardship on the parties and witnesses because of the distance to the tribal court (forum non conveniens ground).

In addition, some state courts have adopted a “contrary to the best interest of the child” standard when deliberating a transfer request—even though such a standard is not included in the law or guidelines—and have invoked it as grounds to deny a transfer when the Indian child has already “bonded” to his/her foster caretaker(s). (Be aware that some other state courts have condemned the use of this standard to deny a transfer.)

## **MORE PROCEDURES**

Whatever the reason, if transfer to a tribal court is denied and the case remains in state court, various other procedural protections of ICWA will apply. For example, a party attempting to achieve the involuntary foster care placement of an Indian child must establish, by showing clear and convincing evidence, that an active effort has been made to provide remedial and rehabilitative services to the child’s family and that it was unsuccessful; and continued custody by the parent or Indian custodian

likely will result in serious emotional or physical damage to the child.

The latter showing must be supported by the testimony of one or more “qualified” expert witnesses, persons who have substantial knowledge of traditional Indian child-rearing practices or substantial experience working with Indian children. In states with small Indian populations, finding such a person may be problematic, but the alternative—allowing the child’s future to ride on the opinion of experts who may be ignorant and, therefore, biased against Indian parents—is more problematic.

When the petitioning party’s objective is the termination of parental rights to an Indian child, the party has the burden of demonstrating beyond a reasonable doubt that serious emotional or physical harm will befall the child if parental rights are not terminated, and that active efforts to provide remedial and rehabilitative services have been unsuccessful. Again, the findings must be supported by the testimony of a qualified expert witness, one who is versed in the ways of traditional Indian child-rearing practices.

## **VOLUNTARY PLACEMENTS & ADOPTIONS**

In recognition that a substantial number of Indian children have been removed from their homes under the guise of “voluntary placements,” ICWA regulates the voluntary placement of Indian children and the voluntary termination of parental rights for adoptions. Its stringent requirements on parties who seek voluntary placements represent an attempt to abolish a longtime pattern by many public and private agencies of abusing the rights of Indian parents.

The act mandates that the valid placement of an Indian child in foster care or the valid termination of parental rights requires the consent of the Indian parent in writing before a judge of competent jurisdiction (either a state court judge, if the child is domiciled off the reservation, or a tribal court judge) who certifies that he/she has explained to the parent the consequences of his/her actions in a language the parent understands, or has had the consent translated into a language the parent understands.

A consent to the termination of parental rights cannot be executed until after the child is ten days old. If the consent is not obtained pursuant to the provisions of ICWA, the termination will not be legal. The party obtaining custody will be barred from invoking a



state court's jurisdiction to further place the child, and the child will be ordered returned to the parent, unless returning the child would subject him/her to immediate danger.

An Indian parent or custodian can revoke his/her consent at any time during the foster care placement and before the decree of termination or adoption has been entered. After doing so, he/she will be entitled to the automatic return of custody of the child. In the case of an adoption, however, if the court has already entered an order accepting the voluntary termination of parental rights, the parent cannot revoke his/her consent. In cases where an Indian child has been in the home of an Indian custodian, not only must there be a termination of the parental rights, but also a termination of the custodial rights before the adoption will be legal.

## PLACEMENT PROVISIONS

A second, and equally important, goal of Congress in enacting ICWA was to ensure the placement of Indian children in homes that would reflect the unique values of Indian culture. This was achieved by the placement provisions of ICWA, which govern both voluntary and involuntary placements of Indian children and define placement preferences that public and private agencies must follow. *(Indian tribes are permitted under ICWA to change the order of the act's placement preferences, so you must investigate with each tribe you encounter the order of its particular preference scheme.)*

According to ICWA, when an Indian child is placed in foster care, the placement agency or party must place the child, in the absence of good cause to deviate, with (1) a member of the Indian child's extended family (including non-Indian members of the family), (2) a foster home licensed or approved by the child's tribe, (3) an Indian foster home licensed or approved by a non-Indian agency or authority, or (4) an institution for children that has the approval of an Indian tribe.

To determine which placement option best meets the intent of ICWA, the placement agency must consider the need to approximate the child's family setting as closely as possible, to keep the child as near as possible to his/her family's home, and to place the child in the least restrictive environment.

When an Indian child is placed for adoption, ICWA requires that, in the absence of good cause to deviate, the child be placed with (1) a member of his/her

extended family, (2) other members of his/her tribe, or (3) other Indian families. In this situation, too, it is necessary to determine whether the tribe involved has altered the standard preference scheme.

In either a foster care or adoption placement, if the party advocating a deviation from the placement preferences demonstrates good cause to deviate, the state court can sanction a placement that does not conform to the standard placement criteria.

The Department of the Interior's guidelines for state courts lists the following as examples of good grounds to deviate: (1) a request to deviate that comes from the biological parents or the child (provided he/she is of "sufficient" age), (2) extraordinary physical or emotional needs of the child (as established by qualified expert testimony), and (3) the determination—after a diligent search for a family that meets the placement preferences—that a "suitable" family is not available.

## IS IT WORKING?

The standard by which any law should be judged is whether it has achieved its stated legislative objective. The Indian Child Welfare Act was enacted to prevent the continued removal by state agencies, courts, and private agencies of large numbers of Indian children from their families and—equally important—their culture.

