S. HRG. 105-916

PROMOTION OF ADOPTION, SAFETY, AND SUPPORT FOR ABUSED AND NEGLECTED CHILDREN

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

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PROMOTION OF ADOPTION, SAFETY, AND SUPPORT FOR ABUSED AND NEGLECTED CHILDREN

WEDNESDAY, OCTOBER 8, 1997

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:09 a.m., in room SD–215, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Chafee, Grassley, D'Amato, Conrad, Breaux, Rockefeller, and Moynihan.

OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will please be in order.

It is a pleasure to welcome such a distinguished panel of members of Congress. We are looking forward to their testimony.

But first, let me say the foster care system reflects a part of modern society which prompts us to ask many questions of ourselves and each other. It is a mirror that can be troubling to look into.

And today, we have the privilege of welcoming a number of individuals who are daily witnesses of the successes and the failures in the system through which millions of people pass each year.

Each report to a child protective service agency involves a victim and a perpetrator, in most cases, a child and his or her parent.

A case may take a single day or many years to close. Many of these cases are complex and the length of time in foster care has an effect on the child.

Between 1985 and 1995, the number of children in foster care increased, increased from 276,000 to 494,000, an increase of nearly 80 percent.

And much of this increase is due to the hurricane force waves of drug abuse which continue to unleash their destructive powers on communities and families.

The Department of Health and Human Services estimates that 100,000 children currently in foster care cannot return home without jeopardizing their health, safety, and development.

With great concern that more children are staying in foster care for longer periods of time, the very laws which are intended to protect children may in practice work against their best interests.

Part IV–E of the Social Security Act takes up just 30 pages of text in the compilation of the Social Security laws.

And the experts joining us today understand how those words touch the lives of those in the child welfare system for good and ill.

They are the ones who must make Solomon-like decisions about words like "reasonable efforts," "best interests of the child" and what they mean to an infant who is born addicted to crack cocaine or to a troubled adolescent who has never known a permanent place to call home.

Last month, a very distinguished, bipartisan group of Senators introduced S. 1195, the Promotion of Adoption, Safety, and Support for Abused and Neglected Children Act. And this legislation is the subject of today's hearing.

The child welfare system itself is complex, composed of many parts and programs. And although the Federal Government has assumed a greater share of the cost of these programs in recent years, State and local governments still provide the majority of resources for the child welfare system.

In fiscal year 1997, the Federal Government contributed $5 billion to the child welfare system. And of this amount, 85 percent was spent through Title IV–E programs.

CBO estimates that under current law, outlays for foster care and adoption assistance will increase by more than 50 percent from $3.9 billion in fiscal year 97 to $5.9 billion in 2002.

Federal funds are used to subsidize about half of the children in foster care and about two-thirds of the children receiving adoption assistance payments.

And under current law, CBO estimates a number of children receiving Federal adoption assistance under the IV–E program will increase from $141,000 in fiscal year 97 to $229,000 in 2002, an increase of 62 percent.

Today, we will—the committee will take another look at the future of the child welfare system, a system filled by young victims of violence and neglect.

And there are many demands on the system with a variety of potential pressure points at which reform might be aimed.

The views we hear today will provide us important insights to guide us.

Let me mention, in the article in the October 1st Washington Post about a study on welfare reform conducted by the University of Maryland at the Baltimore School of Social Work, "The effects of welfare reform on the child welfare system is of deep concern to everyone."

And this study shows that of 1,810 children whose family left Maryland welfare rolls, only three children, all from the same family, entered foster care. So the early news is good news.

Now, let me recognize my good friend, Senator Moynihan.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. Thank you, Mr. Chairman. You and I and others of us here have commented that one or two removes almost all of the social problems of American society.

Today reflects the earthquake that shuttered through the American family at the beginning of the 1960's.

Only a minority of American children will reach 18, having lived both—all their lives with both natural parents.

A third of our children are born to single parent, all which accumulates and enters a Social Security system which rather like welfare began with something altogether different in mind, the children of parents who had naturally deceased.

This is not a very different situation today. This legislation does respond to it. I am very honored to be a co-sponsor.

And I have a statement I would like placed in the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Moynihan appears in the appendix.]

The CHAIRMAN. Senator Chafee.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM RHODE ISLAND

Senator CHAFEE. Thank you very much, Mr. Chairman. I appreciate your holding this hearing on the so-called PASS Act, Promotion of Adoption, Safety, and Support for Abused and Neglected Children. I will refer to it as the PASS Act.

This, as you mentioned, is a bipartisan piece of legislation. In addition to Senator Moynihan, Senator Craig, Senator Rockefeller, Senator Jeffords, Senator DeWine, Senators Coates, Bond, Landrieu, and Levin, perhaps others by this time have joined in.

And I want to pay tribute to Senators Craig and DeWine who played a pivotal role and a special thanks to Senator Rockefeller who has been a lead sponsor of this legislation and has worked tirelessly for years on behalf of the Nation's children.

I also want to welcome Congressman Dave Camp and Congresswoman Barbara Kennelly. They are supporters of the House bill which passed overwhelmingly.

It is such a good bill, we liberally incorporated it, many provisions in our bill.

And I want to thank both of them for all the work they did in the House.

I just want to say a couple of words, if I might, about the legislation. What this legislation will do is to make critical reforms to the Nation's child welfare and foster care system and go a long way toward improving the lives of hundreds of thousands of abused and neglected children.

These are children without a safe family setting. They are children who face abuse and neglect every day of their lives. All too often, they are children without hope.

And this chilling situation has brought the sponsors of this bill together to take immediate action.

We have two goals: to ensure that abused and neglected children are in a safe setting. That is number one.

And two, to move children more rapidly out of the foster care system and into permanent placements, i.e. into adoptive situations.

While the goal of reunifying children with their biological families is laudable, we should not be encouraging States to return

abused or neglected children to homes that are not safe, that are unsafe. Regrettably, this is occurring under present law.

Mr. Chairman, as you mentioned, in the U.S. now, there are about 500,000, half a million abused and neglected children currently live outside their homes, either in foster care or with relatives.

In my small town, we have 1,500 of these young children in foster care situations.

Many of them will be able to return to their parents. Many will not.

All too often, children who cannot return to their parents wait for years in foster care settings before they are adopted, if ever. In today's child welfare system, it is a lonely and tragic wait with no end.

The act we are dealing with seeks to shorten the time a child must wait to be adopted, all the while ensuring that wherever that child is placed, his or her safety and health are the first considerations.

This act also contains important new financial incentives to help these children find adoptive homes.

State agencies will receive bonuses for each child that is adopted. And families who open their hearts and homes to these children will be eligible for Federal financial assistance in Medicaid coverage for the child.

I believe this is a good, bipartisan compromised packaged. The sponsors have worked hard to come together in support of a child welfare reform bill.

The majority leader has indicated that adoption legislation is one of the few select priorities to be dealt with before we adjourn in November.

So I want to thank you, Mr. Chairman, for holding this hearing. And I look forward to hearing the testimony from our distinguished witnesses. Thank you.

The CHAIRMAN. Thank you.

Senator Grassley.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA

Senator GRASSLEY. Charles Loring Brace, the founder of the Children's Aid Society and the Orphan Train System had this to say.

And I want to quote: When a child of the streets stands before you in rags with a tear-stained face, you cannot easily forget him. And yet, you are perplexed what to do. The human soul is difficult to interfere with. You hesitate how far you should go. End of quote.

Congress has been considering reform of this year that has caused all of us involved to ask how far should we go?

But after extensive research into the failure of the foster care system, I ask how far can we go?

This foster care system, of course, is a very complicated system that requires careful consideration by us legislators.

Meaningful reform can only happen when we recognize the gravity of the problem and take major steps to reform the system.

These issues are complex, but the solutions are also complex.

I want to recognize our colleagues as my fellow committee members have for your efforts of this issue.

You, too, understand how complex the issue is and yet stuck to it in a bipartisan fashion. It is a very unique coalition. And I was glad to be a part of it.

I understand that this subject is an uncomfortable, almost painful one for many, but the foster care system is in crisis. And that means that children are suffering.

Although the system was set up to be temporary and an emergency situation, it has become a lifestyle for too many children, set up and promoted by the system itself.

The Federal Government is pumping billions of dollars into a broken system that has virtually no accountability or performance measures.

We are getting what we pay for: long-term foster care.

Twenty-one States are under consent degrees because they fail to take proper care of children who had been abused or neglected.

Someone said, quote, the foster care—that foster care has been a black hole for many of America's neediest and most neglected children, end quote.

For the first time in 17 years, Congress has the opportunity to address the pain and suffering of these children.

The House bill is a small step towards fixing the problem. And the Senate bill offers even more.

I hope that necessary improvements are made on the Senate bill. I still have some concerns about a few of these provisions, yet I feel that the bill makes strides in the direction of real reform.

Thanks to Senator DeWine's efforts both bills reform reasonable effort's statutes. The Senate, termination of parental rights provisions are an improvement on the House language.

I support the provisions of the bill that requires States to make reasonable efforts to place a child in an adopted home. However, it does not ensure these efforts for all children who will not return home.

The language should be strengthened to strike all references to encourage States to make reasonable efforts to place a child in another planned, permanent living arrangement which is in the end long-term foster care. Long-term foster care should never be a State's goal.

I am very concerned about the new entitlements that this bill sets up. It would expand and direct IV–E money to drug treatment centers, homeless shelters, women's shelters, birthing homes, and psychiatric hospitals.

Now, this would be for the first time extend foster care payments to children still in their parent's custody. And payment would not be contingent upon success of the program.

I would encourage this committee to delay family preservation re-authorization until next year when it can have an appropriate review time.

Any real reform must strive to dramatically limit the time a child can legally spend in foster care, remove financial incentives to keep children in foster care, and provide incentives for success, not incentives for attempts.

Children need to know that they have permanency which means in the end successful, healthy reunification with their birth families or permanence in an adoptive home.

I have a foster—I have a poster in my office that inspires us to work for real reform. The Iowa Citizen Foster Care Review Board asks children who are waiting to be adopted what they would like to tell us.

And this is what the children said. And these are all separate quotes:

"Don't leave us in foster care so long."
"It is scary to move from home to home."
"Find us one good family where we can feel like a real member of the family."
"Check on us frequently while we are in foster care to ask us how we are doing and to make sure that we are safe."
"Tell us what is going on so that we do not have to guess."
"Tell us how long it will be before we are adopted and why things seem to take so long."

And then, I am ending here. That is the end of those quotes.

Dave Thomas of Wendy's was in my office Monday, saying that we need to make sure that these kids have a happy childhood.

He went on to say that for those who have had a happy childhood, it is hard to understand why. For those who did not have a happy childhood, you know why.

The CHAIRMAN. Thank you, Senator Grassley.

Senator MOYNIHAN. Mr. Chairman, could I ask Senator Rockefeller to indulge me for just one remark?

The CHAIRMAN. Please proceed.

Senator MOYNIHAN. Senator Grassley mentioned Charles Loring Brace and the Children's Aid Society and the Orphan Trains.

This goes back to the 1840's in New York City when you had a similar crisis of family formation and maintenance in this new industrialized city. It was a combination of many things, not in the least typhus and typhoid fever.

And these young Protestant reformers hit upon a good idea for all these Irish kids, Congresswoman Kennelly.

And they got together these trains twice a year. And they just filled them up with kids and drove across—headed west. They crossed the Mississippi.

And then, they stopped at every town in Iowa. And all the kids got out. And the farmers looked them over and picked one or two.

And then, they went on until there were no more kids, went back, filled up again. And it was a remarkable success.

And they still have annual meetings, these orphans are grandmothers now and great grandmothers.

And if present arrangements do not succeed, I suggest we keep on hold the idea of those orphan trains and those Iowa farm families.

Senator GRASSLEY. That is very true.

The CHAIRMAN. Senator Rockefeller.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. Thank you, Mr. Chairman. I will just put my statement in the record so we can get to our witnesses.

But I think thanks are important. And there is a lot of thanks sitting at the table waiting to give testimony.

Larry Craig, this could not possibly have happened without him. He brought folks together.

John Chafee, who stepped out for a moment, took a lot of time working with Mike DeWine and myself and others to bring this all together.

Jim Jeffords, Dan Coates, the critical addition to this coalition. Kit Bond, Mary Landrieu who is before us, Carl Levin, Bob Kerrey, Byron Dorgan, and you, sir, and you, ma'am.

So that needs to be said. What John Chafee said as he started off, this is bipartisan. It is terribly, terribly important this kind of legislation be bipartisan.

And it needs to be treated as an entire package, not just as parts of legislation. And I really think we have something here, putting the emphasis on safety first for children and moving them into the adoption system.

I think it is a fair bill, a good bill. And, as the Senator said before, one that the majority tends to take up in this month. So I thank the chairman.

[The prepared statement of Senator Rockefeller appears in the appendix.]

The CHAIRMAN. Senator Breaux.

OPENING STATEMENT OF HON. JOHN BREAUX, A U.S. SENATOR FROM LOUISIANA

Senator BREAUX. I, too, just want to join in congratulating our distinguished panel of witnesses. We have some real experts down here to share their thoughts with us.

I want to particularly commend my colleague from Louisiana, Mary Landrieu, for being in a leadership role in this area.

I assure you there is no one in the Senate that knows more about adoption than Mary does.

Senator LANDRIEU. Thank you.

Senator BREAUX. And we are anxious to hear from her recommendations on this, as well as other panelists.

Thank you for being here.

The CHAIRMAN. Thank you, Senator Breaux.

And as it has been indicated, we have the great pleasure of hearing from six members of Congress: Senator Craig, Senator DeWine, Senator Landrieu, Senator Levin.

We are very pleased to have Congressman Dave Camp and Barbara Kennelly here with us this morning.

I would ask that you keep your remarks to 5 minutes. And Senator Craig, we will be glad to hear from you.

STATEMENT OF HON. LARRY E. CRAIG, A U.S. SENATOR FROM IDAHO

Senator CRAIG. Mr. Chairman, thank you very much. And to this whole committee, a special thanks.

Senator Rockefeller has mentioned the coalition that came together here in the Senate with our staffs to resolve what you recognize, Mr. Chairman, as a very critical issues.

So special thanks to John Chafee, of course, and Senator Rockefeller and Senator Grassley and their staffs for being so involved as we worked out this issue.

I was reminded Sunday again why we are involved. If you any of you watch the Sunday news shows on the NBC affiliate station here in Washington, channel 4, one of the anchor women for years has done the program Tuesday's Child.

And she brings before the public through the media of television children who are under difficult circumstances and in most instances are in foster care to publicize them and hopefully for someone to come forward to adopt them.

And she has been quite successful. And many children have found loving, permanent homes.

But the reason I was reminded of why we are here this morning with 1195 or the PASS bill as Senator Chafee calls, it is because three beautiful children, ages 10, 8, and 7, all three of them sisters were brought before the public on channel 4 this past Sunday.

And once again, a plea, that these were beautiful, normal children who deserved a home, went out.

They had been inside the foster care system for 3 years. And I shook my head and wondered why, but I think we know why, those of us who have spent time with this issue to understand that we do by the nature and the character of the foster care system currently constituted provide permanency in a temporary system that does not offer the kind of loving care that we would hope for all children.

But let me recognize my colleagues at the table. And it is a pleasure to have Congressman Camp and Congresswoman Kennelly who brought together a phenomenal bipartisan effort over in the House.

And as Senator Chafee said, much of what we have here is a incorporation of those efforts, along with the efforts of Senator Rockefeller and Chafee and DeWine and Coates and so many others who were involved.

When a child's health and safety is at risk, we normally do not hesitate. We act quickly to remove that child from danger.

As a society, we have even set up a safety net to protect children who are at risk of abuse and neglect.

So I am here today to tell the committee that quick action is needed now because the children or the child welfare safety net is failing far too many of America's at-risk children.

At one end, it is allowing children to slip back to abusive home. On the other, it is trapping children in what was supposed to be a temporary care system.

Decisions are being driven by factors other than the child's own well being. And that should never have happened.

We have all seen the tragic results of heartbreaking news accounts of child injuries and fatalities, of staggering statistics about mounting numbers, of children in foster care awaiting permanent families.

The problem does not lie with the vast majority of foster parents, relatives and case workers who work vigilantly to provide the care needed by these children.

Rather the problem is the system itself and the incentives built into it. That frustrates the goal of moving children to permanent, safe, loving homes.

We introduced the PASS Act to fix the flaws in the safety net. It would fundamentally shift the foster care paradyne without destroying what is good and necessary in the system.

For the first time, a child's health and safety will have to be of paramount concern to any decision made by the State.

For the first time, efforts to find an adoptive or permanent home will not only be required, but documented and rewarded.

For the first time, steps will have to be taken to free a child for adoption or other permanent placement if the child has been languishing in foster care for a year or more.

In short, I think the reforms in this bill will do a lot of good to a lot of children who desperately need our help.

Having said that, I acknowledge this is not a perfect piece of legislation, Mr. Chairman. Frankly, I do not think a perfect bill pass the United States Senate.

That is because my perfect bill is probably different than some other Senator's perfect bill.

While we all agree on the goal of finding a safe and loving permanent family for every child, ideological differences can put us at different ends of a goal field.

And I think we have finally come together with the legislation we have before us.

As I know for sure, it was the perfection that brought us to the issue. And that is fair. And that is appropriate.

So a great deal of credit goes to a good many who have worked hard to produce this legislation.

We are willing to look beyond our legislative solutions to find the common ground. And I think maybe, we have found it.

We have found it. And we have brought those issues together.

So I would hope that we attempt to take this effort and make it the perfect effort that we would like to have as a bipartisan effort to resolve this issue because what is at stake is the future of children.

And that is the future of our country. And we could no better.

Thank you.

The CHAIRMAN. Thank you for your very eloquent statement.

[The prepared statement of Senator Craig appears in the appendix.]

The CHAIRMAN. Now, it is my pleasure to call on Senator DeWine.

STATEMENT OF HON. MIKE DeWINE, A U.S. SENATOR FROM OHIO

Senator DEWINE. Mr. Chairman, thank you very much. I am delighted to join my colleagues here at the table, all who have been very much involved in putting this legislation together.

To look at the committee, I am delighted to see this panel, everyone of whom has been very much involved in this whole issue, some of you for many, many years.

Mr. Chairman, we are here today to try to correct a policy that has led to the brutal abuse and in some cases the tragic death of thousands of America's children.

Let me tell you about just one of these children. Last February, the Los Angeles Times documented the tragic true story of a little 2-year old girl by the name of Joselin Hernandez.

Joselin was removed from her parents' custody when she was 6 weeks old. She was removed because she had broken legs, cracked ribs, and burns. Prosecutors say the injuries were inflicted by her parents.

This little girl, Mr. Chairman, was then placed in the custody of her grandmother. But tragically, her grandmother died. Joselin was then returned to her parents.

Three months later, Joselin was dead. Both of her parents have been charged with murder and are scheduled to stand trial.

Mr. Chairman, it should not surprise any of us who have looked at this issue that in the face of this evidence, the parents are now fighting for the custody of Joselin's younger brother.

There is no way, Mr. Chairman, that these children, either Joselin or her younger brother should ever have been returned to these parents.

But sadly, this is at least in part an unintended consequence of a Federal law that was passed in 1980.

And let me just say, as I have stated many times, Mr. Chairman, this is a good law. And it has done a lot of good, but it has had an unintended consequence. And this bill will change that.

This law required what it called reasonable efforts to be made to reunify families. But in practice, these efforts have really become unreasonable efforts with truly tragic consequences.

Unfortunately, the children I have mentioned are just a few of the victims. No matter what the particular circumstances of a household may be, I believe the State must make reasonable efforts to keep it together.

This is what the law seems to require, to put it—make reasonable efforts to keep these families together, families that are really families in name only.

Mr. Chairman, there is strong evidence to suggest that in practice, reasonable efforts have become extraordinary efforts, efforts to keep families together at all cost. And children have died as a result.

For several years, I have been advocating a change in the law to make explicit that the health and safety of the child always must be paramount in determining whether a family should be reunified.

I introduced bills in both the 104th and 105th Congress to clarify this law. And I am proud to say that my bill has been incorporated in both the PASS Act that we are discussing here today, as well as the adoption, promotion act which overwhelming passed the House of Representatives earlier this year.

Mr. Chairman, it is imperative that we set a very clear standard so that all of the adults that have such tremendous power over these very vulnerable children understand that the child's health and safety must come first and that these children must be protected from dangerous adults.

That is the purpose of the PASS Act. I think it is important that we change the law and that we do it quickly.

Delay means more tragic stories, more tragic stories of young lives shattered and lost.

I look forward to working with you and everyone on this committee to try to bring this legislation to the floor very quickly.

Mr. Chairman, over the last 2½ years, I have given probably 10 speeches on the Senate floor. And I think this is the fifth time that I have testified in a committee about this very issue.

Every time that I testify, I tell a different story. That is the tragedy of this, that the longer that we in Congress delay changing this law, more tragedies will occur.

Now, Mr. Chairman, let us be honest. The passage of this law is not going to eliminate every tragedy. We know that. We cannot save every child.

But I think it is abundantly clear from the evidence and from my traveling the State of Ohio and talking to people who deal with this issue every day that if we change this law, we will save children's lives.

We will never know who they are. We will never see them, but children will be alive next year and the year after because we changed the law.

We cannot save every child, but we can save some. And I think we need to move very quickly.

Thank you very much.

The CHAIRMAN. Thank you for your leadership in this most important area.

[The prepared statement of Senator DeWine appears in the appendix.]

The CHAIRMAN. It is now my pleasure to call on my good friend and colleague, Carl Levin.

STATEMENT OF HON. CARL LEVIN, A U.S. SENATOR FROM MICHIGAN

Senator LEVIN. Mr. Chairman, thank you and other members of the committee who all have played a critical role in this.

I just want to commend those who have been so tenacious in their effort to get this bill put together on a bipartisan and bicameral basis and to get it passed in both Houses.

This bill seeks to do a very humane thing which is to protect children. In order to do that, we must separate them legally from their biological parents more often than we have. It is necessary that we do so for the sake of children.

And the reasons that have been given already by Senator Craig and Senator DeWine and will be given by Senator Landrieu and our House colleagues, and you in your opening statements, each of you are eloquent testimony for why we must take this step, why we must protect children.

We must put them in permanent homes. We must more often than we do legally separate them from their biological parents and get them adopted. It is the right thing to do.

I want to focus on just one small part of this bill that I have been deeply involved in for as long as I have been here which is the need of some people who have been adopted, and I emphasize some peo-

ple who have been adopted to seek their biological parents or their siblings later on after they are adults.

For whatever reason, that need exists, both in some children who are adopted and in some indeed siblings who seek their own siblings.

Many States have registries where people who seek each other can find each other. About half our States have those registries.

The humane thing to do when we have two adults seeking each other is to permit them to find each other, just the way it is the humane thing to do for a child to make sure that child is in a safe and permanent home.

So when that child grows up, if that child seeks, for instance, to find a sibling from whom he or she has been separated and if the sibling wishes to find that child, it is humane to permit them to find each other.

One provision of this bill which I have been very active in helping to pass the Senate twice with the help of Senator Kassenbaum when she was here, now Senator Craig and Senator Landrieu and others have co-championed this language would be to provide for a mutual, voluntary registry which would be operated at no expense to the government to facilitate the mutually desired reunions of adults.

It is easier to legally separate people, children from their biological parents if you know that when that child becomes a adult, if that child, for instance, wants to find a sibling who also wants to find him or her that that will be facilitated. That is also the humane thing to do.

And so this language which has twice passed the Senate is in this bill. It has been defeated or not passed in the House because frankly the lobbying efforts of one person who is totally misstated or distorted what it does says that this language would open records which it does not, says that this language would provide money for people who are searching which it does not.

This language simply provides for a registry that would be—would facilitate those who wish to find each other, who are adults to find each other.

I want to thank Senator Craig, Senator Landrieu, Senator McKane and others who have taken on this cause with me.

I want to thank Senator Chafee and Senator Rockefeller and others who are the driving forces behind this bill, along with Senator DeWine and so many others who have incorporated this language in the bill.

And I want to end with reading a part of a letter from Michael Reagan who is the adopted son of President Reagan who has been a stalwart supporter of this language for as long as I have been. And he wrote me recently. This is what he wrote me. And I believe he has written letters to a number of you, as well.

"Once again, I would like to convey my strong support for the National Voluntary Reunion Registry which you are proposing along with Senators Craig, McKane, and Landrieu. I believe wholeheartedly in your humane approach to facilitating the desires of adult adoptive persons, birth parents, and separated siblings who seek to know one another."

"As you know, I am an adoptee who has had the great privilege of meeting my biological brother and sister and learning about the lifetime of loving and caring by

my birth mother," which, by the way, is not usually the instance in this kind of circumstance that you are talking about.

"My birth mother died several years prior to my reunion with my siblings. As we discussed during our meeting at your home a few years ago, my adoptive father, Ronald Reagan, supported my desire to meet my birth mother and helped me in my early efforts. When my father helped me, it was the greatest gift he ever gave to me. It is my hope that this compassionate legislation will be included in the final foster care bill enacted into law. I have used such a registry myself. And it has become apparent to me that my birth mother would have also."

Thank you, Mr. Chairman. And again, this is a small part of a very significant bill whose significance goes way beyond what this provision provides, but I did want to spend my time this morning focusing on this provision and again with my thanks to the sponsors of this legislation.

The CHAIRMAN. Thank you, Senator Levin.

Senator Landrieu.

STATEMENT OF HON. MARY L. LANDRIEU, A U.S. SENATOR FROM LOUISIANA

Senator LANDRIEU. Thank you, Mr. Chairman.

And again for your leadership, without it and without our ranking member, it would not be possible, I do not believe, without all the good work of all of us to get this done now, to pass it in this Congress.

I particularly appreciate the opportunity that Senator Craig and others have given me to join this effort that was well underway many years, of course, before my arrival here.

But I am happy to help add what strength I can to stop, Mr. Chairman, what I consider to be a national tragedy and a national disgrace of children being literally tortured and killed at the hands of their parents and relatives.

I have often wondered as a mother and one of nine siblings from a happy home how it would feel to a child to be tortured and killed by someone who is supposed to be caring and loving to them and for them.

But it is not just the immediate death and torture that, as Senator DeWine has pointed out and the many, many, many tragic stories that he has told, but, Mr. Chairman, we come this morning because there is a slow emotional death that also occurs in children who are left languishing in foster care, languishing on the streets, languishing in hospitals or in institutions, no place to call their own, no one to call their parent, their mother, their father, their grandmother or grandfather.

It is, Mr. Chairman, a national disgrace that this country that has managed to succeed so wonderfully in so many other areas has in my opinion failed miserably in trying to help to protect the most vulnerable among us.

With Senator Rockefeller's leadership and Senator Kerrey and others, the new science that shows that the first 3 years of life are so crucial to human development, the pre-natal, zero to three.

It is of great urgency that we take the step this year, now, this week, this Congress to help change a system that perhaps we have unintentionally become a party to.

And that is why I am a co-author of this legislation. It is imperative for us to make a quick assessment as children come into this

world, if they are in a family that can provide the kind of nurturing and support that they need to grow to be the kind of human being that God created them to be and to reach a capacity by the age of three so that they can cope with whatever tragedy might come their way.

It is clear we cannot stop every accident or tragic occurrence. But what we can do is to make our system of State and local and Federal agencies and private to work to see and to pay attention and give support.

This is the most important thing our government could do. I cannot think of another to help strengthen our families to create a system of quick identification and quick and permanent placement for children.

And millions of children at stake. Millions of communities are shattered and made weakened and weaker by our failure to do this.

So this bill is an important step. I think much more needs to be done. And hopefully, this legislation can go through. And it is very good. It can be improved.

In each Congress, we can continue to make progress until this National tragedy has been ended.

I want to close by a story briefly. I said if I could ever get to a microphone after hearing this young man speak that I would not pass up the opportunity.

But a young African-American male about 32 years old spoke to a packed audience in Louisiana. His name is Shane Salter.

How this young man turned out to be the most wonderful person that he is today, it is only a miracle of God because at the age of four, he stumbled out of a Brooklyn apartment, dirty, had been abandoned.

He says he cannot remember, but he was just very hungry. So he had to find the light. He found a police officer, led the police officer—how he did it on his own, I do not know—back to his little brother who was 6 months.

The police officer gathered the six-month old in his arms and took Shane by the hand and walked them to the agency.

That began a saga that never ended. It lasted his whole life. He never found a family of his own. He was never reunited with his family. He went from foster home to foster home, trying to keep his brother with him.

The struggle that this young man went through and how he turned out now to have graduated from college, adopted his own children to try to prevent that from every happening to young people again is a story to behold.

I hope he can testify before this committee. But his plea was, all I ever wanted was a home to call my own. And for some reason, he was just lost in the system.

It happens too often. It happens tragically. And we need to fix it. And we can. We have the resources to do it.

I would urge in my closing to give States directives, but to give them flexibility, support our juvenile courts as much as we can because these judges and case workers have to be given the support to make the kind of decisions that are very difficult for us to make here clearly in Washington.

The Kellogg Foundation is one of many I know that has done excellent work. I hope the staff will look at their recommendations.

And as Senator Grassley said, who I understand opposes it, but he is right on one: let us reward success and not just effort. Let us reward success because that is what we need. And children are depending on us.

Thank you so much.

The CHAIRMAN. Thank you, Senator Landrieu.

It is my great pleasure to welcome our two members from the House of Representatives, both of whom serve on the House Ways and Means Committee.

I thought I might lobby you a minute. I understand later today——[Laughter.]

The CHAIRMAN. Later today, you might be considering Fast Track. And I would certainly urge and hope that you will support the chairman in reporting this measure out today.

Senator CHAFEE. Now, whether you can testify or not today depends on whether you take that pledge. [Laughter.]

The CHAIRMAN. So indeed, it is a pleasure to welcome you.

Congresswoman Kennelly, do you want to start?

Congresswoman KENNELLY. Thank you.

STATEMENT OF HON. BARBARA B. KENNELLY, A U.S. REPRESENTATIVE FROM CONNECTICUT

Congresswoman KENNELLY. Mr. Camp has asked me to open. And I thank him. He has been an absolute delight to work with. And he continues to be.

And I thank you, Senator Roth, for allowing me and asking me to testify today.

When Congress adjourns probably next month, we will all be going home to our families for the Thanksgiving and Christmas holidays.

And yet, while we do that, 500,000 young children will be still waiting for permanent homes. And I can think of no better reason for us to say that we should see that this legislation is passed.

And so let me commend the bipartisan group of Senators who recently introduced this legislation known as the PASS Act to protect children and promote adoption.

On the House side, Representative Camp and I worked very, very hard to get together. Our staffs spent hundreds of hours, met with the children's groups that represented children and protected children against abuse from across the country.

But every so often, Dave Camp and I would get together and ask for the list of what the staff could not agree on.

And we sat there until we agreed on what should be in the bill. And each time in each meeting, David or I had to step away and not get what we wanted.

But it was the only way we could go forward and go to the floor with a bill that would pass, in fact by 416 to 5.

Your act, Senators, the PASS Act shares many similarities with the House legislation in promoting both protection and permanency for children.

Like the House bill, the PASS Act would revise the current Federal requirement that States make reasonable efforts reunify abused children with their families.

Both bills provide specific examples, illustrating when children should not—should not be returned home, such as when abandonment, torture, or sexual abuse has taken place.

Hard as it is for us to say these things, we know it happens and we must do something about it.

The PASS Act includes several other provisions of the House adoption bill, including financial bonuses for States that increase the number of children being adopted from foster care and a requirement that States expedite their reviews of children in foster care.

Of course, there are also differences between the two bills. Unlike the House bill, the PASS Act would make children more eligible for Federal adoption subsidies. And we re-authorize the family preservation program.

While there may be concerns about the cost of these provisions, a good argument can be made for providing more resources for our child welfare system.

However, if these costs, additional costs are going to hold the bill up, we should step back and let the bill go forward.

The Family Preservation and Support Program will spend about $2 million a year to my home State of Connecticut.

Coming from a State under court order to improve its child welfare system, we certainly can use that funding. And I support you for insisting on it, but hope you know when you are not going to win. And if you are going to win, keep going.

However, I do not think the PASS Act makes a wrong turn in two areas. First, reducing the House bill bonuses for States that increase adoption from $4,000 per child to $2,000 per child, I feel makes little sense.

I should remind that you CBO has said that the House adoption bonuses will actually save money by reducing foster care expenses. So there is no reason to reduce their size.

And second, I am concerned about the PASS Act's most stringent provisions on terminating parental rights.

Not only does the PASS Act require a judicial proceeding to terminate parental rights when a child has been in foster care for 1 year instead of 18 months as in the House bill, but it also eliminates an exception to this requirement when no effort has been made to help the birth family

Furthermore, the bill would prohibit appeals to TPR decisions after 1 year of the decision.

I know we all have the same objection of moving children toward permanency more quickly, but let us move with some caution when deciding the permanency that severs a parent's connection with their children.

And you are dealing with people who all understand that that decision has to be made.

Do not misunderstand these comments. While I do not agree with every change in PASS Act compared to the House bill, I firmly believe that the bill gets us one step closer to our shared goal of helping abused children find safe and loving and permanent homes.

And I must comment on Senator Moynihan's comment about the Irish children who went across the trains—across the country on trains, were lined up and families took them.

I am afraid we can never go home. Right now, we are in a society unfortunately where a child cannot even go and sell candy at a door, where a child cannot take his bike to visit a friend after dark.

And so we must in short urge this committee to report the PASS Act to the Senator floor so we can go to conference and send a bill to the President before we adjourn.

Let us not go home for the holidays and leave those children still not addressed.

I thank the Senators. I thank the Senate.

The CHAIRMAN. Thank you, Congresswoman Kennelly.

[The prepared statement of Congresswoman Kennelly appears in the appendix.]

The CHAIRMAN. It is a pleasure to now hear from Congressman Camp.

STATEMENT OF HON. DAVE CAMP, A U.S. REPRESENTATIVE FROM MICHIGAN

Congressman CAMP. Thank you, Mr. Chairman, it is an honor to be here. And I want to thank the Senators for their very valuable and compelling testimony and also to reiterate, I agree with everything Barbara Kennelly said.

It has been a pleasure to work with her. And together, we have been able to get this bill through the House. And I look forward to working with all of you in the future.

I am here today because I believe the Federal Government—I believe we have an opportunity to help a lot of children.

Based on all the information that has been presented to the Congress and on extensive discussions I have had with elected officials, with foster parents, with community advocates, I cannot see why any concerted effort to promote adoption led by Federal legislation will not result in 10,000, 20,000, or 30,000 more adoptions per year.

Adoptions are good for children. And the reason is simple. Nearly every adopted child is placed in the best child rearing machine ever invented, the family.

Children reared in families, especially two-parent families grow up to do well in nearly every measure, marriage, employment, education, avoidance of crime, and independence from welfare.

With adoption, we change a child's entire life. The new family stays with the child for his or her entire childhood. And that is why adoption is the most powerful social intervention known.

My major message to you today is this, anything that further delays the passage of a good adoption bill will hurt thousands of children.

The bill passed by the House and actually the bill before the Senate does two big things. They both do two big things to require States to move more quickly.

First, we identify circumstances, such as murder, child murder, and allow States to identify other circumstances in which it will not be necessary to provide services to a family before moving to adoption.

When a mother physically abuses her third child or a father has killed a sibling, States should move immediately to terminate parental rights and find adoptive parents.

Under current law, it is not all clear they can. Under our bill and under the Senate, there is no question that they can.

The second important step both bills take is to establish a specific time period by which States must take concrete steps toward adoption.

In addition to encouraging States to move faster, the other major provision in our bills is to give incentives to States that increase the number of children in foster care who are adopted.

According to the Congressional Budget Office, these incentives will produce their intended effect. In fact, the Federal Government will save enough money by speeding up adoption that the savings will exceed the money we spend to provide the adoption incentives.

Now, the Senate seems ready to act. And for this, I am very grateful and heartily congratulate all of the Senators and staff who have worked on your bipartisan bill, particularly Senators Rockefeller, Chafee, and Grassley who I have worked with.

My hope is that the Senate will pass a bill quickly, get us to conference. It would be a shame if Congress does not enact a bill this year.

Some believe that you cannot write good social policy without spending more Federal money. And I strongly disagree.

We can increase adoptions, move child protection policy a huge step in the right direction without spending more money.

And the House bill does it and has received overwhelming support.

Here are three facts about current spending of child welfare I hope you will carefully consider. First, there are a couple of charts over there.

Chart one, the Congressional Budget Office thinks that under current law, we will spend $28 billion Federal dollars on child protection programs over the next 5 years.

Spending will increase by almost 50 percent over the period. And we will spend $6.2 billion more Federal dollars than if we have continued to spend at the 1997 level.

Thus, we are already spending lots of money. And spending is increasing rapidly.

Secondly, the increase in administrative funding which is chart two is the most flexible of the entitlement programs.

That increases just as dramatically as overall spending. Administrative funding increases from $1.6 to $2.3 billion over the next 5 years, an increase of 45 percent.

So not only does spending increase, but there is a hefty increase in the category of spending that provides States with substantial flexibility.

And third, as many members of the committee will recall, just 3 years ago, we started a new entitlement program to provide services to families that abuse or neglect their children.

And according again to CBO, we are going to spend about $1.4 billion on that program over 5 years.

I would like to express my gratitude to the Senator for their formulation of a strong adoption bill and emphasize that my view is that additional spending is not required.

I am concerned that that could create a hurdle as we get to conference.

I close by stating that increasing the number of children who find loving adoptive homes is too important to be delayed.

Again, I would like to express my gratitude for the Senate's formulation of their bill. And I look forward to working with you all, hopefully in conference.

Thank you.

The CHAIRMAN. Thank you, Congressman Camp.

[The prepared statement of Congressman Camp appears in the appendix.]

The CHAIRMAN. On the question of additional costs, Senator Craig or any members of the panel, I would like your advice and comment.

According to the Congressional Budget Office, S. 1195 will cost over $2 billion if adoption assistance payments are delinked from current law eligibility requirements.

That means there will be no means testing in the future and that historically, of course, it will be unlimited payments to those who are low income, but this would open the door to everyone.

Now, I understand part of the concern is that making sure that adopted children have Medicaid available to them.

But, of course, we just passed a $24 billion program in that area. And I think most States are taking significant steps in that direction.

But my understanding is what this really does is shift cost from the States to the Federal, but it does not necessarily add any new adoptions.

Would one of you care to comment on that?

Senator DEWINE. Mr. Chairman, let me just——

Senator CHAFEE. I would stress that that $2.5 billion is over 5 years.

The CHAIRMAN. Yes.

Senator DEWINE. Mr. Chairman, I do not pretend to be an expert in this area. Let me just make one comment which is kind of a partial answer to your question.

The current system to me makes no sense, with all due respect. The current system provides that once a child is to be adopted that we look at the status of that child based upon the birth parents' status.

In other words, we determine eligibility based on birth parents.

Now, at that point, the child has no relationship to the birth parents really. It is gone.

So we are taking two sets of kids. And we are putting one stamp on one group of kids that says money will flow with you. And on the other group of kids, we are saying money does not flow with you if needed.

And we are doing it I think in an arbitrary and capricious way that makes absolutely no sense. I do not understand why we do it the way we do it.

It seems to me that we need to—the delinkage to me makes logical sense. It seems to be a question of equity.

And we ought to look at this from the point of view—not only the point of view of the child, but the actual status of the child.

And what we are trying to do is to encourage adoptions. And we are trying to assist in difficult adoptions.

And if that is what the goal is and we are trying to help people to adopt these children. I think we should always look at it from the point of view of the child and not the adoptive parents, not the natural parents. Let us look at it from the point of view of the child.

It makes no sense to label some kids as eligible for these, this money and others as not. And we do it based on the status of the birth parent and the income of the birth parent, not on the status of anybody else.

Senator CRAIG. Mr. Chairman.

The CHAIRMAN. Yes, Larry.

Senator CRAIG. I agree certainly with what Mike has said. And I grew more convinced of this as we worked to put this legislation together.

We have certain children that are simply going to require a certain level of care that a normal child does not. And we want these children in permanent, loving homes.

Therefore, it becomes very important that the money stay with the child, be with the child and not as a measurement of the parent.

And if that does not occur, I am convinced that a good many of these children will stay inside the system. And I think we just have to be concerned about that.

Now, we have attempted to find offsets. And we think we have, although others have a similar interest—or have interests in those offsets.

And we are going to have to work to get that done. And we hope this committee, your committee, Mr. Chairman, can facilitate us in doing so.

As Senator Chafee has said, this is spread over a 5-year period. But with the savings involved that Congressman Camp spoke of, the combination with facilitating greater levels of adoption, it is a net plus for us.