At the very minimum, the existence of the act has brought attention to the unique needs of Indian children and provided state agencies and judges with a valuable, cross-cultural educational tool. Although the removal of Indian children from their homes continues to occur at an alarming rate, ICWA mandates a process that, if adhered to over time, will eventually ensure the survival of Indian tribes and cultures well into the future.

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# Tribal-State Relations: Promising Practices in Child Welfare

Both the United States Congress and Tribal governments have articulated the importance of protecting the safety, permanency, and well-being of American Indian/Alaska Native (AI/AN) children. Through the Indian Child Welfare Act (ICWA) of 1978, Congress stated that “there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children” (25 U.S.C. Sec. 1901). Congress goes on to further assert that “it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian Tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture . . . ” (25 U.S.C. Sec. 1902).

Providing child welfare services for AI/AN children routinely involves multiple governments, agencies, and jurisdictions. In addition, unique historic and cultural factors play a major role in shaping service availability, utilization, and effectiveness for Tribal families and communities. Under ICWA, the Federal Government has established requirements for State and private agencies that regulate how placements of Tribal children and services to Tribal families should occur. The Administration for Children and Families (ACF) re-emphasizes these requirements in their instructions to States regarding the development of Child and Family Services Plans, issued in April 2005 (ACF, 2005). However, it is not unusual to see Tribal-State conflicts with regard to the implementation of ICWA requirements and such issues as notification, transfer of cases, service provision, placement preferences, preservation of connections, and achievement of permanent family outcomes.

This issue brief is intended to help States and Tribes find ways to work together more effectively to meet the goals of ICWA. Understanding the principles of effective practice identified here, along with the history and context for Tribal-State relationships,

will assist readers in developing positive Tribal-State relations in their communities.

## NEGOTIATION OF DIFFERENCES IN CHILD WELFARE VALUES AND PRACTICES

A potential barrier to positive Tribal-State relations involves the differences that often arise between State and Tribal child welfare values and practices. Within Tribal communities, child welfare decisions often are made based on the concept of *community permanency*. When a child is born into a Tribe, he or she becomes not just part of the family, but also a part of the entire community. The meaning of family in Tribal settings encompasses individuals outside of the child’s biological parents and siblings and is often referred to as the child’s extended family. An AI/AN child’s extended family becomes a reference point for his or her identity and sense of belonging. From the Tribal perspective, these concepts of identity and belonging are central to the idea of permanency and are considered paramount in decisions regarding the placement of Indian children. When family reunification is not an option, therefore, the Tribal perspective places emphasis on permanency alternatives that help the child stay connected to his or her extended family, clan, and Tribe (Cross, 2002).

While Tribal communities consider placements within the context of the community, mainstream models often consider placements within the context of the individual parent and the individual child. For example, within mainstream society, greater emphasis is often placed on certain types of permanency, such as adoption with full termination of parental rights. In this instance, the connection of the child to his or her birth family is severed. Many Tribal communities, on the other hand, do not agree with terminating a parent’s rights and may instead utilize customary adoption practices. In a customary adoption, the child is taken in by a family or community member but still has the opportunity to have a relationship with his or



her biological parents and extended family (Clifford-Stoltenberg & Simmons, 2004).

These differences in how family, community, and permanency may be viewed can shape how Tribes and States work together on child welfare cases and form the foundation for what is defined as “success” in achieving permanency for Tribal children. When States pursue policies or practices that are inconsistent or inflexible with regard to Tribal values, Tribal-State relationships are almost certain to suffer. States that embrace Tribal values, on the other hand, demonstrate a respect for Native culture and tradition. This respect can lead to more open, effective Tribal-State relations. One common mechanism for expressing this acceptance of Tribal values and practice is a Tribal-State agreement that allows the Tribe maximum flexibility permitted under the law to make decisions that reflect its culture, rather than imposing a State approach.

Overcoming all of the potential barriers discussed in this section can be challenging for both Tribes and States, but many States and Tribes have developed relationships and strategies to address the needs of AI/AN children and families. New collaborations are increasing, and paradigm shifts are occurring in the thinking of State and Tribal officials that are transforming relationships in child welfare.

## **WHAT ARE THE COMPONENTS OF SUCCESSFUL TRIBAL-STATE RELATIONS?**

Tribes and States share common purposes and common interests. Both entities are concerned with protecting the health and welfare of their citizens by effectively and efficiently utilizing public resources, providing comprehensive programs and services to their constituents, protecting the natural environment, and engaging in economic development activities. States and Tribes are most successful in achieving better outcomes for children and families when a positive partnership is established, as demonstrated through a mutual understanding of government structures, cooperation and respect, and ongoing communication.

### ***Mutual Understanding of Government Structures***

To facilitate strong Tribal-State relations, Tribes and States begin by developing an understanding of each other’s governmental structures and processes. Without this fundamental knowledge, it will be difficult to identify the most beneficial avenues within

each government for negotiating common interests related to child welfare (Johnson, Kaufmann, Dossett, & Hicks, 2000).