The CHAIRMAN. Well, as I have said, I think what the critics are arguing, and I am interested in your comments, is that you are basically Federalizing costs, shifting costs from the State to the Federal. And it is not adding new adoption.

Let me ask you this question, as you have said, Senator Craig, this bill is a compromise. It is not perfect. And I would ask any of the panel to comment.

What do you see as the two or three most important provisions of the bill which will have the most dramatic impact for helping the most children?

Senator CRAIG. Mr. Chairman, we change the mind set, if you will, of foster care. And that is what is so fundamentally important here.

And that is not to say that the mind set of caring that Senator DeWine has spoken to is wrong. It certainly is not.

But there is no incentive to move children into permanency. And also, as they were working to rehabilitate the birth family, in some instances in an non-rehabilitative way, the children languished.

So there are some key factors there that create trip wires of decisionmaking that are very important for the sake of the child that move it toward a permanent environment of care and promote that adoption at a much earlier time.

And I think that while you and I are concerned about cost factors, the diminishing cost that this bill will implement into the system is substantial.

And so we change the mind set. We change the culture. And that is extremely important, all in the positive sense of the child.

Senator DEWINE. Mr. Chairman.

The CHAIRMAN. Senator DeWine.

Senator DEWINE. Very briefly, Mr. Chairman, this bill will do two things. It will save lives. And that is the most obvious thing.

But I think that what we sometimes miss, and it has brought out today, but I want to reemphasize it, is that the current situation is a national tragedy where we have hundreds of thousands of children languishing in foster care, losing their childhood while we fiddle with the system and while we give and bend over backwards to give natural parents every right in the world and we forget the rights of the children.

Six months to you and to me and 6 months to me at the age of 50 maybe is not too long, but six months for a child who is 2 years of age is a fourth of that child's life.

We have children who languish in foster care, not just for two, three, and 4 years that we talked about, we have some who languish in foster care for eight, nine, and 10 years and their whole childhood.

We also have children, Mr. Chairman who I personally met and talked to who have been in 15 and 16 and 17 foster care homes.

Do we think that child has any chance of success? As my colleague, Mary Landrieu pointed out, any child who makes it through that, it is a miracle. It is a miracle from God.

And those are the children we need to worry about, as well as the children who are dying.

The CHAIRMAN. Senator Chafee.

Senator LANDRIEU. Mr. Chairman.

Senator CHAFEE. Thank you, Mr. Chairman. I would like to address Senator Camp—I mean, Representative Camp.

The CHAIRMAN. Could I—I am sorry.

Senator LANDRIEU. No, go ahead. I will add it later.

Senator CHAFEE. Go ahead, Senator.

Senator LANDRIEU. All right. Let me just add three points. When you ask what could be the most important provisions, I think the Senators have pointed out this focus on permanency.

And a good, permanent placement should be sort of our overriding principle. It is not just removing the child from harm which we, you know, sort of thought was maybe what we should be doing. And sometimes we are successful or not.

It is making a quick, wise decision based on the facts as we understand them and then giving permanency because what a child

needs is a home to call their own, parents to call their own, not just a group home.

I think giving States flexibility which this bill, even though it gives tougher parameters gives some flexibility is important, particularly at the court level and again rewarding success.

The other principle I think that is so important in this bill, hopefully can incorporate more of it, is accountability. A lot of these records are closed. It is hard to figure out what went wrong.

And in order to fix a problem, we need to know what is happening in the courts. A lot of the records are closed.

This bill does not address that, but I hope to focus some of time on it so that everyone in the system can be held accountable for the actions and decisions made, giving the children the protection and privacy they need, of course, but holding the system, including ourselves accountable for what we do.

Congressman CAMP. Senator, can I just follow up on that very quickly?

The CHAIRMAN. Yes.

Congressman CAMP. There are three things that are important that our bills have in common. One is we change the reasonable effort standard.

For years, the pendulum had swung way over to family preservation. And we are bringing it back, as Senators DeWine and Landrieu have said for safety and for permanency.

We encourage States to terminate parental rights in those situations where it is appropriate. And thirdly, we have an adoption incentive.

And those three are I think the critical items in the House bill and the Senate bill that we have in common.

The CHAIRMAN. Thank you.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. I would like to address a question to Representative Camp.

I think it is very important to remember that under this legislation—obviously, I am more familiar with our legislation than I am yours. But I think it is probably the same.

There are very new—there are new and burdensome, if you want, requirements on the States to take certain actions.

The States have to—in our bill, have to review every case, think of it, every foster child's case every 6 months, a court has to.

We have a limitation. You can only be in foster care for 12 consecutive months or I think—is it 18 months total? Twenty-four months cumulative.

And we have a background check, a police check of adoptive parents and foster parents. All of that takes money and effort by the States.

So we have a requirement in our bill, a maintenance of effort requirement that when we replace money, the money we replace if we are indeed replacing adoptive assistance payments or Medicaid, that the State must maintain—have a maintenance of effort in this program. And I think that is a good provision.

And I would like to stress the point that Senator DeWine and Senator Craig both made that we take care of in our bill.

And that is the current Federal law is that eligibility for Medicaid and for adoptive assistance is based on the income of the biological parent and/or if there has been a prior adoptive parent.

So you get the bizarre situation of a child might have been adopted by a family of some wealth. And then, that adoptive parent dies. And you have a successive.

And the child goes into foster care. And another, new parents wish to adopt that child, but the ability of that child—that parent to obtain Medicaid coverage of those children goes back to the adoptive mother.

We have a very case in Michigan, oddly enough, where the Hayes family wanted to adopt three children, 15, 13, and 12.

The kids have spent too much time in foster care, moving four times in 10 years.

They were adopted. This is the key thing. They were adopted, but returned to foster are when their adoptive mother died.

Because their adoptive mother was not poor, the children are not currently eligible for adoptive assistance.

And the Hayes family, the new adoptive parents cannot afford to take these children without Medicaid.

So we changed that. We go—we take the criteria based on the new parents that are coming up, not the biological thing. To me, that makes perfect sense.

And so I do not—I do differ with your provision in your remarks on the top of page 4 where you just say all we are doing we is substituting.

In reality, all this provision does is replace State dollars now going to adoption subsidies with Federal dollars.

In many instances, there are no States. For example, Michigan and six other States do not provide Medicaid coverage.

And 14 States do not cover Medicaid for children who are adopted in one State and move with their parents to another State.

So I want to give the rationale for our proceeding as we have.

Congressman CAMP. Well, providing Medicaid coverage to adopted children is something I would very much like to talk about I think.

But I do not believe that if we delink or Federalize the adoption subsidy that they will do anything to increase the number of adoptions.

And so what I would like to do is see our focus, how do we move kids out of foster care into permanent, loving homes more quickly?

And there is just no evidence that that will do that. So that is why I have a concern with it.

Senator CHAFEE. I did not quite understand what you meant: there is no evidence that providing assistance for the family, including adoptive assistance and Medicaid coverage.

Congressman CAMP. Well, the Medicaid coverage, I think might be a very good idea. And I would certainly like to talk about doing that. And I do not know whether we can do it in the context of this bill.

But providing Medicaid coverage for adopted children is something I would obviously like to work with you on.

But I think in terms of this adoption subsidy simply Federalizing that, that has been a shared responsibility with the States.

There is no indication that by simply Federalizing it that that will increase the number of adoptions in any way.

You are just changing the account the dollars flow out of. You are not making any policy change that is going to move kids out of foster care and into permanent homes more quickly. That is my whole concern with that.

Senator CHAFEE. Well, Mr. Chairman, our time is nearly up. Just quickly, is there any evidence that adoption bonuses increase adoptions?

I am not saying there is none. I am just not familiar with it.

Congressman CAMP. Well, Michigan has been doing it in a little different way since 1964. And it has moved kids out of the system and into homes more quickly.

And so—and we had testimony before our subcommittee from, you know, officials in the State Family and Dependence Agency.

Senator CHAFEE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. Yes. Senator Craig is gone, but I compliment him on his statement about the motive of the bill to change the mind set of foster care.

I think it would be more accurate to say that we are sending signals that we hope will change the mind set of foster care.

Possibly, one of the shortcomings of the legislation which otherwise is a very good piece of legislation is the lack of enforcement.

Of course, we can withhold funds from States, but we know HHS has had the authority to do that and over the last 3 years has not.

So I think we need to think in terms of how do we really make sure that the mind set has changed because we all agree that we have to change the mind set.

We are hoping this bill does it. And I am just suggesting we ought to make sure that this bill does that.

Senator DeWine, I am going to read four quotes. And I want your comment. These are from child psychology experts. "Federal incentives currently reward States for keeping children in foster care rather than finding adoptive homes for them."

The second one, "The Federal Government reimburses States for foster care costs on a per day/per child basis, a reverse incentive funding scheme that in effect rewards States for keeping children in care."

Third, "The needs of the system come before those of the children."

Fourth, "Whenever any agency is given a blank check to pursue unclear goals, inefficiencies abound. Until systems are rebuilt around performance and accountability, no progress will be made."

Are you concerned about the financial incentive of the system?

Senator DEWINE. Senator Grassley and Mr. Chairman, the answer is, yes.

And let me, if I could just digress for a moment, go back to a statement that you made a moment ago because I think it is so right on point.

We think this bill is going to change the situation. But one of the things that we are really doing by the changes that we are talking

about today is trying to change the culture or the climate in the whole child care area.

I have told this story before, but so many times over the last few years when I would talk to a children service agent, talk to a case worker and I would say, well, why did this tragedy occur?

They would come back to me and say, well, you do not understand, Senator. The Federal law requires us to do this.

And then, when you press them a little further, they would say Federal law requires us to make reasonable efforts reunite these families.

And so we have created a culture in this country, not just Congress. It has grown over the years.

In the last year or so, we are starting to change that culture. In hearings such as this and legislation such as this, I think is going to go a long way to change that culture so that we think first of the child, the best interest of the child, the safety of the child.

And I think that your point was right on about changing the culture.

Let me move to your second point and your actual question. I agree with you. I think this bill moves us in the right direction. As you have said, it does a lot of very, very good things.

I do not think it goes as far as some of us might like frankly into getting at what I would call the money problem.

And the money problem is that whatever you encourage or whatever you subsidize, you are going to get more of. That is basic principle.

We have started years and years ago to very understandably subsidize from the Federal level almost really as an entitlement foster care.

And so while we pay States per day, per child for foster care, we do not really—although there is a couple of exceptions in this bill, we do not or have not, at least in the past put economic incentives in there for them to, a, move children out of foster care and bring these cases up for resolution in court and not let these poor children stay in this limbo.

And second, we have not really created enough incentive for adoption. So we need to give the States more incentive and weigh it, skew it, if you could towards that way, as opposed to what we have historically done in the past which is to create basically an entitlement which says we are going to pay the State so many dollars per day, per child for forever if that child stays in foster care.

And I would hope to work with you and other members of the committee in the future to get at that real underlying problem in our system because I think it is a problem.

Senator GRASSLEY. Thank you very much.

Congressman Camp, last February, the House heard testimony that child welfare agencies have financial incentives to keep children in foster care too long. And child experts have cited financial incentives as a barrier to adoption.

A special needs adoption advocate testified. And I quote, it is our unavoidable conclusion that the biggest single barrier to adoption is the fact that the children have become profit centers for agencies. End of quote.

So my question is, will the limited bonuses in the House and Senate bills adequately address these serious allegations? How many children will actually be eligible for the bonus scheme?

And I have this estimate that I do not know whether it is accurate or not, but it has been estimated that it would cover about 7,000 children of the 50,000 that ought to be adopted.

Congressman CAMP. Well, I think the reason children are kept in foster care is a complicated one.

And part of it is that the foster care money is an open-ended entitlement. And they do, you know, receive those Federal dollars, regardless of what they do.

Both of our bills would change that in that we would have a time limit that a child can be in foster care only so long before proceedings must be initiated in order to terminate parental rights.

I think also by changing that reasonable efforts standards, we do change this culture that Senator DeWine talked about.

We do bring the pendulum back to the Senate where reasonable efforts became every effort.

And we have a very celebrated case in Michigan where literally a parent who had abandoned a child was flown back into the State, put up in a hotel, given a limousine.

And children that were in foster care for a year were yanked from these foster care parents and disrupted. And ultimately, the family did not reunite.

But that went on for years. And it is that kind of thing we are trying to change.

I do think the incentive monies—I do not have offhand the exact number of children that it would benefit.

But CBO has scored the bill that it would move children out of foster care and into adoption because they have scored the bill that it would, quote, save money.

So that means that, yes, children would be moved more quickly out of the foster care system and into permanent homes.

Senator DEWINE. Mr. Chairman.

The CHAIRMAN. Yes, Senator.

Senator DEWINE. If I could just add one more thing to your question. I do not think we are going to be able to do it in this bill or this year, but I think the idea that you and I have discussed which is your idea to more front load the money on foster care.

In other words, possibly pay the States and give them more money upfront in the first 6 months, in the first year.

But then, at some point, say, we are going to ratchet that money down so that the incentive is really on the State to figure out somehow how to move children into adoptive homes and how to terminate these parental rights in cases where we know they are never going to go back to their families anyway.

Some way to skew the money so that the money—more money is upfront to give the States more opportunity to put more emphases on adoption and things such as that, but then take that money at the end.

If that child has been in foster care for 2 years, 3 years, 4 years and say to the State, look, there is a limit to what we are going to pay because we do not think you are making the efforts overall that you should be making.

That type of change I think would be helpful.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Mike, if I just might ask you this on the reasonable efforts because I think that is a—you have been very, very strong on that throughout.

And I think the clarification of reasonable efforts is really important for everybody to understand on this.

You spent a lot of time working. One of the things that impressed me most about you from the very beginning that you have done this stuff. I mean, you have been in the thick of it yourself personally.

So tell me why it is that the reasonable effort changes that we make in this bill are in your view and mine right.

Senator DEWINE. I think the key is that we specify and clarify what I think everyone—and I am sure I was not here in 1980. But I am sure everyone thought the law was then in 1980 when it was passed, but we spell it out.

And I think what we have learned is in 17 years that what Congress thought it did in 1980 has been interpreted in very strange ways over the years.

Congress simply said in 1980 we should make reasonable efforts to reunify families. That was it. And you had to keep showing that you are trying to make reasonable efforts.

Unstated was the obvious. And sometimes, I guess you have to state the obvious. And that is that the best interest of the child should always be paramount, number one, over and above anything else.

And then, number two, going along with that, the other side of that is that the safety of the child has to be paramount, as we say in this legislation, use that language.

That I think I am sure everyone in 1980 assumed was a given. But I know from traveling in the State of Ohio and talking to people who have to deal with this every day and talking with judges that many times, it is not interpreted that way.

And many times, people are doing things that they would not do, but for their interpretation of the Federal law. This will remove that.

Keep the language in there that says you should try to make reasonable efforts to reunify families. That is a given. That is good, but let us make it very, very clear the safety of the child is always paramount.

The other thing the bill does is to set forward as the House bill does very specific circumstances that are sort of the bottom line. Hey, if these things, clearly, you do not have to make reasonable efforts.

Senator ROCKEFELLER. I think your point is so important because I think it is easy for people to get confused and say, why are you re-authorizing the Family Preservation Act of 1993 and then going ahead and saying, yes, but we want to cut it off earlier. The safety of the child comes first.

I think the point is that both are important. And you have made that point.

I can remember even in this committee a number of times talking about the theory that if you take two social workers or take a social worker and give that social worker two families who are in trouble that the chances are, you know, fairly reasonable that you give that social worker enough time and not too many families that they can make a difference.

And that is important. To the extent that it works, that is important. But there is a time where that cannot work.

And when it does not work, then you have to stop just pretending it might. And so therefore, you have balance of family preservation and much more aggressive moves towards adoption. I think that makes a lot of sense.

Senator DEWINE. Absolutely, Senator and Mr. Chairman. Ultimately, that balance cannot be made by me or by you. It has to be made by the case worker who is in the field, who is looking at that child, who is looking at those parents, who wants to make—who has to make the best decision they can make.

And they will not always make the perfect decision because they do not have a crystal ball. But what we do in this legislation is level it out the playing field so that they can make that decision based on the best information they have.

I am convinced that since 1980, they have not been able to do that. They have perceived it.

The people who actually have to make these literally life and death decisions have perceived it to be, we have got to keep going back and making these efforts to satisfy the law, even when we know in our heart it is the wrong thing to do. This will change that.

Senator ROCKEFELLER. Thank you, Senator.

And Senator Landrieu, Mary.

Senator LANDRIEU. Yes.

Senator ROCKEFELLER. As has been said, you know this firsthand and directly. Do you think that one of the reasons that the—on that chart that the spending goes up is because in fact there are just simply a lot more children today who are at risk?

We are finding out who they are. Abuse and neglect reports continue to rise. That is more on the public conscious.

Senator LANDRIEU. Correct.

Senator ROCKEFELLER. And therefore, we are following that following up. And is that, do you think, the main reason that those numbers go up because we are counting many more children?

Senator LANDRIEU. Correct. And let me say that I support the Congressman's, one of his central tenets that we are really wasting a lot of money currently in the system because our incentives are not properly fixed and that we could, even within the current context without spending any more money really improve the situation.

However, I am aware that the rising population and the increase of people calling and as we raise the consciousness of this issue, there are going to be more and more and more children.

And some additional resources are clearly necessary for adoption bonuses, as in both of our bills and more support at the local level.

If I could just add one point that does have me concerned. And I want to put it on the record. as you know, the violence in our

homes in many—in some instances, it is the women who are being violent toward their children.

But in the vast majority of instances, it is men being violent towards the women and the children.

It is a double tragedy for a mother to watch her child being killed at the hands of either a man she is married to or living with without her being in a position to stop it and then have her other children taken from her.

Now, I think we have to be very careful here. I support termination of parental rights, but I also support punishing and getting the punishment right for who the right perpetuator is.

I think a lot of women are caught in horrible situations. And the system has to work. That is why I keep sounding like a broken record about flexibility.

But I think you better let your case workers and your judges and the people there on the ground make the right choices about what to do and give them a whole list of things that are possible, ranging from subsidy and a shelter which I hope is part of this to, you know, foster care, to adoption.

I mean, it is not just the adoption piece. It is everything. So I am just—I am supportive. I am here.

But I just think that we need it. That is what I said, this bill may not be perfect. Let us take the step and continue to work.

And I just think the more flexibility we can give and the more support, financial and otherwise, would be helpful.

Senator ROCKEFELLER. Thank you, Mr. Chairman. And I will just conclude by saying that one of the things that I like about our bill is not only that we establish the priority that children's health and safety come first, but also when it comes to termination of parental rights, that is not something which is done, as you have indicated in a casual fashion.

That cannot happen without a judge saying it can happen or it cannot happen on a case-by-case basis.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Rockefeller.

And I want to express my appreciation to the panel. I think your testimony has been most helpful. And we look forward to working with you. Thank you very much.

It is now pleasure to call upon the panel of expert witnesses. I would ask them to come forward, please.

The Honorable David E. Grossmann has been Judge of the Hamilton County Juvenile Court since 1976. And because of his efforts, Hamilton County is considered to be a model for the management of child abuse, neglect, and dependency cases.

He is President of the Ohio Association of Juvenile and Family Court Judges and an Immediate Past President of the National Council of Juvenile and Family Court Judges.

We also have Mr. Joseph Leean who is Secretary of the $3.7 billion Department of Health and Family Services for the State of Wisconsin.

He has responsibility for a number of health and social service programs, including Medicaid, adoption, child welfare, and drug abuse prevention.

He was a member of the State Senate and is a former Co-Chairman of the State Joint Finance Committee.

And then next, we have Mr. Robert Guttman who runs a program in Washington, DC that provides volunteer legal advice to foster parents who want to adopt abused and neglected children.

Previously, Mr. Guttman served as a staff member in Congress of the Congressional Research Service, and in the Senate, including as Chief of Staff to Vice President Dan Quayle.

We have Mrs. Faith Loney. She is a foster parent from Southfield, Michigan, who is here to tell us about her experiences as a—family experiences with the foster care system.

Finally, we have Dr. Valora Washington who is Director of the Kellogg Foundation, a $42 million Families for Kids Program which funds projects in 11 States.

Dr. Washington has a doctorate in child development. She has held administrative and faculty positions at American and Howard University, Antioch College, and the University of North Carolina at Chapel Hill.

It is indeed a pleasure to welcome all of you.

And Judge Grossmann, we will ask you to begin.