Tribes and States wishing to work toward effective child welfare relationships might begin by seeking answers to the following questions:

- Who are the appropriate people at both the Tribal and State levels to discuss child welfare issues (e.g., Tribal council, State governor, child welfare director, etc.)?
- How are child welfare program and policy decisions made within each government? (Do decisions involve the Tribal council/State legislature? Who determines membership within the Tribe?)
- What does the child welfare service delivery system look like? Who are the key agencies, and what is their authority and mission? Who is the service population for each government (e.g., all AI/AN people in a given area, or only Tribal members living on Tribal lands)?
- What is the best process for discussion and negotiations? Who should be involved, how will issues be discussed, and how will conflict or disagreement be addressed?

### ***Cooperation and Respect***

Once Tribes and States understand how each other’s governments function, they can further enhance Tribal-State relations by employing general principles of good relationships, including cooperation and respect. Cooperation is a major component of successful Tribal-State relations. When both Tribes and States are willing to set aside prior conflicts (e.g., jurisdictional issues, land claims, water rights, taxation, etc.), they are more successful in reaching out to one another to come to agreements on child welfare issues. This cooperation must be built around mutual respect and an understanding that each entity is an independent government operating to serve a particular population, and that AI/AN families are citizens of both governments.

States and Tribes are most successful in meeting Federal requirements and serving the best interests of AI/AN children when they acknowledge and utilize the strengths and resources of each government. Tribes have a large knowledge base that they can share with States regarding the protection of Tribal children and the strengthening of Tribal families. Their rich traditions and cultural practices were the foundation



for the development of unique approaches that are among the most successful used in child welfare today with this population. Safety, permanency, and well-being of AI/AN children are facilitated by the ability of the agency providing care to understand the child's culture, including his or her perception of permanency and critical connections with his or her extended family and Tribe. States that recognize Tribes as important resources in addressing child abuse and neglect among AI/AN families have been able to improve services and outcomes for AI/AN children.

Within Tribal communities, mutual respect is greatly valued. It is a principle evident in all aspects of Native life, especially child rearing (Lewis, 1980, as cited in Cross, Earle, & Simmons, 2000). Mutual respect involves listening actively to other viewpoints, being aware of one's own assumptions, and remaining open to ideas that may challenge one's personal views or experience. In a practical sense, States can demonstrate respect and understanding by viewing Tribal governments as a primary resource that can benefit Tribal children in care. Supporting Tribal capacity development and practice will ultimately benefit Tribal families and children.

### ***Ongoing Communication***

Tribes and States that communicate early and often are better able to establish mutual understanding and respect. Often, Tribes and States communicate only in times of conflict or misunderstanding. To remedy this reactive situation, mechanisms for ongoing Tribal-State communication, such as public and private forums, can be created. In addition to ongoing communication, it is helpful to establish a process for frequent review and assessment of policies addressing Tribal-State relations issues and the development of recommendations for improvements in these policies. Many States and Tribes have created Tribal-State advisory committees in child welfare to serve as a forum for communication and planning. In other places, conferences and policy institutes have been developed by Tribes and States. All of these efforts have in common a goal of enhancing communication and institutionalizing successful processes and practices.

Excerpted from "Tribal-State Relations," Child Welfare Information Gateway, U.S. Department of Health and Human Services, Children's Bureau, Administration for Children and Families, 2005. This issue brief was developed in partnership with the National Indian Child Welfare Association. Full text, including references, is available at [www.childwelfare.gov/pubs/issue\\_briefs/tribal\\_state/index.cfm](http://www.childwelfare.gov/pubs/issue_briefs/tribal_state/index.cfm).



# A Child's Journey Through the Child Welfare System

by Sue Badeau and Sarah Gesiriech

The chart on the next page provides a model which highlights typical decision points on a child's journey through the current foster care system. Although the format is based on federal and common state law and practice, nevertheless it is only a model. Laws vary across states, as do the capacity and practices of child welfare agencies and courts to manage their caseloads.

This paper describes the typical progression a child makes through a state's child welfare system. Each state's child welfare agency<sup>1</sup> is responsible for ensuring the safety and well-being of children. Child welfare systems have several chief components:

- Foster care—full-time substitute care for children removed from their parents or guardians and for whom the state has responsibility. Foster care provides food and housing to meet the physical needs of children who are removed from their homes.
- Child protective services (CPS)—generally a division within the child welfare agency that administers a more narrow set of services, such as receiving and responding to child abuse and neglect allegations and providing initial services to stabilize a family.
- Juvenile and family courts—courts with specific jurisdiction over child maltreatment and child protection cases including foster care and adoption cases. In jurisdictions without a designated family court, general trial courts hear child welfare cases along with other civil and criminal matters.
- Other child welfare services—in combination with the above, these services address the complex family problems associated with child abuse and neglect. They include family preservation, family reunification, adoption, guardianship, and independent living.

- While 542,000 children were in foster care on September 30, 2001, 805,000 spent some time in care over the course of that year.<sup>2</sup>
- Children in care in 2001 had been in foster care for an average of 33 months. More than 17 percent (91,217) of the children had been in care for 5 or more years.<sup>3</sup>

Once a child is known to the child welfare agency, he and his family become subject to a series of decisions made by judges, caseworkers, legal representatives, and others, all of whom have an important role to play. A child may encounter dozens of other new adults including foster parents, counselors, and doctors.