STATEMENT OF HON. DAVID E. GROSSMANN, JUDGE, HAMILTON COUNTY JUVENILE COURT, CINCINNATI, OH

Judge GROSSMANN. Senator Roth and Senators, I appreciate the opportunity to come before you and testify on this most serious subject.

I offer myself as an old judge who has long labored in the vineyards of the juvenile systems. I began my work in Cincinnati in 1959 as a magistrate and become a judge in 1975 and have now just about completed my 23rd year as the presiding judge of our court.

Senator CHAFEE. Excuse me. I would say that each of the witnesses has 5 minutes. So if you would do your best to adhere to that rule, then we would have a chance for questions. Thank you.

Judge GROSSMANN. I have some personal interest in this subject because I have nine grandchildren, two of them are adopted.

I have a daughter-in-law who is also adopted and has recently found her birth parents and her birth siblings.

And I know firsthand what some of the anxieties and trauma that go with that are involved.

Many of you and many of the panel have already observed the tragedy, the national scandal, I would call it, of almost half a million children who languish in foster care or out-of-home placement.

We know the problems that have precipitated that. We need not rehearse them now, although it is always worthwhile to remember that we have some significant fractures in our society involving the increased divorce rates, the breakdown of family, the problems of unwed mothers who are by the way struggling in many cases, many who do not know how to raise a child because of their own abuse and neglect in their childhood.

Also, they lack support from husbands or from fathers who have failed to support them either emotionally or physically or monetarily. And I see this every day in my court.

We have all struggled with this. The numbers on the board before tell us much money has been spent. We have tried and tried and tried, worked diligently, but I am not so sure we have worked smart.

If you will pardon an old judge's observations in this area, I think perhaps I may have slant on this that might be helpful to all of us.

I had the privilege some almost 11 years ago to chair a committee of metropolitan court judges. And I brought a copy of their work with me called the "Deprived Children: A Judicial Response," 73 recommendations.

This committee was made up of 40 judges who were the presiding or lead judges in the biggest cities of the United States.

And they were struggling back there in the mid-1980's with the same problem that you are struggling with today.

And they came forward after 2 years of hard work with this document. And I would like to submit it as part of the record here with the committee today because the observations of those 73 recommendations I think will be very interesting to you as you work on this bill.

[The document appears in the appendix, at page 150.]

Judge GROSSMANN. As I said, they worked diligently. Not all of us have been successful in the attempts we have made to bring permanency to children.

I think almost of the sorcerer's apprentice who constantly was trying to bail the inundation of children coming into the system and the process of trying to relieve the swelling waters of children that were lingering in foster care.

And the drains were not working right. The drains that would take them to permanent homes, to loving homes were not working right.

And as I watched this, I was very concerned in my own career because it has been part and parcel of my life for the better part of almost 40 years.

Let me tell you what I think part of the major problem is as a very brief tale of two cities. Cincinnati, Ohio is a large metropolitan area. It comprises about 900,000, a little less people in the county in which my jurisdiction exists.

And we have had a very, very forward-looking county, supplying many of the needs of the children, a very forward-looking process of child care and child welfare.

But in the 1980's, we still had 4,500 children in foster care, in out-of-home placement, placed there under the authority of the court and languishing.

As a result of that, we took immediate steps. We began, first of all, to develop a very significant management information system that told us in detail where all these children were and who they were.

We front loaded our system, set up a panel of four or five, six magistrates to handle these cases, to move them swiftly through the system to attempt to correct our problems.

As a result of that, as I sit here this afternoon, we now have only 1,400 or 1,500 in that pipeline. That is a significant drop.

The tale of two cities, my dear friend, Nancy Sauers who is the presiding judge of Chicago, Illinois. She has a dual system.

If I may just have 30 seconds.

Her problem is that she has 30,000 children in the pipeline in Cook County. And as a result of that—by the way, there are 50,000 in the State of Illinois—the court is literally foundered.

The problems that you seek to adjust cannot be adjusted until we have strong, well informed, effective and efficient courts.

The courts are the key to the solution of the problem. We need to strengthen them in every way we can.

If we are going to pass the aid to children, the bill the PASS Act has in reference to further assistance to foster care and to reunification efforts and to that affair, we need to strengthen aid to the courts through the court improvements bills.

I would strongly urge you to look at that. I can assure you, if we strengthen the courts, much of your problem will start to ameliorate and resolve itself.

The CHAIRMAN. Thank you, Judge Grossmann.

[The prepared statement of Judge Grossmann appears in the appendix.]

The CHAIRMAN. Mrs. Loney.

STATEMENT OF FAITH LONEY, FOSTER PARENT, SOUTHFIELD, MI

Mrs. LONEY. Chairman Roth and members of the Finance Committee, good morning and thank you for the opportunity to be here today.

We feel an overwhelming sense of appreciation toward Senator Chafee, Senator Rockefeller, Representative Camp, Senator Levin, and all those who have worked so diligently to bring H.R. 867 and S. 511 and now S. 1195 to light.

Mrs. Tammy Patton and I come to you from the Detroit metropolitan area where our most important credential is that of parent and foster parent.

We have been foster parents for 5 years and in addition to our own birth children have collectively fostered 18 boys and girls.

I currently have three children placed in my home which is licensed for the care of four.

It is a privilege to speak on the behalf of our past and present foster children and all those who languish in a system which purportedly protects them, but too often persecutes them as a result of loose and misconstrued terminology.

I am pleased to support the majority of changes in statutes that comprise the Promotion of Adoption, Safety, and Support for Abused and Neglected Act or PASS.

For over a decade, the policies covering children's welfare has seemingly benefitted everyone, except the children by weighing parental rights against best interest.

I have never believed the current wording of "reasonable efforts" was intended to be interpreted as "at all costs."

Yet, every day, more children fall victim to false perceptions of this law. Additional barriers include agencies with over burdened case loads, languid attorney representation, complacent attitudes,

and lack of panoramic views when dealing with preservation of parental rights.

I would like to briefly share with you the history behind two cases and how the current system failed the children physically, emotionally, and mentally.

In case number one, an infant was left abandoned at the hospital. He was positive for cocaine, but had no immediate physical concerns. He is the eighth child born to his mother, none of whom she has raised.

Issues she has faced include abandonment, neglect, physical abuse, and poor social interactions.

All her children were adopted out through foster care or raised by relative placements. The infant has an older brother who was adopted out just three days before the child was born.

The mother does not respond to court orders and fails to show up in court. At the permanent custody hearing at the 6-month juncture, the mother showed up and said she wanted to plan for her child.

That child is now 15 months old and has been a temporary court ward all his life. His mother still needs a magnificent amount of time to be able to effectively care for herself or her child who is termed medically fragile.

Reasonable efforts could literally cost this child's life. A supervisor for the case said, we know that if we send him home, he will come back into care and in a short time, but the law says we must.

The second case is five siblings are placed in care in separate homes. Governmental agency support has valiantly tried, but failed in their attempts to rehabilitate both parents and maintain the family.

The children have suffered severe neglect, mental neglect, medical neglect, physical and sexual abuse.

All the children were born positive for drugs. And two are medically fragile. All but the infant shows emotional problems.

The mom is incarcerated. And the dad suffers physical limitations because of his past social life.

Due to the time that the children have spent in care, it is now time for permanency planning.

The children spent two weekends visiting with their father at his mother's home. The father has no source of income, no place of his own to stay, and zero reliable resources.

During both visits, neighbors called Protective services for substantiated neglect and physical abuse.

The plan for family reunification continues to be pursued based on reasonable efforts for reunification.

Based on just these cases, you can see why I am most anxious to have some portion of this bill enacted.

I am particularly encouraged by the decreased relevance of reunification over best interests, the removal of geographic barriers in county jurisdictions as determining factors for placement, and State accountability in the form of required documentation of efforts for permanency.

Every day that we wait on this legislation costs children all over the United States a lifetime of unnecessary suffering.

Unfortunately, a significant number of these children have spent the entirety of their formative years within the foster care system.

Mrs. Patton and I have been accused of being over zealous in our efforts to assure that children's rights are maintained.

Often our concerns are met with acrimony. And we have endured various degrees of slander.

However, we continue to be the voice for the inaudible cries of children we know are harmed by institutionalized emotional abuse.

We believe that all children have the right to grow up in a stable environment, maintain their childhood innocence, and inherently have a sense of security.

If biological families cannot provide these elements within a timely manner, should children be forced to pay with mental instability, low self esteem, no sense of belonging, and general apathy?

General concerns I have about S. 1195 include section 104, transition rule for current foster care children, a 1-year appeal period at the termination of parental rights and requirements for criminal background checks of foster families and staff members, but not relatives, the financial burden of enacting these laws, and private versus State agency's enforcement of the act.

May I just have a moment?

The CHAIRMAN. Yes.

Mrs. LONEY. Mr. Chairman, it concerns me deeply that none of the proposed changes affect the care of children in—affect the children in care right now.

With the transition rule, it would be more than a year before the hundreds of thousands of children in foster care today could hope to have some resolution in their lives.

In the life of a child, a year is a phenomenal amount of time.

This bill is a major undertaking. And many of our prominent figures are already saying it is an unaffordable task.

The portions of this—if portions of this bill or its entirety is enacted, measures must be taken to ensure that guidelines are adhered to.

The examples that I share with you today are not based on statistics, hearsay, or rumors, but experiences that I share every day with foster children throughout my community.

The children in today's system require that we all take accountability and do our parts to ensure them promising futures.

Thank you for your time for letting me express myself here today.

The CHAIRMAN. Thank you, Mrs. Loney.

[The prepared statement of Mrs. Loney appears in the appendix.]

The CHAIRMAN. Mr. Leean.

STATEMENT OF JOSEPH LEEAN, SECRETARY, DEPARTMENT OF HEALTH AND FAMILY SERVICES, STATE OF WISCONSIN, MADISON, WI

Mr. LEEAN. Thank you, Chairman Roth and members of the committee, looking at Senate bill 1195.

I am Secretary of the Department of Health and Family Services in Wisconsin. And we have a long, proud history of child welfare services and more recently have assumed national leadership on welfare reform.

I want today to verge just a moment because there are people I think, nay sayers so to speak, that suggest that welfare reform may in fact, as we encourage people to work, require in fact that people work that it may over load a child welfare system.

In Wisconsin, we had our W2 welfare reform based on Work Not Welfare in two counties during a pilot prior to the passage of the Federal Welfare Reform Act and in fact prior to implementing W2 in Wisconsin.

We had Work Not Welfare pilots in which we had significant case load reductions of AFDC: 95 percent in one rural county, 75 percent in a much more populated county, and in both counties had reduced child abuse and neglect reports.

Researchers have indicated that self reliant, working families in fact make better parents. And our experience in Wisconsin in fact bears that out.

So I believe that welfare reform and child welfare are integrally related because strong, healthy working families in fact raise children with the same attributes.

Our welfare reform in Wisconsin and the child welfare system we believe in such a link in fact will help to reduce the incidence of child welfare and the abuse and neglect reports.

We are equally proud in Wisconsin of our leadership in the area of child welfare services.

The PASS Act seeks to establish by Federal law many of the laws that are already enacted in Wisconsin.

We have adoption laws that are a national model. Our Children's Code was recently revised to assure timely termination of parental rights.

We have additional annual dispositional hearings for children that have been on our books for years. Criminal record background checks are already required. And foster parents are allowed a voice in court.

We believe that these are good parts of this bill and the House bill.

Furthermore, we have advanced in Wisconsin the principles and practices of child safety for the last 10 years.

And quite frankly, we emphasize and believe that this bill is very strong in emphasizing children's safety and also outcomes.

And I have in Wisconsin just begun to look at outcome and performance, report cards, so to speak, on our efforts to increase the adoption of special needs kids.

I understand that there are people that will criticize that the Federal Government that the IV–E provides incentives to keep children in a foster care situation.

In Wisconsin, that is not the case. Our counties do not receive more money. It is a sum-certain appropriation for the year. And they do not have a financial incentive to keep children inappropriately or languishing in a foster care system.

Certainly, the time limits in S. 1195, we can certainly support. We are concerned that the Congress has struggled to reached consensus on a child welfare bill.

We are very much in favor of the efforts that the House put forth in their bill. And we encourage you and the House of Representa-

tives to work together this year to pass a compromised bill on child welfare.

I would like to take just a couple of minutes to highlight some of the provisions. We fully support the language that confirms our belief that children's health and safety are paramount.

There are two words in the Senate bill that we would urge you to delete. When you say that reasonable efforts should be made to preserve and unify family, you follow it with two words that say "when possible."

We do not believe those words are needed and in fact, could possibly be used as an excuse to not make reasonable efforts when in fact reasonable efforts should be made.

And we think the rest of your language focusing on the safety is paramount. And the time limits make that strong enough.

And we would encourage you to take a look at those two words.

The adoption incentive payments, we are very much in favor of. And we think that adding and being able to use the money for the safety and permanence of our children is important.

The Senate bill suggests that adoption across State and county jurisdictions should be very prescriptive.

We would encourage you to let that study go forth. Do not in fact threaten the interstate compact. And perhaps look at the jurisdiction on adoption, but not on foster care.

Sometimes, geographical location is important, if there is a chance to reunify families.

We are very much in favor of the permanency planning hearing. However, we would encourage you not to require the courts to do it every 6 months.

Current law will allow for cases to be reviewed as an administrative review panel every 6 months. Let us not over burden our courts more than they already are.

I hate to conclude on a negative, but it is very, very important. The cost that is going to be allocated to States to fund this where in fact the funding is going to be taken out of a capped Federal grant on TANF for all administrative funds.

When there are Medicaid, IV–E, and TANF families, we think is an unfunded mandate on States.

I encourage you not to jeopardize the passage of a very needed child welfare bill by the language in the Senate bill that in fact becomes an unfunded mandate by taking and not allowing for the allocation of administrative costs for Medicaid, for IV–E, and in fact putting it all on TANF.

We do not even have all of those programs in the same agency in Wisconsin. That is typical across the country.

Let us not rob Peter to pay Paul in this particular essence and in fact cause animosity between programs.

Unifying and wrap-around services are important. And that particular funding mechanism would be very detrimental.

Thank you Chairman Roth and the committee.

The CHAIRMAN. Thank you, Mr. Leean.

[The prepared statement of Joe Leean appears in the appendix.]

The CHAIRMAN. Dr. Washington.

STATEMENT OF VALORA WASHINGTON, Ph.D., PROGRAM DIRECTOR, KELLOGG FOUNDATION'S "FAMILIES FOR KIDS" PROGRAM, BATTLE CREEK, MI

Dr. WASHINGTON. Thank you very much for the opportunity to testify here today. I am here to share the experiences of Families for Kids, as an adoptive parent myself and the Director of the Families for Kids initiative of the Kellogg Foundation.

We are working in 11 States toward a common goals to achieve permanency for children who are waiting in foster care.

As the largest and most comprehensive effort ever formed, our experiences are grounded in the wisdom of more than 14,000 people in 19 States.

And we are working in public and private partnerships. We do not represent any special interest.

Rather, in everything we do, we are looking through the eyes of the child, putting their needs and interests first, doing what we know works, focusing on solutions that are available now, bringing more accountability into the child welfare system, looking at concrete results, and outcomes for children.

Through our focus on looking through the eyes of the child and staying focused on results, more than 70,000 children have been placed in adoptive homes in the past 2 years.

Countless others through our efforts have been stabilized and kept safe in their birth families.

Our vision is very clear around five achievable outcomes. First, we believe that children should only wait 1 year for a permanent placement.

We believe they should be in one stable foster home, that they should have one family-friendly assessment process to determine their need.

They should only have one case worker or one case work team and that there should be comprehensive support for families and care givers.

We have debated these for years in our communities. And that is how we came up with this vision.

This is not an intellectual brainstorm. It is grounded in the experiences of communities.

We believe that these five outcomes have to interact synergistically to achieve lasting reform.

My written testimony shares the lessons we have learned about how to achieve these results of promoting adoption, assuring safety, accelerating placements, and increasing accountability.

In my oral testimony, I want to simply highlight a few issues for your consideration. Much today has been said about family preservation. And often this is contrasted as a versus adoption.

Looking through the eyes of children and the success we have achieved in Families for Kids, we feel that while we promote adoption, many times family preservation, as you know, is well appropriate.

What we have learned by actually working with families and communities and in States with thousands of children and families is that our citizens want us to keep families together when this can be done safely and in the best interest of the child.

They do not want children to be kept unsafely where it is not in the best interest of the child.

We often hear a lot of stories and dramatic cases about children who have, as one story in the Washington Post described it, been returned to murderers.

But what we found in working in our 11 States, I can assure you that the citizen professionals working there take child safety very seriously.

And looking through the eyes of children, we approach the troubled parents with respect and humility.

We know that there are many times that children should never, ever return home. But in our communities, we try to offer them the support that they need and encourage reunification.

But we warn families and advise families that speedy placement of children into new permanent homes will occur.

For example, in our Families for Kids cite in Michigan, this approach has led to a sharp reduction of children who even enter the county welfare system in the first place.

And we are delighted when family preservation efforts succeed in the continuum of permanency options.

But in Families for Kids, we are steadfast in our guideline that children should have only one year of waiting before adoption or permanent placement.

We promote adoption in a lot of ways through comprehensive efforts, speeding court action, expanding employer-paid adoption benefits, offering incentives, such as vouchers, innovative use of technologies and computers, and specific child recruitment concurrent planning and other efforts.

One year to permanency has been perhaps the most controversial and difficult decision in our communities. And we have continually debated this premise.

But the bottom line is a year is a very long time through the eyes of a child. Remember when you were a kid and the time you spent waiting from on birthday to the next just seemed like an eternity.

Kids without homes cannot be kept waiting while the adults and systems around them wallow in indecision or inaction.

Finally, I want to encourage you to do everything you can as fast as you can to increase the accountability and results focus of the systems that serve our waiting children.

For the simple truth is your efforts to promote adoption or sure safety depend on basic information, like knowing who the children are, knowing how many there are, knowing where they are.

And the frightening truth is that in too many communities, there are still in a way counting on their fingers, using outdated technology.

And in community after community, we found that our reformers had to begin with the fundamental task of getting hard data, establishing base line data, building their capacities to access and use information in the service of reform.

And following years of this kind of basic work, all of our Families for Kids cites are using data not only to describe children in system processes, but also to drive change that works for children.

We are very much aware and happy that there has begun now some mandatory reporting system. And this effort is going to need support.

Just very quickly, may I conclude by saying that permanent homes and finding permanent homes for children can be achieved. This is a challenge that can be solved.

Our experience working in the 11 States shows us that many States are already moving in the direction of what you are talking about here today to implement legislation that accelerates placements and streamlines the timeframes.

Many of the States are already engaged in far reaching changes of the kind that you are talking about.

No one State, we believe, has all the answers, but together these efforts are clearly designed with the principle of timely, permanent as an organizing concept while paying attention to the critical issues of culture, community, and families and decision making.

Thank you very much.

Senator CHAFEE. Thank you, Dr. Washington, very much.

[The prepared statement of Dr. Washington appears in the appendix.]

Senator CHAFEE. I just want to explain to the panel there is a vote on now. That is why the Senate has gone over to vote. Senator Roth will be right back.

As I mentioned, there is a vote on now. And we have 10 minutes or so before the conclusion of the vote.

But I would like to proceed now with Mr. Guttman. I am delighted to see you.

STATEMENT OF ROBERT M. GUTTMAN, ATTORNEY AT LAW, WASHINGTON, DC

Mr. GUTTMAN. Thank you, Senator. You may not remember, but back when you were on the Labor Committee, I handled a number of amendments for you in job training legislation.

Senator CHAFEE. I remember that.

Mr. GUTTMAN. We have added two. Three for three I think it was.

Senator CHAFEE. It was the last time I hit so well. [Laughter.] Go to it.

Mr. GUTTMAN. Senator, I hope my testimony will give you a somewhat different perspective on the child welfare system.

I come here and I represent no one but myself. I have no official part in the administration of the child welfare system. And I will neither gain nor lose a dollar no matter how you write this bill.

I am here because 4 years ago, I volunteered to run a project to provide pro bono lawyers for foster parents who wanted to adopt the children who had been placed with them.

From that vantage point, I have become familiar with the child welfare system in DC. And anybody who becomes familiar with that system gets a heartened desire to reform it.

In this statement, I would like to make four points. The first and most important point is that the problems of the child welfare system are not caused by provisions of Federal law.

I cannot over emphasize the importance of this point because only if you understand that can you find the right way to deal with the problems.

To paraphrase Shakespeare, the fault here, Senator, lies not in your laws. It lies in the unresponsive bureaucracy that has grown up to administer them.

What we need to do is not to correct the technical errors in the statutes, but to find ways of changing the bureaucratic behavior.

Or as Senator Craig said, to change the culture. Senator Rockefeller said to change the mind set I think.

That is what we need to do in the child welfare system. And it is a much more difficult thing than making corrections in law.

I learned this lesson from the project I run. If the law worked the way it is written, foster parents would not need pro bono lawyers to help them adopt their children, but need them, they do.

Real life in the child welfare system bears little relationship to the present picture that you may draw from reading the law.

My second point and it follows from the first one is that we need to change the behavior of those who administer the law.

We need to change the dynamics of the system by instituting an incentive structure that will reward good performance and sanction bad performance.

The current law is full of dictates that tell the States how to run their system, but says nothing about what the systems are supposed to accomplish.

We need to do the very opposite. We must move from the process-oriented requirements of current law to a results-oriented performance system.

That is what we need to do if we are going to change what actually happens in the child welfare system.

My third point is that a performance-driven system is feasible. It requires three components: first, a clear statement of the goals of the system; second, a method of measuring the extent to which the system is meeting the goal; and third, a system of incentives and disincentives to reward accomplishment and correct poor performance.

Interestingly enough, the current child welfare law nowhere states what the goal of the system is. But I believe that we can all agree that the goal of the child welfare system should be to ensure that abused, abandoned, and neglected children are placed in stable and caring family situations as quickly as possible, whether that is achieved by placement in a new adoptive family or by being returned to their own family under conditions that ensure their well being.

Performance indicators that measure the achievement of this goal have many technical difficulties, but I think the solution pointed out in my written statement are workable.

Providing incentives for good performance is made rather easy by the anomaly of current law. Under the current law, the worse your performance, the bigger your grant.

All we need to do is give the State the portion of the grant it loses when its performance improves.

Corrective action against poorly performing States is a most difficult and contentious issue. I suggest some approaches to it in my

full statement, although we always have to recognize the difficulty if a State or a system really will not adjust its performance is very hard for the Federal Government to do anything.

Senator CHAFEE. Mr. Guttman, I apologize. I have to go over and vote.

Mr. GUTTMAN. All right.

Senator CHAFEE. So we will just take a little recess here. Just everybody relax and stay right where they are.

Senator Roth will be back quickly to continue. But the time is fleeing. So I just have to get there.

[Whereupon, at 12:12 p.m., the hearing was recessed to reconvene at 12:16 p.m.]

The CHAIRMAN. The committee will please be in order.

I apologize to our panel for the interruption, but it is normally what seems to happen.

So Mr. Guttman, will you continue with your testimony, please?

Mr. GUTTMAN. Certainly, Senator.

I said I have four points to make. And let me just recapitulate very quickly the first couple that I covered.

The first point I want to make and it is the most important one, the serious problems of the child welfare system are not due to the provisions of Federal law. They are due to the way the bureaucracy administers them.

And therefore, my second point is you have got to do something to change the way the system is administered. You have got to put some incentives into that system that will change the behavior.

And my third point was that it is quite possible to institute a performance-driven system that needs a statement of the goal.

It needs a way of measuring whether that goal is being achieved. And it needs a system of rewards for good performance and negative factors for bad performance.

And that is perfectly feasible to do. In my written statement, it outlines some of the difficulties as well as some of the solutions.

My fourth and my last point is the child welfare is a system that in the last analysis must leave much to discretion.

Decisions about the removal of children from their parents, whether it is safe to return them home, placing children with strangers, destroying parental bonds, and creating new ones are difficult and often heart rendering decisions.

These decisions cannot be subject to any set formulas, but must rely on the informed discretion of caring professionals.

When such a system goes awry as this one has gone awry, it cannot be fixed by imposing new, rigid rules.

It must give clear goals to guide the professional's discretion. And it must have an incentive structure to assist them in attaining the goals of the system.

Well-meaning provisions do not always work well. Rigid rules are ill suited for dealing with the awful problems of the child welfare system.

Even such an apparently self-evident rule as not requiring, quote, reasonable efforts in the case of a parent who has been convicted of killing a sibling may have adverse affects.

As I seem to have gained a little time from the recess, let me just explain that because I think it is very important.

The bill says no reasonable effort shall be required when the parent—when a court has found that a parent has murdered a sibling.

The bill also provides that the safety of the child and well being of the child is paramount.

Now, let us look at those two rules together in a case that unfortunately happens all too often. A child welfare worker comes to a house and they find one dead child and two survivors. The child presumably died of neglect.

No criminal proceedings have yet been brought. And yet, the rigid rules suggest that somehow or other something different will happen after the court convicts that mother than happens before.

That is wrong. Exactly the same result should happen at the beginning before the court has decided because the safety and health of the child requires you do not reunify in that situation.

But by putting in a rule saying something different happens after the court has made a determination, you are likely to create new delays and adverse effects.

Thank you for the opportunity to testify. I will be happy to answer any questions. And I was determined to go off, finish before the red light, but I did not make it.

[The prepared statement of Mr. Guttman appears in the appendix.]

The CHAIRMAN. Mr. Guttman, you make the observation that the bureaucracy is much of the problem.

At the same time, you urge that there be performance goals which I think makes good sense, but great discretion be left.

How do you, under those circumstances, bring about change in the bureaucracy?

Mr. GUTTMAN. Because what you do is you reward good performance.

Let me tell you, I use the word "bureaucracy" because that is sort of what comes to mind. In the child welfare system, there are many caring and able social workers. I see them in——

The CHAIRMAN. Of course.

Mr. GUTTMAN. I see them in the District of Columbia. They are wonderful people. What happens to them after two or 3 years, they get burnt out. They get disgusted.

They cannot deal with the system anymore because they do not get rewarded for getting their jobs done well.

So what you need to do is to put some pressure on that system to help out the good people and discourage the bad.

And by giving rewards to a system as it moves forward and taking adverse action against those that are not moving forward, I think you may be able to change the pattern of behavior.

A performance-driven is not going to change things in a year, but it may point people towards moving in the right direction.

In the District of Columbia, it has been under court order for about 4 years, had a receiver for 2 years.

That receiver and the judge, they keep dealing with all sorts of small corrective action categories. And it does not actually change the system.

You have got to have something that rewards the system if it makes progress.

It is not an easy task, as you know from your Government Performance Reward Act. These systems do not change very easily.

They are very resistant, but all you can do is nudge them in the right direction as best you can.

The CHAIRMAN. Judge Grossmann, as I understand your testimony, you think key, maybe key to changing the bureaucracy is a stronger judicial system. Is that correct?

Judge GROSSMANN. Absolutely, Senator. We have been trying to drive this system through the resource systems, through the welfare systems, through the mental health, through the mental retardation systems, through the alcohol and drug abuse systems.

And it is the court which settles best interest. It is the court who places children in foster care. It is the court who is charged with the responsibility to monitor.

It is the court that is responsible to see that when children are not able to be safely returned that they move into a process of termination of parental rights.

And what I am experiencing, Senator, is that we have a series of courts in this country. And frankly, it is mainly the big city courts.

As you heard my figures about Cook County, I could tell you the same figures about Los Angeles or New York or St. Louis or Miami or Detroit.

The whole bulk of this problem rests in those big cities. And they are literally inundated. They do not have the hearing capacity.

And they do not have the technical assistance through—from information management systems to deal with their problems.

It was not until we in Cincinnati developed a very sophisticated, computerized, on-line management system that would tell us where every child was and what the profiles they held were in minute detail that we could first get our hands on it.

Then, once that information was available and we spread it out to all of the agencies within the counties, suddenly people starting realigning themselves.

Suddenly, things started to shift because they could see where the blanks were. They could see where the duplications were.

But the court has to do its job first. If you do not get the court running right, the whole system languishes. That is what I am telling you.

The key is that the court is the engine. Once the engine is in shape, you will draw the train with it.

If you keep trying to push the train with the cars, you will never get there.

The CHAIRMAN. Do any of you—Dr. Washington, do you have any comments on it?

Dr. WASHINGTON. I would say in the Families for Kids cites that working through the courts and streamlining judicial processes and getting the judges together to have a different vision about what is possible has been a key to our success in the Families for Kids cites where we have been successful.

I will also say that there are also points of entry where change can occur. We have also found that having strong community partners, people in communities who begin to know about and take an active interest in what is happening to the system can also be a

place where change can begin, as well as with the professional social workers themselves.

Many of them can be strong agents for change because oftentimes, they know what needs to be done, as was said earlier, and can be very strong advocates for children.

Mr. GUTTMAN. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. GUTTMAN. I would just like to support what the judge has said. In fact, the appendix to my testimony is a letter to the American Bar Association describing the program I run and its frustration.

And one of the things that I advocate there for the District of Columbia, absolutely essential that we establish a family court here in the District because the current system is unable to handle the case load that it has.

The CHAIRMAN. Let me raise one further question. Maybe, Mr. Leean and you, Mrs. Loney, would care to comment.

In section 104 regarding the termination of parental rights, there are two provisions dealing with elimination of unnecessary court delays.

These provisions establish a 1-year statute of limitation for appeal of orders terminating parental rights and for orders of removal.

Is that a wise provision? Could this provision actually prolong the process for finalizing an adoption?

Do you care to comment, Mr. Leean?

Mr. LEEAN. We would support the provision that is in the bill, Mr. Chairman. Certainly, the courts—and going back to the other question. And this is somewhat related.

The courts are very important in resolving the problem. And the problems are most acute in the urban areas.

In Milwaukee, we experience the same situation. I would disagree with the honorable judge from the standpoint that that is maybe the only place that we need—and I do not know that he said that.

I would encourage that we need this type of legislation. But obviously, the courts are over loaded.

We are developing an information system, as well. We experience the same thing that the judge indicated.

We quite frankly, throughout the whole system, do not where these kids are in some respects or how long they have languished or what services they have been getting.

And we are developing an information system that will help the courts, but as well as help the community development.

And quite frankly, on the question you ask, we would support the 1-year appeal process.

The CHAIRMAN. Mrs. Loney.

Mr. GUTTMAN. Senator.

The CHAIRMAN. Yes.

Mr. GUTTMAN. I am a little baffled by the provision. In the District of Columbia, you note an appeal within 30 days. And the government gets 60 days. And I have never heard of a court that permits an appeal of a judgment for a period like a year after the effect.

So I am a little fearful of negative implication. The Federal Government is not saying up to 1 year is all right when 30 or 60 days seems perfectly adequate.

It also strikes me in terms of the Federalism issue, most matters like an appeal of an order are decided by court rules.

And we are now by Federal law as a condition of a grant to administer a child welfare system, we would be requiring courts to change their rules.

I am not saying that it would be unconstitutional because the power of the Federal Government's grant program is very great, but it is a great intrusion on the independent court system to deal with a problem that I do not know exists.

I mean, I called a couple of attorneys. And I did not find anybody who knew of any judgments that could be appealed where the notice of appeal does not have to be filed within 30 or 50 or maybe 90 days.

Mrs. Loney. Mr. Chairman, recognizing that termination of parental rights is something that is never done very lightly, as was discussed earlier, I think it is almost ludicrous to give a year for a parent to appeal the termination of their parental rights.

It is also definitely counter productive to the goal of trying to expeditiously move towards permanency because if I have already had this child, then how long has this child already been in the system?

Say, I am already at the 24-month period that this child has already been in the system. And now, permanent rights have been taken.

Now, there is another year that can go by where this parent has a chance to come back and appeal that termination.

My child is now 3 years old. If you add that 3 years old onto a child that was already 5 years old, that child is now eight.

How many placements has that child already been in? And if that foster parent does not want to adopt that child, that child is now at an age where they are considered hard to become adoptable.

Judge GROSSMANN. Senator, fortunately, many courts of appeal understand the very problem you are talking about and put these cases on fast tracks.

The year, as I understand it, is the outside limit. Most of these cases should be heard much more rapidly than that.

But I would like the larger point.

The CHAIRMAN. Please do.

Judge GROSSMANN. Some of them, of course, go way beyond that. And that is a terrible business.

The larger point is that I understand that the court is not the total answer.

But I can tell you this, if you do not straighten out these courts and give them the resources and get their functioning and their information systems in order, we can keep adding money into the periphery of this thing and we are never going to get there.

We need more money in the areas of adoption. I am chairing a National Policy Committee on Adoption.

We have Dave Thomas who is funding it for us, along with the Honda Foundation. President Ford is an honorary chair of it.

We have a collection of very fine experts looking at this whole adoption problem.

It is a serious one. We need help. We need more resources.

I am just trying to emphasize that I know with 40 years experience where these courts are suffering. And I know these judges personally.

They simply cannot do it unless we get the resources going to assist them in the whole processes of hearings.

And by the way, it does not take a rocket science to understand that if I reduce a docket pipeline from 4,500 cases to 1,500 cases, can you imagine where the money is saved? It is no longer going into all of this foster care.

Suddenly, the case workers have lower case loads. Suddenly, there is more money to do the kinds of things to reunify families that they could not do before.

It just follows as night unto day. If those things happen, then the system is going to unclog and the drains are going to start to work.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

I spent 4 years chairing something called the National Commission on Children. And there was an unbelievably broad range of people from the far left to the far right and in between.

One of the members incidentally was a fellow named Bill Clinton who was Governor of Arkansas.

But we came out with an unanimous report. And we looked at every single aspect of children from health to these subjects to everything else.

And it was a progress has been made. A lot of progress has been made.

But I will never forget the visit that we took to the Los Angeles juvenile justice court.

And I will never forget the children who were up that day for decisions being brought up in a large, sort of a cargo wired elevator with criminals.

The criminals went right to their section of the courthouse. And the kids went left to their section of the courthouse.

And there was a symbolism there which was profoundly disturbing, but that was not as disturbing as going into the court.

And then, I had to actually—because I was chair, the chief judge sat at my ear, so to speak, on the bench—I mean, on the sitting portion, trying to interpret for me this absolute bizarre goings-on that was taking place where judges were dealing with—in cases.

The judge was dealing with a case where, you know, there was translation needed that it was not available or there were records needed and they were not available.

The parent, the bus had not run that day. So the person was meant to be there.

And he said that they were spending—and this was almost 10 years ago—spending like 10 minutes per case.

Judge GROSSMANN. Right.

Senator ROCKEFELLER. So I really sympathize with that. And I will tell you that in the first iteration of this bill, the so-called Safe Act, there was some money for our judges, but it was very—as it

is always the case in legislation, it is very important to get a bipartisan consensus.

And you have heard all of us talk about that here. And it really is important.

And I am not sure that under this that it is not even possible to do a little bit in that direction, the bill that we have, but it is definitely a step back.

And I agree with you very, very much that that frustration is huge. And it is something that we are not correcting adequately. And I just totally agree with you.

Judge GROSSMANN. By the way, Senator——

Senator ROCKEFELLER. Can I just ask one question?

Judge GROSSMANN. Yes.

Senator ROCKEFELLER. And then, you can answer both.

Could you explain to me, let us say on a termination of parental rights decision, what it is that goes through a judge's head in making that decision because that raises questions here in this body, you know.

Some people say, well, that is not a good thing to do. And I always say it is a judge's decision because when you say it is a judge's decision, that kind of makes it all right, but maybe not for everybody. [Laughter.]

So I would like to—if you could explain it.

Judge GROSSMANN. It is one of the toughest decisions that the judge has to make.

Let me answer it this way. We fought a long battle with these 40 judges in this Metropolitan Courts Committee to resolve the issue of best interest that it in fact resided with the court, with the judge.

So, first, best interest of the child. Safety is one of the strong foundation stones of best interest.

Timeframes, you have heard it mentioned. Time for a child is a different business than it is will all of us adults. Are we going to wait for years before we decide?

So if efforts had been made, let us say the case looked like some effort might help the family to reunify, but it is not working. And time has passed.

We have got to sunset the thing. That is what we did in Ohio. We sunset it, how long you are going to let the thing drag.

So time for the child, best interest of the child, safety of the child.

Obviously, there are some problems that the birth parents have that render the issue of reasonable efforts moot, you know.

That is why it always puzzled me is how could we mistranslate what reasonable efforts was. There are some cases where there are no reasonable efforts, you know. It is not there. But those are the things that go through.

And the idea, one of the things that concerns me most and we have not mentioned this. There is a reluctance on the part of judges across this country to terminate parental rights because they think they are casting the child into the pit where nothing will happen.

And that is so serious, but we must move on to that, solve it. Those are the thoughts that go through your mind.

Senator ROCKEFELLER. So that is interesting, Mr. Chairman, because—and then, I will just close on this.

That judges in fact would hold back from making a decision that he or she might feel is the right decision because they are not sure what the next step is.

And therefore, the next step of permanent placement in a safe, healthful——

Judge GROSSMANN. Right. That is like cracking the adoption question, cracking the permanent question.

Senator ROCKEFELLER. Would in fact free up a judge perhaps to be——

Judge GROSSMANN. Yes. When a judge is saying there is 50,000 children out there lined up whose rights are terminated already are going nowhere. Whoa, you know.

Senator ROCKEFELLER. Got you.

The CHAIRMAN. Well, I want to thank each and every one of you for being here today. I regret that Senator Chafee is unable to return as Ice Tea, a bill which he will be managing on the Senate floor, is coming up now.

But I think the entire panel will agree that your testimony today has been extremely helpful and insightful.

Senator ROCKEFELLER. And Mr. Chairman, I think you should point out that Senator Chafee's working on Ice Tea does not mean he is taking a refreshment break. [Laughter.]

He is working on a highway bill.

The CHAIRMAN. A highway bill which is in the jurisdiction of his committee.

So thank you very much. We appreciate your being here.

The committee is in recess.

[Whereupon, at 12:39 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. DAVE CAMP

I have come to testify today because I think the Federal government has an opportunity to help a lot of children. Based on information presented to the Committee on Ways and Means and on extensive discussions with state and federal officials, I cannot see any reason why a concerted national effort to promote adoption, led by Federal legislation, will not result in 10,000, 20,000, or even 30,000 more adoptions per year.

Adoption is good for children. The reason in simple. Nearly every adopted child is put in the midst of the best child-rearing machine ever invented — the family. Children reared in families, especially 2-parent families, grow up to do well on nearly every measure — marriage, employment, education, avoidance of crime, and independence from welfare.

With adoption we change a child's entire life. To use the jargon of social programs, the "intervention" stays with the child for her entire childhood — and perhaps her entire life. That's why adoption is probably the most powerful social intervention known.

My major message to you today is this: anything that further delays the passage of a good adoption bill will hurt thousands of children. I hope this thought will color all your deliberations — delay hurts children.

Now what do I mean by a good adoption bill? I mean two things: first, a bill that speeds up state decisions about adoption; and second, a bill that provides states with incentives to increase adoption.

The first thing good adoption legislation needs to do is move the nation further in a direction that Congress has pursued at least since the excellent legislation we enacted in 1980. Specifically, we need to coax the states to make quicker decisions. The biggest single problem with the nation's child protection system is that it moves at a glacial pace. The best data available shows that when children enter foster care in New York, it's two years before a decision is made to move them to a more permanent setting. The comparable figure in Illinois is three years. And these numbers are just for a child's first spell in foster care. Of the children returned to their family, at least 25% come back into foster care and stay another few years.

The bill passed by the House does two big things to require states to move more quickly. First, we identify circumstances, such as child murder, and allow states to identify other circumstances, in which it is not necessary to provide services to a family before moving to adoption. When a mother physically abuses her third child, when a mother already has lost custody of one or two children, or when a father has killed a sibling of an abused child, states should move immediately to terminate parental rights and find adoptive parents. Under current law it is not at all clear that they can. Under our bill, there is no question that they can, and in some circumstances, must.

The second important step we take in our bill is to establish a specific time period by which states must take concrete steps toward adoption. Over the years, I have been extremely perplexed about why experts and administrators are always so reluctant to establish a firm time limit by which states must make decisions in these cases. When asked, they always respond with something like: "Oh, if you only understood more, you would see that these cases are so complex that whatever time limit you select would not work in most cases."

Given our current system with long, apparently pointless, stays in foster care, our bill simply requires states to begin the court procedures to terminate parental rights after 18 months.

To be honest, I would like to write an even stronger provision. But we have bipartisan agreement in the House on 18 months, and the states more or less agreed to 18 months. So that's the provision in our bill.