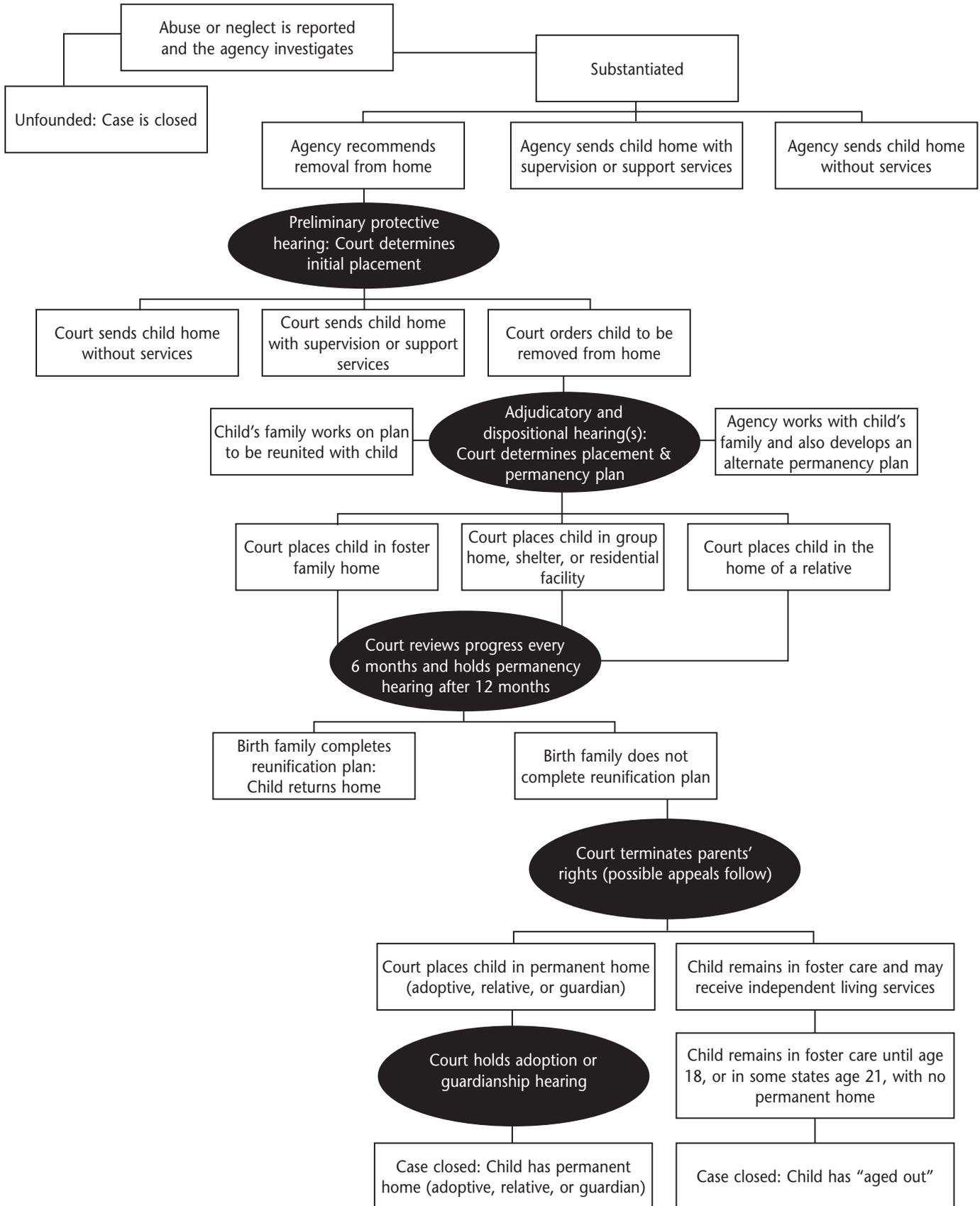
Most children (60%) enter foster care when removed from their homes by a child protective agency because of abuse and/or neglect. Others (17%) enter care because of the absence of their parents, resulting from illness, death, disability, or other problems. Some children enter care because of delinquent behavior (10%) or because they have committed a juvenile status offense (5%), such as running away or truancy. Roughly 5 percent of children enter care because of a disability.<sup>4</sup> For many, it represents their only access to disability services, for example, mental health care for a child with severe emotional disturbance. In these rare instances, in states that allow such placements, a child is placed in foster care voluntarily at the request of his parents.

Foster care is intended to provide a safe temporary home to a child until he can be reunited safely with his parent(s) or adopted. However, being removed from home and placed in foster care is traumatic for a child, and the period of time he may spend in care can be filled with uncertainty and change.<sup>5</sup>

A child in foster care is affected by a myriad of decisions established by federal and state laws designed to help him. At each decision point, action or inaction can profoundly influence the child's current circumstances and future prospects. The discussion that follows highlights typical decision points on a child's journey through foster care.



# A Child's Journey Through the Child Welfare System



Although the format is based on federal and common state law and practice, nevertheless it is only a model. Laws vary across states, as does the capacity and practices of child welfare agencies and courts to manage their caseloads. These factors can and often do create delays that complicate a child's journey through the child welfare system and often extend his time there.

**DECISION POINT—Abuse or neglect is reported and the CPS agency responds.**

The child's journey through foster care usually begins when a mandated reporter<sup>6</sup> or concerned citizen makes a report of abuse or neglect to a state agency. For example, a doctor delivers a baby who has drugs in his system; a neighbor notices bruises on a child; a toddler is found abandoned in a public place; or a teacher notices a student who is unclean, unfed or severely ill.

- Child abuse and neglect, or maltreatment, are defined in both federal and state law. Federal law provides a foundation for states by identifying a minimum set of acts or behaviors that define physical abuse, neglect, and sexual abuse. The Federal Child Abuse Prevention and Treatment Act defines child abuse and neglect, at a minimum, as “any recent act or failure on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act which presents an imminent risk of serious harm” to a person under age 18.<sup>7</sup> States can and do expand on or clarify definitions in a variety of ways that are particular to local needs. Although any of the forms of child maltreatment may be found separately, they often occur in combination.

The U.S. Department of Health and Human Services (HHS) estimates that in 2001, CPS agencies received nearly three million referrals of maltreatment involving five million children. Approximately 903,000 of these cases were substantiated after investigation.<sup>8</sup>

The following types of abuse and neglect occurred (some in combination with others):

Type of Abuse	Percentage
Neglect	59.2%
Physical Abuse	18.6%
Sexual Abuse	9.6%
Emotional/Psychological maltreatment	6.8%
Other (abandonment, congenital drug addiction)	19.5% <sup>9</sup>

The ages of the victims ranged as follows:

Age	Percentage
Birth to 3 years	27.7%
4–7	24.1%
8–11	22.8%
12–15	19.5%
16–21 or unknown	6% <sup>10</sup>

More than half (56.5%) of substantiated reports were made by professionals, including teachers, law enforcement officers, and physicians. The remaining 43.5 percent were made by family members, neighbors, and other members of the community.<sup>11</sup>

The majority of the victims were maltreated by a parent (birth, adoptive, or step). The breakdown is as follows:

Relationship to the Child	Percentage
Mothers (acting alone or with a non-parent)	46.9%
Fathers (acting alone or with a non-parent)	18.7%
Mother and Father	19.3%
Non-parent	11.9%
Unknown	3.1% <sup>12</sup>

In 2001, an estimated 1,300 children died from abuse or neglect. Eighteen of these deaths (1.5%) occurred while a child was under the custody or supervision of the child welfare agency.<sup>13</sup>

Once a report of maltreatment has been made, the CPS agency investigates whether abuse or neglect has occurred and assesses the risks to the child.



**DECISION POINT:**

*The CPS agency finds that the allegations of abuse and neglect are unfounded and the case is closed.*

or

*The CPS agency finds evidence that the child is at risk for subsequent abuse or neglect and conducts an assessment to determine whether the child can remain safely at home with supervision or support services.*

The assessment may include a visit to the family home and interviews with the family and persons outside the family. The family may help identify services that may be needed to better care for their child, such as parenting skills training or addiction services.<sup>14</sup>

- The majority of children entered foster care because of neglect, often the result of inadequate housing, poor child care, or insufficient food or medical care.
- A substantial percentage of parents with children in foster care have substance abuse treatment needs.<sup>15</sup>

**DECISION POINT—The CPS agency petitions the court recommending the removal of the child from his home under the supervision of the child welfare agency. This petition initiates a series of judicial hearings.**

If the CPS assessment indicates the child is at high risk for subsequent abuse or neglect, the CPS agency conducts an investigation and requests a court order to remove the child from the home. Generally, in emergency situations, the agency will remove the child and place him in emergency or temporary foster care before receiving the court order.

**DECISION POINT—Protective hearing: the court determines initial placement.**

An emergency custody hearing, or protective hearing, will be held for the court to first determine whether the child has been abused or neglected. If the judge determines that abuse or neglect has occurred, the case then proceeds to an adjudicatory and dispositional hearing, where the judge will decide, based in part on the child welfare agency's recommendation, to do one of the following:

- (1) Send the child home without services;
- (2) Send the child home with supervision and support services; or

- (3) Remove the child from his home.

This same set of options will be considered at each subsequent hearing.

**DECISION POINT—Adjudicatory and dispositional hearing(s): the court determines that the child must be removed and approves an initial placement and reunification plan.**

Once the child is removed from his home, he and his parents become formally involved with the juvenile or dependency court system, and the child is considered in state custody and generally a ward or dependent of the court. The child and his family are assigned a case worker from the child welfare agency.

The child's case worker develops a case plan detailing:

- (1) The types of services that the child and his family will receive, such as parenting classes, mental health or substance abuse treatment, and family counseling;
- (2) Reunification goals, including visitation schedules and a target date for a child's return home; and
- (3) Concurrent plans for alternative permanent placement options should reunification goals not be met.

The court reviews and may modify the recommended case plan.