But whatever the specific time period, we must create the expectation throughout the system — among parents, among social workers, among the courts, among service providers — that the biological parents have a fixed period of time to improve enough that the child can be returned home. Once that fixed period of time has been exceeded, the system should begin rapid movement toward placing the child with another family.

In addition to cajoling, encouraging, and even requiring states to move faster, the other major provision in our bill is to give cash rewards to states that increase the number of children in foster care who are adopted. According to CBO, these rewards will produce their intended effect. In fact, the federal government will save enough money by speeding up adoption that the savings will exceed the money we spend to provide the adoption bonuses. Every once in a while, a policy comes along that actually is good for children and that simultaneously saves money. The adoption incentive is such a policy.

So there you have it. Our goal is to increase adoptions. The two most important policies to achieve this goal are to create time limits and procedural requirements that encourage or force states to act more quickly and to give states cash rewards for placing more children with loving adoptive families.

I want to emphasize that the House bill was developed in close consultation with states by a bipartisan group of members working through a bipartisan staff group that consulted frequently with the Administration. As a result, the bill passed the House 416 to 5. I have no doubt that the President would sign it.

Now the Senate seems to be ready to act. For this, I am very grateful and heartily congratulate all the Senators and staff members who worked on your bipartisan bill. My hope is that the Senate will pass a bill quickly and get us to conference. It would be a shame — and as I argued previously, would hurt children — if Congress does not enact a bill this year.

Given what I hope is the inevitability of a House-Senate conference, let's begin the conference right now. Here's my main message to the Senate: Don't spend so much money.

I realize that many members of Congress, and perhaps 99% of the states and the advocacy community, think you can't write good social policy without spending more federal money. I strongly disagree. We can increase adoptions, and move child protection policy a huge step in the right direction, without spending more money. The House bill does it — and received overwhelming support.

I now want to directly address those who seek to spend more money. Here are three facts I hope you will carefully consider. First, as shown in Chart 1, CBO thinks that under current law we will spend $28 billion federal dollars on child protection programs over the next 5 years. Moreover, spending will increase by almost 50% over the period and we will spend $6.2 billion more federal dollars than if we had continued to spend at the 1997 level. Thus, we're already spending lots of money and spending is increasing rapidly.

Second, the increase in administrative funding, which is the most flexible of the entitlement programs, increases just as dramatically as overall spending. Administrative funding, as you can see in Chart 2, increases from $1.6 to $2.3 billion over the next 5 years, an increase of about 45%. Thus, not only does spending increase, but there is a hefty increase in the category of spending that provides states with substantial flexibility.

Third, as many members of this Committee will recall, just 3 years ago we started a new entitlement program to provide services to families that abuse or neglect their children. According to CBO, we're going to spend about $1.4 billion on that program over the next 5 years.

So I now ask again: Given that we have a House bill with huge bipartisan support that is also supported by the Administration, why would the Senate insist on spending more money on programs that are already rapidly expanding — especially in view of the fact that Congress created a new program to provide services to families just 3 years ago.

Let me raise three final issues. First, several parts of the Senate bill emphasize family preservation; i.e., the rehabilitation of parents who have abused and neglected their children. We have examined the research on family preservation, as has the General Accounting Office. I think it fair to say that the scientific community agrees that there is no solid evidence that family preservation leads to better outcomes for children. Given this, coupled with the fact that current law already emphasizes family preservation, why would we push the statutes any further in this direction?

Second, the biggest single spending item in the Senate bill would require the federal government to provide a subsidy for every adoption of a special needs child in the United States. Under current law, the federal government subsidizes special needs adoptions only of those

children who come from families eligible for welfare.

Here is a fact that I urge members of this Committee to consider. The new group of adopted children this bill proposes to subsidize, at additional cost of about $2.3 billion over 5 years, already has subsidies. They are subsidized by state government. So in reality, all this provision does is replace state dollars now going to adoption subsidies with federal dollars. The net result is $2.3 billion in additional federal spending without any impact on adoption. I hope before I leave today someone will explain how children are better off if their adoptions are subsidized by federal dollars rather than state dollars.

Third, the Senate bill proposes a new entitlement program using IV-E funds for children who have been removed from parents for any number of reasons including: substance abuse, homelessness, post partum depression, and the special needs of teen parents. There is no limit on these funds. At least two policy concerns are worth mentioning here. First, there is no research that shows that children are any better off when they are reunited with their mothers in a drug rehabilitation center or a homeless shelter. Second, Congress is usually very careful in creating entitlement programs. We already have several entitlement programs for child protection. We should not create another one unless there is very strong evidence that it is needed and will be effective.

I close by expressing my gratitude for the Senate's formulation of a strong adoption bill and by emphasizing my view that the additional spending in the bill is unnecessary. Worse, the spending will cause lots of trouble in conference, especially because the method of paying for the funding increase is not apparent. Increasing the number of children who find loving adoptive homes is too important to be delayed.

r campsenate

Chart 1

Spending on Child Welfare Programs Increases Dramatically Under Current Law

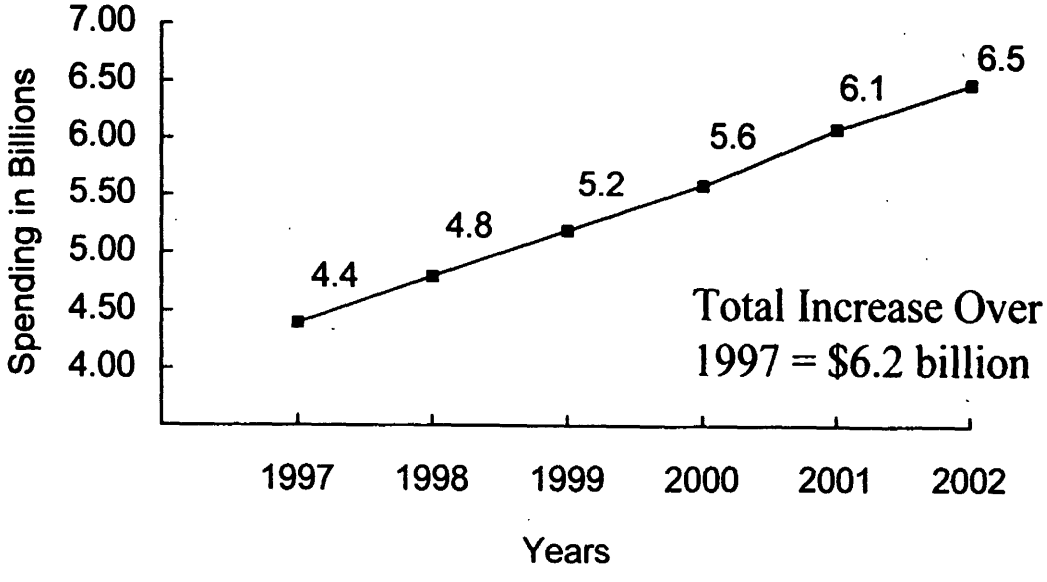
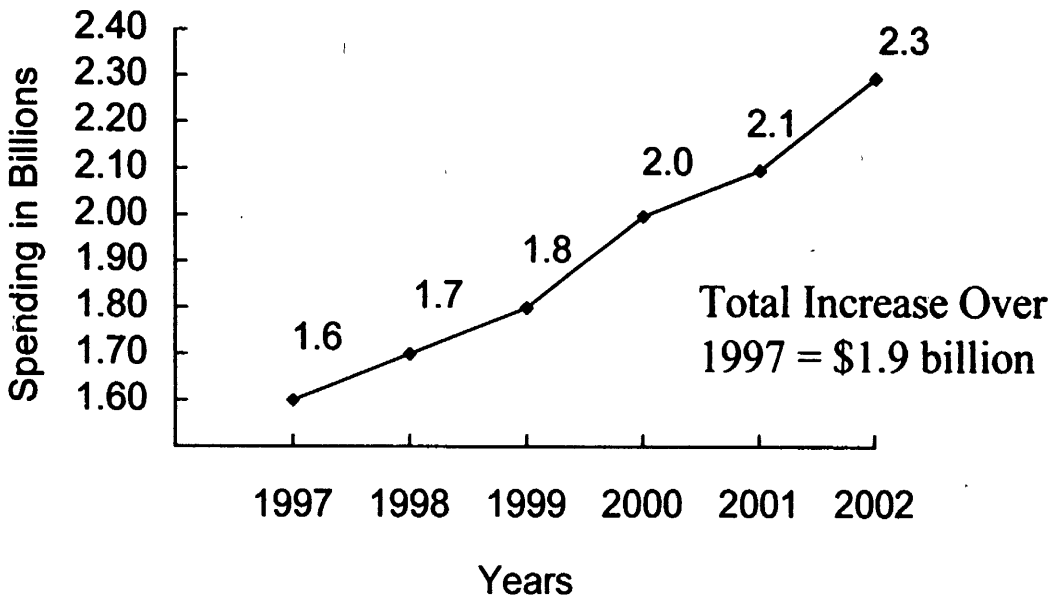


Chart 2

Spending on Administration Continues to Explode



STATEMENT OF SENATOR LARRY E. CRAIG

BEFORE THE SENATE COMMITTEE ON FINANCE

Hearing on S.1195, the Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act

OCTOBER 8, 1997

Mr. Chairman, Senator Moynihan, members of the Committee, thank you for allowing me to testify today on behalf of the PASS Act -- the Promotion of Adoption, Safety and Support for Abused and Neglected Children Act.

When a child's health and safety are at risk, we don't hesitate -- we act quickly to remove the child from danger. As a society, we've even set up a safety net to protect children who are at risk of abuse or neglect.

I'm here today to tell the committee that quick action is needed now, because the child welfare safety net is failing far too many of America's at-risk children. At one end, it's allowing children to slip back into abusive homes; at the other, it's trapping children in what was supposed to be "temporary" foster care. Decisions are being driven by factors other than the child's own well-being. We've all seen the tragic results in heartbreaking news accounts of child injuries and fatalities, or staggering statistics about the mounting numbers of children in foster care awaiting permanent families.

The problem does not lie with the vast majority of foster parents, relatives and caseworkers who work valiantly to provide the care needed by these children. Rather, the problem is the system itself, and incentives built into it, that frustrate the goal of moving children to permanent, safe, loving homes.

We introduced the PASS Act to fix the flaws in the safety net. It would fundamentally shift the foster care paradigm, without destroying what is good and necessary in the system. For the first time, a child's health and safety will have to be the paramount concerns in any decisions made by the state. For the first time, efforts to find an adoptive or other permanent home will not only be required but documented and rewarded. For the first time, steps will have to be taken to free a child for adoption or other permanent placement if the child has been languishing in foster care for a year or more.

In short, I think the reforms in this bill will do a lot of good for a lot of children who desperately need our help.

Having said all that, I acknowledge this is not a perfect bill. Frankly, I don't think a perfect bill will pass the United States Senate. That's because my perfect bill is probably very different from another Senator's perfect bill. While we all can agree on the goal of finding a safe, loving, permanent family for every child, ideological differences can put us on very different paths to that goal.

As I'm sure you know, it was the quest for perfection that brought the Senate's foster care reform effort to a standstill last summer. To their credit, a number of Senators -- many of whom serve on this committee -- were willing to look beyond their own legislative solutions in an effort to find common ground.

We found it, and the PASS Act is the result. It combines features from all proposals circulated in the Senate, including the House-passed bill. It is a compromise approach to the issue, without being a compromise of anyone's principles.

While I'm sure changes can be made to improve the bill, it is my strong hope that the Senate will not let the perfect become the enemy of the good -- the VERY good -- in this case. As I said at the beginning of my statement, when a child is in peril, we don't hesitate. America's abused and neglected children need help now, and the PASS Act would help thousands of them into safe, loving, permanent families. I urge all members of the committee to support this bill and help make an enormous and positive difference in our nation's child welfare system.

SENATE FINANCE COMMITTEE
PROMOTION OF ADOPTION, SAFETY, AND
SUPPORT FOR ABUSED
AND NEGLECTED CHILDREN (PASS) ACT
OCTOBER 8, 1997

Mr. Chairman, Thank you for holding this important hearing on S. 1195, the Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act. The issue of foster care, and child welfare in general is a very important one. I congratulate my friend and colleague, Senator Chaffee, for putting together this bi-partisan bill to address the issue of child welfare.

For most of the past decade, child welfare has been characterized as a system in crisis. The number of child abuse and neglect reports received by states is at a record high level, and the number of children living in foster care is nearing an historic peak. More babies and very young children are entering foster care, and children are remaining in care for longer periods of time. Only a small percentage of foster children are eventually adopted, and the overall number of such children has not changed significantly in recent years, despite the rise in the total foster care caseload.

These trends place great pressure on Congress to work to fix the system. I commend the sponsors of this bill today for introducing legislation which seeks to address this critical issue, and I look forward to the testimony of the experts before us today.

Thank you Mr. Chairman.

TESTIMONY
of
U.S. SEN. MIKE DEWINE
before the
Senate Finance Committee

Hearing on S. 1195, the "Promotion of Adoption, Safety and Support of Abused and Neglected Children (PASS) Act"

OCT. 8, 1997

Good morning. Let me begin by thanking our distinguished colleague from Delaware, the chairman of the committee, for scheduling this hearing. Let me also say that we couldn't be here today were it not for the hard work of many Senators, including several members of this Committee.

We're here to try correct a policy that has led to the brutal abuse, and in some cases the tragic death, of thousands of America's children.

Over the last year, I have given many speeches about this on the Senate floor – speeches about a number of young people, whose terrible stories have come to my attention. Elisa Izquierdo. Joseph Wallace. Cecia Williams. Nadine Lockwood. Christina and Natalie, the granddaughters of Sharon Aulton, who testified before a hearing in the Labor Committee that I chaired last fall.

Each of these names has a tragic story behind it. If we don't act to reform this system, more stories -- more tragedies -- are inevitable. Let me tell you about yet another story.

Last February, the Los Angeles Times documented the tragic true story of a 2-year-old girl named Joselin Hernandez.

Joselin was removed from her parents' custody when she was six weeks old, because she had broken legs, cracked ribs, and burns. Prosecutors say the injuries were inflicted by her parents.

This little girl was placed in the custody of her grandmother. But tragically, her grandmother died. She was then returned to her parents.

Three months later, Joselin was dead. Both her parents have been charged with murder, and are scheduled to stand trial next

month.

In the face of this evidence, the parents are fighting for custody of Joselin's younger brother!

There's no way -- no way -- these children -- either Joselin or her younger brother -- should ever have been returned to those parents.

But sadly, this is -- at least in part -- an unintended consequence of a Federal law. The law requires what it calls "reasonable efforts" to be made to reunify families -- but in practice, these have become unreasonable efforts, with truly tragic consequences. Unfortunately, the children I have mentioned are just a few of the victims.

Under the Adoption Assistance and Child Welfare Act of 1980, for a state to be eligible for federal matching funds for foster care expenditures, the state must have a plan for the provision of child welfare services approved by the Secretary of HHS. The State plan must provide "that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home."

In other words, no matter what the particular circumstances of a household may be -- the state must make reasonable efforts to keep it together, and to put it back together if it falls apart.

There is strong evidence to suggest that in practice, reasonable efforts have become extraordinary efforts. Efforts to keep families together at all costs.

And children have died as a result.

For several years I have been advocating a change in the law to make explicit that the health and safety of the child are paramount in determining whether a family should be reunified. I introduced bills in the both the 104th and 105th Congress to clarify the reasonable efforts law, and I am proud to say that my bill has been incorporated in both the PASS Act that we are discussing today, as well as the Adoption Promotion Act which overwhelmingly passed the House of Representatives earlier this year.

It is imperative that we set a clear standard, so that caseworkers, judges, guardians ad litem -- all of the adults that

have such tremendous power over these vulnerable children -- understand that the child's health and safety must come first and that these children must be protected from dangerous adults.

That's the purpose of the PASS Act, and that's why I was so honored to participate in the bipartisan group of Senators that came together to try to craft a compromise bill. I think it is important that we change the law this year. Delay means more tragic stories -- of young lives shattered, and needlessly lost. Mr. Chairman, I look forward to working with you and everyone on this Committee to try to bring this legislation to the Senate floor.

Senators are often accused of overstatement. But I am only stating a simple fact when I say that this bill will save lives.

# # #

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES
JUDGE DAVID E. GROSSMANN
CHAIR, ADOPTION COMMITTEE

TESTIMONY
UNITED STATES SENATE
October 8, 1997

PROMOTION OF ADOPTION, SAFETY, AND SUPPORT FOR ABUSED AND NEGLECTED CHILDREN (PASS) ACT

Mr. Chairman, members of the Senate Finance Committee, thank you for this opportunity to testify before you today. I am David E. Grossmann, Presiding Administrative Judge of the Hamilton County Juvenile Court in Cincinnati, Ohio. I am here on behalf of the National Council of Juvenile and Family Court Judges, where in 1995-96 I served as President. I currently serve as Chair of the National Council's Adoption Committee with Honorary Chair former President Gerald R. Ford, and Ex-Officio member Dave Thomas, CEO of Wendy's International.

Despite decades of judicial, legislative, and administrative attention, safety and permanency in the lives of children continue to be of principal concern to our nation's juvenile and family court judges. The National Council of Juvenile and Family Court Judges, the nation's oldest judicial membership organization, for over two decades has focused judicial attention on abused and neglected children. In 1973, member judges identified a need for judicial oversight in dependency cases, and established what is now gaining national recognition as the National Council's Permanency Planning for Children Project.

We at the National Council of Juvenile and Family Court Judges are pleased to have the opportunity to comment on S. 1195, the Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act. I commend the Committee and the sponsors of this legislation for their commitment to moving bipartisan legislation to promote safety and permanency for children in the child welfare system.

The National Council of Juvenile and Family Court Judges

The National Council's interest in the "Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act" is reflected by its long history of activism in this area. The role of judicial leadership in mobilizing systemic and community support to ensure safety and permanence in the lives of children has long been a key focus of the National Council's work.

Many abused and neglected children need the protection of out-of-home care. Yet prior to 1980, research indicates that many children were sheltered in substitute care because family support and rehabilitative resources were neither feasible nor available. Some children drifting among temporary placements had little contact with social service personnel or family members, and failed to receive services to either reunify their families or to secure new adoptive families.

A cornerstone provision of Public Law 96-272, The Adoption Assistance and Child Welfare Act of 1980, mandated courts to make "reasonable efforts" findings which would ensure: (1) Avoiding unnecessary separation of children and families; (2) Reunification of families when safely

possible to do so; and (3) When reunification is not feasible, move toward finding adoptive homes for children. Social service agencies were also required to make "reasonable efforts" to prevent unnecessary out-of-home placement, provide reunification services, and to move children toward adoption.

P.L. 96-272 placed additional burdens upon state courts without necessary funding for additional judicial officers and court staff to handle burgeoning caseloads. Funding for adequate training for judges and court staff as to how to handle additional review responsibilities was also not provided. Due to a lack of definition of the "reasonable efforts" provision of the Act, and a lack of judicial resources, the 1980's saw a movement toward reunification of families by agencies and courts. Often, misinterpretation of the "reasonable efforts" provision led to reunification regardless of safety and permanency concerns. Limited funding for judicial education on this key piece of legislation at times led to misinterpretation of the law. Child welfare agencies also often made reunification decisions which were contrary to the best interests of children.

In 1992 the National Council embarked upon a nationwide project to improve court practice in child abuse and neglect cases. Members of an advisory committee consisting of judges, child welfare professionals, attorneys, court administrators, members of the appellate judiciary and others developed a document which would serve as a blueprint for change in juvenile and family court jurisdictions nationwide. The *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* was published by the National Council of Juvenile and Family Court Judges in 1995. Endorsed by the American Bar Association and the Conference of Chief Justices, this document has been used by state court systems nationwide as a template for assessing systems practice and laying the groundwork for systemic change.

In 1994, the U. S. Department of Health and Human Services' Administration for Children and Families implemented its State Court Improvement Program. Funding was made available to state supreme courts nationwide to: (1) Assess their state's handling of child abuse and neglect cases; (2) Develop a plan for improved handling of dependency cases, and (3) Implement a statewide plan for improving systems practice in this area. Of the 47 states and the District of Columbia who signed on to the program, many recognized the *RESOURCE GUIDELINES* as a guide to improving practice. States are now slowly moving toward implementing change.

Due to the work of the National Council, the U. S. Department of Health and Human Services, and a number of other private and publicly funded initiatives, the nation's juvenile and family courts and child welfare agencies are re-examining their handling of child abuse and neglect cases. Court rules, agency practice, and in some states legislation, are being rewritten as a result of this nationwide systems change.