- Federal regulations require that the child's case plan describe how the state will achieve a safe placement for the child in the least restrictive, most family-like setting in close proximity to the child's parents. The case plan must also describe how the placement is consistent with the child's best interests and special needs.<sup>16</sup>
- Many jurisdictions are experimenting with innovative approaches to develop effective case plans and facilitate safe reunification. Such approaches include mediation, family group conferencing, and co-location of services such as substance abuse assessment in the court.
- Before a State may receive federal reimbursement for the costs resulting from supporting a child after removal from his home into foster care, a judge must determine that reasonable efforts have been made to keep the family together by providing such services as parenting classes, substance abuse treatment, or subsidized child care.<sup>17</sup> However, federal law does not require States to pursue reasonable efforts if a parent has



committed specific types of felonies, or subjected the child to aggravated circumstances, such as abandonment, torture, or sexual abuse.<sup>18</sup>

In 2001, the case goals of 541,998 children in state custody were:

Case Goal	Percentage (number)
Reunify with Parent(s) or Principal Caretaker(s)	44% (241,051)
Adoption	22% (116,653)
Case Plan Goal Not Yet Established	11% (62,014)
Long Term Foster Care	8% (45,792)
Emancipation	6% (32,309)
Live with Other Relative(s)	5% (26,555)
Guardianship	3% (17,624) <sup>19</sup>

In 2001, the placement settings for children in state custody were:

Placement Setting	Percentage (number)
Foster Family Home	48% (260,384)
Relative Foster Home	24% (130,869)
Institution	10% (56,509)
Group Home	8% (43,084)
Pre-Adoptive Home	4% (20,289)
Trial Home Visit	3% (16,685)
Runaway	2% (9,112)
Supervised Independent Living	1% (5,068) <sup>20</sup>

More than 20 percent of children in foster care will move at least three times and in some cases seven or more times.<sup>21</sup> Children move for many reasons, including attrition and lack of training or support for foster families, lack of resources to address a child's special needs, or because the child's behavior may be difficult for some foster parents to manage.

- If the child is removed from his home, he is separated from his parents and may be separated from his siblings. He will meet new temporary "parents" and adjust to their lifestyle and house rules. Foster parents may have their own children or other foster children in their homes. The child may have to attend a new school, leaving old friends behind and adjusting to a new teacher and new classmates as well as new rules. The child

will have a caseworker assigned to him. Ideally the caseworker will visit the child at least once a month. The emotional adjustments will differ for children placed with relatives, or placed in their own neighborhood. The child will have to make these adjustments each time he is moved.

**DECISION POINT—The child is placed in the home of a relative.**

- Federal law recognizes a preference for placement with relatives.<sup>22</sup> However, the regulations clarify that health and safety are the paramount considerations when any placement decision is made regarding a child in foster care, including care with a relative.<sup>23</sup>
- Generally, relatives do not receive foster care payments unless they are licensed foster care providers.

**DECISION POINT—The child is placed in a non-relative foster family home.**

Although the total number of licensed family foster homes in the United States is not known, in 1998, 38 states reported a total of 133,503 homes.<sup>24</sup> Unfortunately, turnover among foster parents is high; 30 to 50 percent leave the system every year.<sup>25</sup>

Foster parents receive stipends to cover room and board, child care, and clothing. They may also receive Medicaid coverage for the children in their care.

**DECISION POINT—The child is placed in a residential facility or in a group home.**

The child may be placed in therapeutic foster care, residential child care, or residential psychiatric care if he has emotional, behavioral, physical or medical needs and requires a higher level of supervision and treatment. A child may be placed in group home care because of a shortage of foster family homes. Group home care is more frequently used for older children.

- A group home is a licensed or approved home providing 24-hour care for children in a small group setting that generally has from 7 to 12 children.<sup>26</sup>
- An institution is a child care facility operated by a public or private child welfare agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experiences, i.e. child care institutions, residential treatment facilities, and maternity homes.<sup>27</sup>



- Federal child welfare funds cannot be used to support children in public facilities that serve more than 25 children or used to maintain children in facilities that are operated primarily for the detention of delinquent youth.<sup>28</sup>

**DECISION POINT—***The court reviews progress every six months and holds a permanency hearing after 12 months.*

Periodic reviews are held in the court or reported to the court.

- Federal law requires states to review a child's case at least every six months after placement in foster care to determine whether the placement is still necessary and appropriate, whether the case plan is being properly and adequately followed, and whether progress has been made toward reunifying the family. The case review must also set a target date for the child's return home, adoption, or other permanent placement.<sup>29</sup>

Permanency planning hearings are always held in court.

- Federal law requires states to hold a permanency planning hearing for each child in foster care within 12 months of initial placement, or after a determination that reasonable efforts to reunite are not required.<sup>30</sup> Some states require this hearing sooner. Foster parents, pre-adoptive parents, and relative caregivers must be given notice and an opportunity to be heard at case reviews and permanency hearings.

Some advocates believe that a child should not remain in foster care longer than 12 months. Other advocates believe that this is too short a period to address the complex and multiple needs of the family, particularly families with substance abuse or mental health needs.

A judge may choose from among several permanency options for the child. In 2001, 263,000 children exited foster care in the following ways:

Outcomes for Children Exiting Foster Care	Percentage (number)
Reunification with Parent/ Primary Caretaker	57% (148,606)
Living with Other Relative(s)	10% (26,084)
Adoption	18% (46,668)
Guardianship	3% (8,969)
Emancipation	7% (19,008)
Transfer to Another Agency	3% (7,918)
Runaway	2% (5,219)
Death of Child <sup>31</sup>	less than 1% (528) <sup>32</sup>

**DECISION POINT—***The child is reunified with his birth family.*

If the parents are successful with the court-ordered treatment plan, the child is reunited with his parents, and the case is closed.

- In 2001, more than 57 percent (148,606) of children in out-of-home care were reunited with their families.<sup>33</sup>
- However, other studies have noted that approximately 33 percent of children who were reunified with their families re-entered foster care within three years.<sup>34</sup> And, approximately 17 percent of children who entered foster care had been in foster care before.<sup>35</sup>

**DECISION POINT—***The birth family does not complete the court-ordered reunification plan. The child welfare agency petitions the court for the termination of parental rights (TPR).*

If a parent fails to comply with the reunification plan, the child welfare agency will petition the court to terminate the parents' rights to the child. At any point during the court process, a parent may seek to voluntarily relinquish their parental rights.<sup>36</sup> When the parents' rights are terminated, a permanent plan for the child will be created.<sup>37</sup>

- Federal law requires states to initiate TPR proceedings for (1) children who have been in foster care for 15 of the most recent 22 months, (2) infants determined to be abandoned, or (3) cases in which a parent has killed another of his/her children, or (4) certain other egregious situations. States may opt not to initiate TPR if (1) the child is in a relative's care, (2) the child welfare agency has documented a compelling reason that TPR would not be in the child's best interest, or (3) the state has not provided necessary services to the family.<sup>38</sup>



- In 2001, more than 65,000 children’s living parents had their parental rights terminated.<sup>39</sup>
- Federal law requires that the permanency plan document the steps taken to place the child and finalize the adoption or legal guardianship and document child specific recruitment efforts taken to find an adoptive family or legal guardian for a child.<sup>40</sup>
- Federal regulations direct states to concurrently begin to seek and approve a qualified adoptive family for the child whenever a state initiates TPR proceedings.<sup>41</sup>

**DECISION POINT—The child is placed with an adoptive family and the court holds an adoption hearing to finalize the adoption.**

Some children will leave foster care through adoption.

- In 2001, 51,000 children were adopted.<sup>42</sup> Nearly 59 percent were adopted by their foster family and nearly 24 percent were adopted by a relative.<sup>43</sup>
- Because children adopted from foster care may have been abused, neglected, or may have lived in multiple homes, the transition to an adoptive home can be difficult. Some states are beginning to explore ways to offer post-adoption services, such as respite care, to ensure the adoptions stay intact.
- In 2001, more than 126,000 children in foster care were considered waiting to be adopted because they have the goal of adoption or because of TPR.<sup>44</sup> These children had been in foster care for an average of more than 3½ years, and their average age was eight.<sup>45</sup>

**DECISION POINT—The child is placed with a legal guardian, often a relative.**

Some children will leave foster care through placement in the custody of a guardian. The guardianship can be granted to relatives, foster parents, or another adult who has a relationship with the child.<sup>46</sup> Guardianship is not as legally secure as adoption. However, it does provide a measure of permanency and stability without requiring the termination of parental rights.<sup>47</sup>

- Federal law defines legal guardianship as a judicially created relationship between child and caregiver intended to be permanent and self-sustaining. The following parental rights with respect to the child are transferred to the

caretaker: protection, education, care and control, custody, and decision-making.<sup>48</sup>

- Subsidized legal guardianships are a means by which some states provide relative (and in some states non-relative) foster parents with financial assistance after they have obtained legal guardianship of the child and the child has exited the formal child welfare system. Subsidized guardianships can provide an alternative form of support for children whose relatives have chosen not to adopt.<sup>49</sup> The federal government does not provide States reimbursement for costs associated with subsidized legal guardianship payments.

**DECISION POINT—The child reaches age 18 with no permanent home.**

Some children will reach 18 and leave foster care without being reunited with their families, adopted, or placed in another permanent home. In these cases, the child welfare agency may provide basic living skills training, housing assistance, and educational opportunities through federally funded independent living programs.

- In 2001, approximately 19,000 youth left foster care when they reached the age of 18 (or 21, in some cases).<sup>50</sup>
- Studies have found significantly lower levels of education, higher rates of unemployment, and higher rates of homelessness for adults who spent time in foster care as children.<sup>51</sup> For example, a study by Westat, Inc., reported that only 54 percent of young adults who grew up in foster care had completed high school, 40 percent continued to rely on public support in some way (were receiving public assistance, incarcerated, or receiving Medicaid) and 25 percent had been homeless for some period.<sup>52</sup> Other studies indicate that a significant percentage of the homeless population in many cities were adults who once had been foster children.<sup>53</sup>

As this paper indicates, the rate at which a child progresses through the foster care system, and the nature of his experience there, depends on many factors. These include federal and state financing, timelines, and legal provisions; good and timely decisions; the availability of services for birth and adoptive families; and the availability of licensed foster homes willing to care for children. Many of these factors are interrelated. But each can contribute to the length and quality of a child’s time in foster care.