Promotion of Adoption, Safety and Support for Abused and Neglected Children (PASS) Act

We appreciate the United States Congress' re-examination of this area of Federal law. The proposed "Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act," once more focuses national attention on the plight of this nation's abused and neglected

children. We are encouraged by your interest in this area. The National Council of Juvenile and Family Court Judges would like to comment on some of the major provisions of the Act.

- **Safety in Case Plan and Case Review System Requirements**

The Federal reasonable efforts language should be clarified to stress that reasonable efforts is an expectation of agencies that services will be provided that are appropriate, accessible, and culturally competent in implementing a permanency plan. This clarification regarding reasonable efforts and safety could be achieved by clearly stating that no child should be placed in out-of-home care who can safely be protected in the home; that reunification be examined and attempted if it can be done safely before other permanent options are selected; and a new standard developed which would require that when reunification is no longer the goal, that the agency is expected to make reasonable efforts to secure a safe and permanent placement in a timely manner. Because of the harm caused to a child by being uprooted from the home to which that child has bonded, removal should be avoided where safely possible.

Members of the National Council of Juvenile and Family Court Judges have always regarded child safety as the key component in case planning and case review. **The National Council supports this provision and suggests that the state plan should be required to include collaborative efforts in the training of the judges and court personnel in the developmental needs of children and the entire continuum of services needed for effective permanency planning. The plan should also be required to include that data and computer systems developed with federal funding should be accessible by the judiciary or judicial personnel for the purpose of tracking and planning for children in placement. This tracking system is a key element in improving court management and timely decision making.**

- **Reasonable Efforts to Preserve and Reunify Families**

The protections of the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272) regarding judicial oversight of children in placement should be retained. The role of the judge as the gatekeeper with required findings that "continuation in the home is contrary to the well being of the child" and "reasonable efforts" are important necessary tools for improving outcomes for children who have been abused or neglected. The periodic review of children in placement and court-approved permanency hearings have a proven effectiveness in maintaining the quality of care for children in out-of-home placement, as well as shortening the length of stay in care.

The National Council recommends that definition of "reasonable efforts" in the main be left to states to define. In general, the construction of specific rigid lists of instances where "reasonable efforts" are not required is not productive.

- **Permanency Hearing at Twelve Months**

Under this provision of the Act, states would be required to hold a permanency hearing within twelve months of a child's placement with subsequent hearings held every six months.

The National Council concurs with time recommendations; however, we are mindful of the experience gained through passage of P. L. 96-272 in which recommendations for regular and frequent judicial review of children in placement added tremendous responsibility to courts with no funding for courts to provide additional judicial resources. Shortened timelines proposed in S. 1195 will place additional burdens upon courts nationwide, and funding for expanded resources, including additional judicial officers, should be considered.

- **Reauthorization of Family Preservation and Family Support**

Juvenile courts throughout the United States are encountering intense pressures in handling of child abuse, foster care and adoption cases. As the numbers of court cases involving child abuse, neglect, and abandonment have sharply increased in the last 15 years (largely due to the heightened reporting of child abuse and neglect and the recent drug epidemic), the number of judges handling these cases has not. Moreover, largely because of state and federal laws enacted in the last 15 years, a typical foster care or termination of parental rights case now involves more hearings, more people compelled to participate in the judicial process, and more issues which must be brought before the court than ever before.

For example, child abuse and neglect cases 15 years ago typically required only one hearing to determine whether a child was abused and, if so, whether to place the child into foster care. Now, with the greater emphasis on rights of the parties and on achieving permanence for children, state law has elaborated the judicial decision process. This has been compounded by federal requirements (implemented by state law and policy) for additional judicial hearings and findings. For example, federal law requires that judges determine whether agencies have made "reasonable efforts" to prevent foster placement, determine whether continued voluntary placement in foster care is justified, and conduct "permanency planning hearings" before a child has been in foster care for 18 months.

Thus, there now must be a series of hearings in child abuse and neglect cases, particularly those involving children in foster care. Those hearings may include an emergency removal hearing, adjudication (trial), disposition (concerning placement, services, and case plans), periodic review hearing (to review case progress), a permanency planning hearing (to make a tentative decision on the permanent legal status of the child), termination of parental rights proceedings, and an adoption hearing.

At the same time more people typically are present at court hearings. Persons who are often now present but formerly were not include foster parents, noncustodial parents, attorneys for custodial and noncustodial parents, child advocates, and agency attorneys.

Because (a) there are now more cases per individual judge, and (b) each case now imposes many more demands on those judges, the quality of judicial decision-making in civil child protection cases has often suffered. As judicial caseloads grow and the demands of each case increase, delays are exacerbated -- and judges are too often forced to hold rushed and cursory hearings. In many

courts, both children and parents are poorly represented. By necessity, state and federal laws mandating court reforms are often ignored or superficially implemented.

These problems have a direct and harmful affect on children and the court's ability to prevent further abuse and neglect. When courts are overcrowded and rushed they can make tragic mistakes. This may mean that more children will be re-abused, and more families will be needlessly separated, more children will have their physical, mental, and educational needs neglected, and -- because of court delays -- more children will remain in "a legal limbo" instead of being promptly placed in safe and permanent homes.

Child abuse, foster care, and adoption litigation is extremely sensitive and difficult, and children and families are frequently harmed by case resolution delays, cursory hearings, and inadequate representation by counsel. State court systems (and local courts) need help and guidance in recognizing and addressing these problems.

Recognizing these problems, Congress enacted legislation which funded the State Court Improvement Program in 1994. The federal law provides a grant to each court system to assess and improve their handling of child abuse and neglect cases. The first year of funding, now largely over, was for the courts to conduct a thorough self-assessment. The next step is developing and refining plans for improvement and then implementing the plans.

Grants are provided to the highest court of each state, and every state court system submitting an application has received such a grant. This includes 48 states plus the District of Columbia. At present, most states have either recently finished or are about to complete their self assessments. They are now refining their plans for improvement and beginning to implement their plans.

So far, federal grant funds have been used to pay for state court self assessments and for the beginning of actual state court improvement efforts. With regard to implementation efforts, a few have already made concrete changes. For example, the state of Maine added two new judges in child abuse and neglect cases and have sharply reduced their backlogs in termination of parental rights cases. The Cook County Juvenile Court in Chicago has begun to reduce the numbers of pending cases for the first time in many years and already has begun to dramatically increase the numbers of termination of parental rights and adoption proceedings. In West Virginia, the state supreme court has required each court to report on the status of every child abuse or neglect case and has created a new set of court rules of procedure to, among other things, complete the court process for abused and neglected children at an earlier point. Virginia has already enacted substantial amendments to state law, designed to increase the pace of litigation. It is now conducting regional interdisciplinary conferences throughout the state to plan for local implementation of the new law. North Carolina has amended its laws to allow, in additional extreme cases, termination of parental rights without "reasonable efforts" to rehabilitate the parents.

To fully benefit from this new grant program, state court systems and the local courts which hear children's cases need help in a number of critical respects: focusing on *the most critical problems* facing their courts, identifying fundamental rather than superficial changes that will address needed court improvements, having the technical capacity and will *to carry out needed reforms*, and obtaining the necessary political support to make those changes.

This is a pivotal moment in court reform efforts for child abuse and neglect cases. States are now deciding on the course of their plans for reform. To ensure that court reform takes hold, state court systems need help. The plans that courts develop in the next year will substantially determine the ultimate direction of their court improvement efforts. We have a unique and time-limited opportunity to help encourage and shape this vital reform effort.

The following are nine reasons why the court improvement program needs to be continued to help the nation's seriously abused and neglected children:

- First, court improvement is a key to successfully achieving permanency for foster children. No matter how well the agency may operate, without properly functioning courts, permanency is not possible.

- Second, courts make vital decisions in the lives of abused and neglected children -- whether to remove them from home for their own safety and whether to place them into permanent homes. Only through improvement of the courts themselves can we ensure that these decisions are made carefully.

- Third, conscious efforts at court improvement directly helps children and families. For example, when courts concentrate on eliminating hearing delays, children get permanent families in shorter periods of time and families are not kept so long in agonizing suspense while waiting for courts to make decisions. When courts schedule their hearings more precisely, delays and continuances are substantially reduced.

- Fourth, for the first time, there is a national effort to improve litigation in child abuse and neglect cases. All of the key national legal organizations, including the National Council of Juvenile and Family Court Judges, the American Bar Association, the National Center for State Courts, and the National Conference of Chief Justices, support this effort. This opportunity may not come again.

- Fifth, there is a clear set of standards for court improvement -- the *RESOURCE GUIDELINES - Improving Court Practice in Child Abuse & Neglect Cases.*

- Sixth, there are working examples of courts that function at a much higher level than most -- e.g., my court in Cincinnati, Ohio and Grand Rapids, Michigan.

- Seventh, court systems are willingly participating in court improvement efforts and want to improve.

- Eighth, court systems don't have enough knowledge to replicate the *RESOURCE GUIDELINES* of Cincinnati or Grand Rapids on their own. They need continuing assistance to accomplish this and encouragement to make the kinds of improvements that are required.

- Ninth, additional time to continue court improvement is vital to future success of implementation efforts. Our organization provides national leadership in this field.

The proposed PASS Act would extend the Family Preservation and Support Act, which includes important provisions which focus on court improvement. Unfortunately, we understand that the PASS Act proposes reauthorizing the Family Preservation Act **without continued funding for the Court Improvement Program.** We also understand that this proposed legislation **does not expand IV-E funding to provide for training for judges and court staff.** We at the National Council are most concerned regarding these two omissions from the Act.

The Court Improvement Program of the U. S. Department of Health and Human Services Administration for Children, Youth and Families has worked effectively with court systems nationwide to improve court/systems practice since its inception. As a result of Court Improvement funding, a nationwide movement has been launched; states are being mobilized toward making significant improvements in daily practice of both courts and child welfare agencies.

The federal policy to improve state court practice as articulated in the State Court Improvement grant process under IV-B should be continued and expanded. States actively participating in the court improvement program can improve both the process of permanency planning and the substance of the court's decisions. Courts play a critical role in ensuring safety and permanence in the lives of children. Many judges and state court systems have in the past had neither the ability nor the resources to meet demands placed upon them by state and federal legislatures. Child welfare agencies also have had difficulty meeting the demands placed upon them. The Court Improvement program has allowed systems to collaborate on issues related to abused and neglected children, and has nurtured an environment of introspection and cooperation among child serving agencies.

Systemic change is a long and difficult process. Gaining commitment of members of groups as diverse as the judiciary, child welfare agencies, attorneys who serve the system, volunteer organizations (CASA) and others is the first step in moving systems toward changing daily practice. This process of collaboration takes time to achieve. Some preliminary outcomes of Court Improvement Program efforts are just now being realized. To cease in providing funding for this critical program would seriously limit future work toward improving practice on behalf of abused and neglected children, and may even result in loss of momentum toward systemic improvements currently being implemented.

In 1992, the National Council of Juvenile and Family Court Judges, with federal support, launched its Child Victims Act Initiative. A committee of judges, child welfare professionals, court administrators, attorneys, and other national experts developed a document entitled *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases*. This document, endorsed by the American Bar Association and the Conference of Chief Justices, was to become recognized nationwide as a blueprint for change, around which significant systemic improvement could be planned and implemented.

Following publication of the *RESOURCE GUIDELINES*, the National Council identified ten model courts nationwide with whom to work toward improving court practice in child abuse and neglect cases. The Hamilton County Juvenile Court in Cincinnati became the nation's demonstration court. Cited in the American Bar Association's publication entitled "One Court that Works," the Cincinnati court became recognized nationwide as a model for other court systems.

At nearly the same time that this National Council effort was launched, Federal funding to support the Court Improvement Program was authorized. State Supreme Courts began assessment of their court systems, and developing plans for improvement. Many states developed plans for providing training and technical assistance to their court systems. The National Council, as well as the American Bar Association, the National Center for State Courts, and a number of other national organizations were invited to assist courts nationwide in their court improvement efforts. The National Council's *RESOURCE GUIDELINES* was used by state court systems nationwide in their efforts toward improving practice.

Through our close work with Court Improvement Programs nationwide, we at the National Council have begun to witness the benefits of this multi-year systems change effort. To cite just two examples, in California, a county-based approach to court systems reform is being mounted which can result in improved practice for the nation's largest population of dependent children. In Cook County, Illinois, significant headway has been made by state and local agencies in working collaboratively to improve court and agency practice, resulting in closing of thousands of cases in a more timely manner.

The Court Improvement Program is crucial in that it:

- Encourages collaboration between courts and agencies to provide better outcomes for children;

- Provides for development or improvement of case tracking systems to enable courts to better evaluate their handling of dependency cases;

- Allows courts to access the assistance of national organizations for technical assistance in planning and implementing needed change.

The National Council of Juvenile and Family Court Judges strongly believes that continued federal support for court improvement is a necessary element to adoption reform, and

encourages the continuation of the State Court Improvement program. The NCJFCJ also encourages Congress to consider funding this program at a higher level than in the past. This vital effort not only must be continued, but must be accelerated to meet the needs of this nation's children in a more timely fashion. While we discuss these issues, children are growing up in foster care without safe, permanent homes.

- **Termination of Parental Rights**

This provision states that regardless of age, if the child has been in foster care 12 of the last 18 months, or has been in foster care for a lifetime total of 14 months, or is an infant who has been abandoned, or the court has determined that a child's parent has committed felony assault against the child or its sibling or has murdered its sibling, the state is required to initiate termination of parental rights and to identify and approve an adoptive family unless a state court or agency has documented a compelling reason for determining that filing such a petition would not be in the best interests of the child. Or unless at the option of the state, the child is in the care of a relative.

As in the family preservation and reunification provision of the Act, the National Council is concerned that specific lists of reasons for mandating termination of parental rights not be contained in Federal law, but left to the individual interpretation of state legislatures and members of the judiciary. Judicial education is the key to making informed judicial decisions.

- **Child Death Review Teams**

This provision requires that the Federal government, states, and in some cases local government, establish and maintain a death review team to review child deaths where there is a record of prior report or reason to suspect abuse or neglect, or the child was a state ward or known to the child welfare agency. **The National Council supports this provision of the Act, and recommends that members of the judiciary be included on death review teams, whether at the Federal, state or local level.**

- **Criminal Record Checks**

The Act requires states to check criminal records and child abuse registries for all prospective foster and adoptive parents and employees of residential facilities. **The National Council supports this position, but also recommends that criminal record checks be required of all family members who may participate in kinship care arrangements.**

- **Reasonable Efforts to Place Children for Adoption**

The new "reasonable efforts" requirement contained in this Act states that if reasonable efforts to preserve or reunify a family are not made or the permanency goal for the child is adoption, then states are required to make reasonable efforts to place the child for adoption, with a relative or guardian, or in another planned permanent living arrangement. Concurrent planning is expressly

allowed. In addition, states must document in the case plan steps taken to find an adoptive home. **The National Council supports this provision.**

- **Statute of Limitation on Appeals**

States are required to provide that orders terminating parental rights and court-ordered child removals would only be appealable for a one-year period. **This provision would promote more timely permanence in the lives of children, and is supported by the National Council.**

- **Delinking of Title IV-E Adoption Assistance from AFDC and SSI**

The AFDC and SSI eligibility provisions are deleted from eligibility criteria for Title IV-E Adoption Assistance, with no changes in the current match rate. States may claim federal reimbursement for all children currently receiving state-funded adoption subsidies and all prospective children meeting the new eligibility criteria. States are required to spend an amount equal to any savings resulting from this provision on services to children and families allowable under Titles IV-B or IV-E. **The National Council supports this provision of the Act.**

- **Interstate Adoption and Removal of Geographic Barriers to Adoption**

This new provision, which requires states to provide that they will not deny any person the opportunity to be a foster or adoptive parent on the basis of geographic residence of the person or child, or delay the foster or adoptive placement of a child on the basis of geographic residence. also calls for a study of interstate adoption issues.

The National Council of Juvenile and Family Court Judges has worked with the Association of Administrators of the Interstate Compact on the Placement of Children and the National Association of Public Child Welfare Administrators to develop and adopt a new regulation governing interstate placement of children. With funding from the Dave Thomas Foundation for Adoption and the American Honda Foundation the National Council is exploring interstate adoption issues, and concurs with the need for a national study in this area.

- **IV-E FUNDS FOR TRAINING**

Finally, this proposed legislation does not allow states to use Title IV-E dollars for expanded training of judges and other court staff. An educated and informed judiciary is vital to the decision-making process which impacts the lives of children. Training for judges and court staff on the developmental needs of children, defining "reasonable efforts," bonding and attachment, changes in legislation and requirements, and the need for permanency in the lives of children are essential elements of information needed by judges engaged in the decision-making process.

Federal and state legislation continue to place added burdens of additional reviews and caseloads on already overburdened court systems. Judges and court staff require continued training in the law, as well as in possible methods for improving court practice nationwide.

The National Council strongly recommends expanding use of IV-E dollars for training of judges and court staff.

In closing, on behalf of this nation's juvenile and family court judges, I would like to thank you, Mr. Chairman, for inviting us to participate in hearings on this important legislation. The National Council of Juvenile and Family Court Judges believes that too many children in this nation are waiting too long for safe and permanent homes, and we appreciate your interest in assisting the nation's courts and child welfare systems to become more responsive to the needs of children. We hope that you will consider our comments in future deliberations, and look forward to working with you as this important legislation moves ahead. I would be pleased to answer any questions you may have at this time.

ROBERT M. GUTTMAN
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For Hearing on
October 8, 1997

Testimony on S. 1195
before
Committee on Finance
United States Senate

Mr. Chairman, Members of the Committee: Thank you for giving me this opportunity to testify. I hope my testimony will be helpful because I bring a different perspective than your other witnesses. I represent no one but myself; I have no official part in the administration of the child welfare system, and I will neither gain nor lose a dollar however you write the bill. Four years ago, I volunteered to run a project[1] to provide pro bono attorneys to foster parents who wanted to adopt the children who had been placed with them. From that vantage point, I have become familiar with the operation of the child welfare system in the District of Columbia. Familiarity with that system does not just breed contempt but also a burning desire to reform it. That is why I am here -- I have no interest other than to help you change a system that fails the needs of children.

While every provision of S. 1195 is designed to remedy an existing problem in the child welfare system and while every provision has an objective that I heartily endorse, I cannot endorse S. 1195 because I do not believe that it will achieve its worthy objectives. That is a serious criticism; I will try to justify it and explain what I think should be done instead.

The child welfare system has serious problems but those problems are NOT caused by the provisions of current Federal law; rather they are caused by the fact that State agencies do not administer the law in a manner consistent with its not very clearly stated purposes. The extent of agency non-compliance with current law is made evident by the numerous successful court actions finding agency violations of law. The District of Columbia may be an extreme case but it is not atypical of big city systems. The Federal District Court found the city agency in non-compliance over five years ago and has assumed a variety of powers, including the appointment of a receiver to manage the agency, to correct that situation -- but without notable success.

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[1] Attachment A is my letter to the American Bar Association describing the project.

A Different Approach is Needed.

Because the systemic problems of the child welfare system are not caused by technical deficiencies in Federal law, they cannot be corrected by the most well-intentioned fine tuning of the current legislation. The problems of the system can be remedied only by enacting changes that will change the dynamics of the system. That cannot be done by revising or adding to the current procedural requirements of child welfare law; it can only be accomplished by a different approach; by a Federal law that will change agency behavior by altering the incentive structure of the child welfare system.

Current Federal law contains no explicit statement of its goal and requires no measurement of the success or failure of the states in meeting it. Instead, Federal law consists of a variety of process requirements which if followed will, it is hoped, lead to beneficial outcomes. That method has not worked in the past and most of the provisions of S. 1195 consist of additional (or amended) process requirements which are based on the same hope.

I suggest that instead of telling States how to run their child welfare systems that the Federal law specify the goal of the system and leave the States great discretion in how to achieve it. The goal of the child welfare system should be to ensure that abandoned, abused and neglected children are placed in stable and caring family situations as quickly as possible; whether that is achieved by placement in a new adoptive family or by being returned to their own family under conditions that ensure their well-being.

In addition to specifying the goal of the system, the Federal government's role should be to:

(1) determine how well the states are doing in achieving the goal,

(2) provide incentives to the states that are making satisfactory progress and

(3) assure corrective action in states that are not making satisfactory progress in meeting the goal.