- 1 Public child welfare agencies are often called by different names such as the Department of Human Services (DHS), Department of Health and Social Services (DHSS), Department of Children and Families (DCF), or the Department of Social Services (DSS).
- 2 U.S. Department of Health and Human Services, Children's Bureau, *The AFCARS Report #8* (March 2003). Available online at [www.acf.dhhs.gov/programs/cb/publications/afcars/report8.htm](http://www.acf.dhhs.gov/programs/cb/publications/afcars/report8.htm).
- 3 Ibid.
- 4 Karen Spar, Specialist in Social Legislation, Domestic Social Policy Division, Congressional Research Library, Library of Congress, Testimony before the Subcommittee on Human Resources, July 20, 1999. The figures in this paragraph represent Fiscal Year 1994 data.
- 5 Ibid.
- 6 State laws identify certain professionals who are mandated to report suspected abuse. They generally include medical professionals, teachers, day care workers, photo lab developers, and law enforcement.
- 7 42 U.S.C. 5106g.
- 8 U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 2001*, p. 21 (Washington, DC: U.S. Government Printing Office, 2003).
- 9 Ibid, p. 21. The percentages total more than 100 percent of victims because children may have been victims of more than one type of maltreatment.
- 10 Ibid, p. 23.
- 11 Ibid, pp. 3 & 7.
- 12 Ibid, pp. 43 & 45.
- 13 Ibid, pp. 51 & 55.
- 14 The Oklahoma Department of Human Services, *The Child Welfare Journey*. Available online at [www.okdhs.org/cfsd/howtos/cw/journey.htm](http://www.okdhs.org/cfsd/howtos/cw/journey.htm).
- 15 Child Welfare League of America, Behavioral Health Division, *Alcohol and Other Drugs*. Available online at [www.cwla.org/programs/bhd/aod.htm](http://www.cwla.org/programs/bhd/aod.htm).
- 16 42 U.S.C. 675(5).
- 17 U.S. Department of Health and Human Services, National Clearinghouse on Child Abuse and Neglect Information, *Overview of the Civil Child Protective Court Process*. Available online at [www.calib.com/nccanch/pubs/usermanuals/courts/protect.cfm](http://www.calib.com/nccanch/pubs/usermanuals/courts/protect.cfm).
- 18 42 U.S.C. 671(a)(15)(D).
- 19 *The AFCARS Report #8*.
- 20 Ibid.
- 21 Kathy Barbell and Madelyn Freundlich, *Foster Care Today* (Casey Family Programs, Washington, DC, 2001), pp. 3–4. These figures were based on 1994 data from the U.S. House of Representatives, 2000.
- 22 42 U.S.C. 671(a)(18).
- 23 Children's Defense Fund, Child Welfare and Mental Health Division, *The Adoption and Safe Families Act (ASFA) Regulations and Kinship Care Families—Frequently Asked Questions* (Spring 2000) and Federal Register, Vol. 65, No. 16, (January 25, 2000), pp. 4032–4033.
- 24 U.S. Department of Health and Human Services, Administration for Children & Families, National Clearinghouse on Child Abuse and Neglect Information, *Foster Care National Statistics April 2001*.
- 25 University of Tennessee Family Foster Care Project, *Foster Family Forum*, Issue 1 (July 2002).
- 26 U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 1999: Annual Report* (Washington, DC: U.S. Government Printing Office, 2001). Some states may include settings with fewer than seven children as group homes.
- 27 Ibid.
- 28 U.S. Department of Health and Human Services, Administration for Children and Families, Administration for Children, Youth and Families, *Program Instruction, ACYF-PI-89-09* (October 1989).
- 29 *Overview of the Civil Child Protective Court Process*.
- 30 42 U.S.C. 675 (1)(5)(C).
- 31 These deaths resulted from all causes including accidental and natural. Only 18 resulted from abuse.
- 32 *The AFCARS Report #8*.
- 33 Ibid.
- 34 U.S. General Accounting Office, *Foster Care: Recent Legislation Helps States Focus on Finding Permanent Homes for Children, but Long-Standing Barriers Remain* (GAC-02-585) (Washington, DC: US Government Printing Office, 2002), p. 10.
- 35 *Foster Care National Statistics April 2001* (2000b).
- 36 *The Child Welfare Journey*.
- 37 Ibid.
- 38 42 U.S.C. 675(1)(5)(E). In the case of an abandoned child, regulations require States to initiate TPR within 60 days of a court determination of abandonment and in the case of a child whose parent has been convicted of a felony specified in the law 60 days of a court determination that reasonable efforts to reunite are not required.
- 39 *The AFCARS Report #8*.
- 40 42 U.S.C. 675 (1)(E).
- 41 42 U.S.C. 675 (5)(E).
- 42 *The AFCARS Report #8*. This figure is based on the most recent revisions to AFCARS, which only include adoption outcomes. This figure differs from the figure presented in the table showing outcomes for children exiting foster care. That figure is based on preliminary data which will be revised once all the outcomes are updated.
- 43 Ibid.
- 44 Ibid.
- 45 Ibid.
- 46 *The Child Welfare Journey*.
- 47 Steve Christian, *A Place to Call Home: Adoption and Guardianship for Children in Foster Care*, p. 28 (National Conference of State Legislatures, 2000).
- 48 42 U.S.C. 675.
- 49 *The Adoption and Safe Families Act (ASFA) Regulations and Kinship Care Families—Frequently Asked Questions*.
- 50 *The AFCARS Report #8*.
- 51 State of Tennessee, Comptroller of the Treasury, *Foster Care Independent Living Programs* (1998).
- 52 *1994 Green Book* (Washington, DC: U.S. Government Printing Office, 1994).
- 53 National Alliance to End Homelessness, *Web of Failure: The Relationship between Foster Care and Homelessness* (1995). Available online at [www.endhomelessness.org/pub/fostercare/webrept.htm](http://www.endhomelessness.org/pub/fostercare/webrept.htm).

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