To carry out the first role, the determination of how states are doing, requires the Federal government to set measurable performance criteria. A discussion of such criteria and some of the difficulties in implementing them is given below.

The second task, providing incentives to states that improve their performance, is relatively easy because of an anomaly in current law. Under the current system, the states get more money the longer a child remains in foster care. As a result, the worse

the state's performance, the larger the grant it receives. Accordingly when a state improves its performance, its grant is reduced. It is therefore possible to provide an incentive to states to improve their performance by awarding them a percentage -- perhaps 50% -- of the grant money they lose because of the improved performance. If this incentive plan induces improved performance, it will not only save the Federal government money but it will provide the States with unrestricted funds that can be used for program improvements and prevention activities.

The third task, taking corrective action in states that do not perform adequately, will be the most contentious. Obviously, the Federal government's first reaction to poor performance should be technical assistance; if that is ineffective, financial penalties could come into play. However, it is difficult to devise substantial financial penalties that will not adversely affect the children in the system, so additional steps will need to be considered. To the extent that a system is under local control, the State could be required to step in. "The Report on State Performance in Protecting Children" would be a useful device in putting political pressure on non-performing systems but, in the last analysis, the Federal government will need authority to issue remedial orders.

Three provisions of S. 1195 take a modest step towards the performance approach: sections 201 & 202 provide bonuses for increasing the number of adoptions[2] and section 206 provides for a report rating the performance of state child welfare systems. They are important steps in the right direction but I urge the Committee to expand the performance approach to the whole child welfare system. If we agree that the object of the child welfare system is to ensure that abandoned, abused and neglected children are placed in a stable and caring family situation, why don't we require the States to achieve that objective, reward them of they do and sanction them if they do not.

Performance Indicators.

It is quite possible to devise performance indicators to measure the operation of the child welfare system. For example:

(1) reduction of length of time in foster care

(2) reduction in time from abandonment or setting adoption goal to adoption decree

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[2] The bonus is based on the increase in the number of adoptions over the number in 1997. This will make it difficult for States that cleared up their backlogs in that year to qualify. Further, the provision should also reward decreases in the time it takes for adoption decrees to be issued.

(3) reduction in incidence of child abuse and neglect, with appropriate safeguards to ensure that reduction is not due to diminished enforcement.

These indicators can, of course, be refined, but I am convinced that we are more likely to improve the child welfare system if we reward superior performance and take action to correct inferior performance than if we make ever more detailed regulations specifying "how to do it." Congress should specify what it wants to achieve rather than the method for achieving it.

I realize that there are many difficulties in moving to a performance-based system. Let me mention just two. First is the problem of the base line; should systems be measured against an absolute criterion such as the national average or against their own past performance? I recommend the latter.

Second, state-wide performance data are rather meaningless as they tend to obscure the problems of large metropolitan areas. Recognizing the federalism problem, I would nonetheless recommend applying the performance criteria on a local jurisdiction basis; in fact, I would limit it to large local jurisdictions with a minimum of 1000 children in foster care. That is where the real problems are.

Spending Money.

I suspect that S.1195 will cost the federal government a lot of money and I congratulate the authors of section 404 for finding such an ingenious way of finding the offsetting savings. I do not question the decision to spend more money for child welfare; I just urge that the Committee establish appropriate priorities for spending it.

The first priority should be encouraging the States to improve the operation of their systems and that will require not only performance incentives but also the funds necessary to implement corrective-action plans where the states are not performing adequately.

The second priority should be to encourage innovation and I heartily endorse the concept of the innovation grants in section 308. However, the Committee should recognize that not all innovation comes from the State; non-profits and others have contributed much to the improvement of child welfare and they should be eligible for these grants as well. The Abandoned Baby Project[1] in the District of Columbia gives great promise of speeding the adoption of abandoned babies but had to rely on private funding because it was not eligible for a Federal grant.

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[1] Attachment B gives a brief description

As a third priority, I recommend a change in the approach to eligibility for adoption assistance contained in section 202. In essence, that provision will make eligible for Federal adoption assistance children who were previously generally eligible only for State adoption assistance. However, that section continues to leave to the States the definition of "special needs" which is the basis of eligibility for both Federal and State programs. In my experience, the District of Columbia (and I suspect other jurisdictions) is tightening the definition of special needs in order to save money -- thus making children ineligible for both programs. It would seem desirable to write a Federal definition of special needs and thus directly benefit children who can be left out when states apply more rigorous criteria. This seems preferable to the approach in the bill which provides a fiscal windfall to states and then tries to recapture that windfall with a maintenance of effort provision, especially as such provisions have always been a test of State ingenuity in avoidance.

In Conclusion.

Child welfare is a system that, in the last analysis, must leave much to discretion. Decisions about removal of children from their parents and whether it is safe to return them, placing children with strangers, destroying parental bonds and creating new ones are difficult and often heartrending; these decisions cannot be subject to any set formulas but must rely on the informed discretion of caring professionals. When such a system goes awry, it cannot be fixed by imposing new rules; it must give clear goals to guide the professionals' discretion and it must have an incentive structure to assist in attaining those goals.

S. 1195 relies too much on new rules. It takes the right approach in requiring that, in determining what is a reasonable effort to reunify a family, the child's health and safety shall be the paramount concern. That is an excellent provision directed at guiding the discretion of the professional who must make the decision. But the bill also provides a specific rule that reasonable efforts shall not be required when a court has determined that a parent has murdered a sibling.

How do these provisions, one calling for discretion and the other precluding it, relate to one another? Let us take an example, unfortunately not hypothetical. Neighbors summon social workers to a house where they find one child dead (probably from starvation) and two in dire straits. Criminal charges against the mother are being considered but have not been brought. Clearly, professional discretion will conclude that reunification is not consistent with the surviving children's safety but the specific rule says that reunification is precluded only after a court decision, and no court proceedings have been brought. The rule creates confusion and will undoubtedly cause delay in the permanency decision -- I am sure the very opposite of the authors' intention.

Well-meaning provisions do not always work well. Rigid rules are ill suited for dealing with the awful problems of child welfare. I urge you to be clear on the outcomes that you want, encourage States to achieve those outcomes and take action if they don't. Do not try to substitute rigid rules where professional discretion is required.

Thank you again for the opportunity to testify on this most important issue. I would be happy to try and answer any questions you may have and to work with the Committee in any way that you may wish.

ROBERT M. GUTTMAN
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WASHINGTON, DC 20003
[illegible]

Attachment A

COPY

December 11, 1996

N. Lee Cooper, President, American Bar Association
c/o Nancy Anderson, ABA Steering Committee on Unmet
Legal Needs of Children
740 15th Street, NW
Washington, DC 20005

Dear Mr. Cooper,

This is in reply to your letter of Nov. 25, 1996 requesting information on adoption legal activities.

A few years ago, the District of Columbia put a cap ($1,000 for uncontested and $2,000 for contested cases) on the amount of legal fees that would be reimbursed under the Federal Adoption Subsidy Program. The Consortium for Child Welfare, consisting of the private, non-profit child placing agencies in the District, soon discovered that the fear of legal expenses was proving a substantial disincentive to the adoption of children in foster care.

In December 1992, the Consortium started a program to recruit law firms who would supply pro bono attorneys to foster parents who wanted to adopt the abused and neglected children in their care. In September of 1993, I volunteered to run the program and I have been doing it ever since.

The program started slowly in 1993, when we had only 6 cases involving 7 children. But as we learned how to do it, the program expanded, the caseload about doubling in 1994 and doubling again in 1995. To date we have supplied pro bono attorneys in 55 cases involving the adoption of 69 children.

The program, in cooperation with the DC bar, runs an annual training program in adoption law and most of our pro bono lawyers come from that training program although others volunteer directly. The program has a zero budget and depends for its success on the outstanding cooperation of law firms and lawyers in D.C.

To add a personal note. I spent most of my career working on federal public policy issues with an impact on millions -- but that cannot compare with the satisfaction that comes from knowing that 69 children have a better opportunity for a stable family life because of this program.

In the spirit of full disclosure, I must admit that there are

many frustrations that come with the satisfaction of running this pro bono program. The two major problems are the obduracy of the child welfare bureaucracy and the inefficiency of the legal process for adoption in DC.

For the last two years, I have been trying to make this program available to foster parents who are supervised directly by the DC government in addition to those supervised by the Consortium agencies. Despite enthusiastic support from the Commissioner who ran the agency and the Receiver who now runs it, the bureaucracy has stalled implementation with the result that this program is available to only one third of the foster parents whom it could benefit. My efforts continue, but I discern no light at the end of the tunnel.

The inefficiency of the legal adoption process has been the subject of discussion between bench and bar in the District but improvements are minimal or nonexistent. The difficulty in getting appropriate adoption rules (there is currently only one, dealing with number of copies) has caused me to become an advocate of a Family Court for the District as the most viable solution to this problem.

I appreciate this opportunity to describe and reflect on what I have always thought of as a very worthwhile program. If you would like more information or if I can be of assistance to anyone thinking of engaging in a similar effort, I would be most happy to respond.

Yours sincerely,

ATTACHMENT B

Abandoned Babies Permanency Planning Project
EXECUTIVE SUMMARY

The Consortium for Child Welfare (CCW), a coalition of 17 private, not-for-profit social services agencies, was founded in 1980 with the mission of improving the quality and delivery of social and legal services to all children and families in the District of Columbia's child welfare system, with an emphasis on building partnerships across public/private lines.

CCW will administer the Abandoned Babies Permanency Planning Project (hereinafter Project), an unprecedented collaborative effort which coordinates the activities of the District of Columbia's legal and social service systems to identify abandoned children quickly, place them immediately in pre-adoptive homes and process their adoption petitions on an expedited basis. The overall goal of the Project is to decrease the length of time abandoned children spend in foster care from two years to six months. The Project has been endorsed by the highest-ranking officials in the relevant District of Columbia governmental agencies. Each agency has assigned key professionals and support services to the Project, amounting to $173,000 of the total Project budget of $373,000.

The Project Director and staff will be located at the District of Columbia Office of Corporation Counsel. Beginning June 2, 1997, Project staff will assess all pending cases of abandoned children, as well as incoming cases each month, and will follow case progress and deadlines using a computer case tracking system. The Project's Abandoned Baby Coordinator will ensure all social work and legal deadlines are met and will conduct a unique case review, involving all parties on the case, within a month of the child abandonment. Training will be provided for all child welfare professionals who will be involved in cases on the Project caseload with an emphasis on new protocols to implement the D.C. Department of Human Services, Family and Child Care Administration (DHS-FCCA) policies on abandoned babies and legal-risk adoptive placements.

The ***primary purpose*** of the Project is to expedite the adoption of abandoned babies and children by providing such cases with intensified and enhanced legal and social work services.

A thorough search for missing parents will be conducted by investigators retained by the Project.

(1) In those cases where a parent is located, counseling will be provided regarding the parental options: (A) demonstrate an interest and ability to provide care for the child, and resume care; (B) relinquish parental rights and allow the child to be adopted; or (C) have parental rights terminated by the court so the child can be adopted.

(A) When a parent expresses a desire to be reunified with the child, historically only a small percentage do, services will be provided to the parents by the D.C. DHS-FCCA. A case conference will be held within the first 30 days of the opening of the case and again in 3 months to monitor the child's progress toward reunification or to change the goal to

adoption and initiate the termination of parental rights, if appropriate.

(B) If the parent decides to sever legal ties to the child, the relinquishment will be taken. Historically, this is the majority of parents who abandon a child. The Project's Placement Coordinator will identify an adoptive home through a public or private child placing agency and placement will be made within 30 days of abandonment. Equal numbers of referrals will be made to the public and private agencies. A petition to adopt the child will be filed in court at the earliest possible date. All necessary steps will be taken to expedite the adoption process, including the recruitment of *pro bono* legal counsel for the pre-adoptive family.

(C) If the parent declines or fails to relinquish, and fails to take timely and necessary steps to resume care of the child, a termination of parental rights motion will be filed.

(2) In those cases where **a parent cannot be located**, but **a relative is identified**, efforts will be made to determine the relative's interest in, and ability to adopt the abandoned child. Project staff will expedite the home study and adoption approval process. A motion to terminate parental rights will be filed, if necessary. If a relative will not adopt the child, efforts will be made to place the child in a pre-adoptive home.

(3) In those cases where **neither parent(s) nor relative(s) are located**, the child will be placed in a pre-adoptive home immediately and a motion to terminate parental rights or an adoption petition will be filed.

The ***secondary purpose*** of the Project is to support the Superior Court of the District of Columbia in processing pending adoption cases and reducing the time required to finalize adoptions.

Finally, it is anticipated that the Project will serve as a model for the effective and efficient management of this specific caseload. The Project will identify and resolve problems related to intergovernmental relationships as they impact the adoption process. This will include improving communication between and among participating agencies, hospital and child welfare agencies so that all are focused on assuring permanence for children by effecting adoption as quickly as possible for children abandoned by their parents at birth, or shortly thereafter.

In January of 1998, Project staff will increase the caseload by providing expedited adoption services for children under the age of 12 whose goal is adoption and who are without siblings, and thus most likely to be placed quickly in a pre-adoptive home. Services include initiating legal activity such as termination of parental rights actions, adoption petitions or permanency planning hearings, and providing supportive social work services such as adoption recruitment. These focused permanency planning efforts will assist in expediting the adoption of children who currently wait years for a permanent home.

A Law Clerk will be assigned to the Termination of Parental Rights/Adoption calendar at the District of Columbia Superior Court. The Clerk, located at Superior Court, will assist in expediting the judicial processing of all pending adoption petitions, including those involving abandoned children.

The specific goals of the Project are as follows:

- To immediately seek voluntary relinquishment of parental rights from birth parents who abandon newborns in District of Columbia Hospitals.
- To initiate and complete successful legal activity for abandoned babies and children within six months of entering the child welfare system.
- To place abandoned infants and children in pre-adoptive homes within 30 days of abandonment.
- To expedite the judicial processing of adoption petitions from fourteen months to three months.
- To reduce the backlog of pending adoption cases in the District of Columbia Superior Court.
- To provide expedited adoption services for children without siblings who are less than 12 years of age, have been in foster care for a year or more and have a goal of adoption.
- To increase training for public and private child welfare professionals on new protocols utilized in Project case management.
- To demonstrate success, in measurable outcomes, of a collaborative approach to system reform which includes coordinated legal and social work activities accomplished on an established schedule.

A statistical analysis of the Project caseload will be generated each quarter, to assess whether cases are progressing as anticipated and to resolve any issues identified as delays to case progress. A Project Advisory Committee, composed of the signatories to the Memorandum of Understanding or their designees, the Project Consultant to the Stewart Trust, representatives from the Center for Study of Social Policy/LaShawn Monitor and D.C. Action for Children, will meet with the Project Director and the Consortium's Executive Director on a quarterly basis to evaluate Project statistics, alter programmatic operations when indicated, and formulate a long-term funding strategy to continue the Project's work.

BARBARA B. KENNELLY
STATEMENT ON PROMOTING ADOPTION
SENATE FINANCE COMMITTEE

OCTOBER 8, 1997

Mr. Chairman, I want to thank you for allowing me to testify today.

When Congress adjourns later this year, we will go home to spend time with our families during Thanksgiving and Christmas. Unfortunately, half a million American children will spend the holiday season waiting for a permanent home. I can't think of a greater reason for quick action on meaningful adoption legislation.

Let me therefore commend the bipartisan group of Senators who recently introduced legislation, known as the PASS Act, to protect children and promote adoption. On the House side, we also put aside our differences and passed legislation in April that will help our nation's neglected, abused and all too often forgotten children. Our legislation passed 416 to 5, so I think there is a clear consensus that we can do a better job of protecting children and promoting adoption.

The PASS Act shares many similarities with the House legislation in promoting both protection and permanency for children. Like the House bill, the PASS Act would revise the current federal requirement that states make "reasonable efforts" to reunify abused children with their families. Both bills provide specific examples illustrating when children should not be returned home, such as when abandonment, torture or sexual abuse has taken place.

The PASS Act includes several other provisions in the House adoption bill, including: financial bonuses for states that increase the number of children being adopted from foster care; and a requirement that states expedite their reviews of children in foster care.

Of course, there are also differences between the two bills. Unlike the House bill, the PASS Act would make more children eligible for federal adoption subsidies and would reauthorize the Family Preservation Program. While there may be concerns about the cost of these provisions, a good argument can be made for

providing more resources for our child welfare system. The Family Preservation and Support Program will send about $2 million a year to my home state of Connecticut. Coming from a state under court order to improve its child welfare system, we can certainly use that funding.

However, I do think the PASS Act made a wrong turn in two areas. First, reducing the House bill's bonuses for states that increase adoption from $4000 per child to $2000 per child makes little sense. I should remind you that CBO has said the House adoption bonuses will actually save money by reducing foster care expenses, so there is no reason to reduce their size. And second, I am concerned about the PASS Act's more stringent provisions on terminating parental rights. Not only does the PASS Act require a judicial proceeding to terminate parental rights (TPR) when a child has been in foster care for one year, instead of 18 months as in the House bill, but it also eliminates an exception to this requirement when no effort has been made to help the birth family. Furthermore, the bill would prohibit appeals of TPR decisions after one year of the decision. I know we all have the same objective, moving children towards permanency more quickly, but let's move with some caution when deciding to permanently sever a parent's connection with their children.

Do not misunderstand these comments. While I don't agree with every change in the PASS Act compared to the House bill, I do firmly believe the bill gets us one step closer to our shared goal of helping abused children find safe, loving and permanent homes. In short, I strongly urge this committee to report the PASS Act to the Senate floor so we can go to Conference and send a bill to the President before we adjourn. Let's not go home for the holidays without sending a clear message that we intend to help children get adopted.

Thank you.

Testimony of Joe Leean, Secretary of the Wisconsin Department of Health & Family Services, before the Senate Finance Committee.

Thank you, Chairman Roth and members of the committee for the opportunity to provide testimony on S. 1195, the Promotion of Adoption, Safety and Support for Abused and Neglected Children Act.

Wisconsin has a long, proud history of child welfare services and more recently has assumed national leadership for welfare reform. These two are forever linked because of the fact that families with low self-esteem, no job, and/or in poverty are at much greater risk of child abuse and neglect and, conversely, strong, healthy, working, self-reliant families raise children with the same attributes.

Our welfare reform is focused on Work Not Welfare. Before our statewide program began this fall, we piloted Work Not Welfare in two Wisconsin counties. In Pierce County, 3 years ago there were 191 families receiving AFDC and by June of this year 7 families were receiving payments. In less than one year during the pilot, reports of child abuse and neglect declined approximately 50%. In Fond du Lac County in a 3-year period including the pilot, AFDC caseloads dropped from 791 families to 187. This is a caseload reduction of over 75%. Their reports of child abuse and neglect declined slightly throughout those same 3 years. Neither county experienced an increase in the number of children placed in out-of-home care during the Work Not Welfare pilot. Self-sufficient working parents have increased self-esteem and enhanced parenting abilities, thereby reducing the risk of coming to the attention of the child welfare services system.

I am equally proud of Wisconsin's leadership in the field of child welfare services. The PASS Act seeks to establish by federal law provisions already in place in Wisconsin statues:

- Adoption laws that are a national model to assure timely, permanent adoptive homes for our children.
- Our Children's Code was recently revised to assure timely termination of parental rights.
- Annual dispositional hearings for children in out-of-home care have been on our books for nearly 20 years.
- Criminal records checks are required.
- Foster parents are allowed a voice in court.

Furthermore, we have advanced the principles and practices of child safety for the last 10 years. Our statewide Child Protective Services Investigation Standards require a careful assessment of child safety in each child abuse and neglect case. We have a Department-wide Strategic Plan that includes a goal to increase the number of timely adoptions and I have developed a quarterly "report card" to track progress and outcomes. We have successfully put into place in each of our 72 counties and 11 tribes creative community partnerships to plan and deliver strong collaborative programs on behalf of families at risk of or involved in the child welfare system. We will assume direct responsibility for child welfare services in Milwaukee County in January 1998, including

significant new resources to assure quality services and the creation of new community partnerships.

Finally, I understand that there are those who criticize the federal government for providing states with financial incentives through Title IV-E to keep children languishing in the foster care system. I want to assure the members of this Committee that that is simply not the case for the 72 Wisconsin counties that are responsible for the direct delivery of child welfare services. For close to 20 years the state has provided a sum certain annual allocation to counties. It is the county's responsibility to plan and budget for a wide range of services for the elderly and disabled as well as children and their families. To the extent that spending exceeds state funding, county tax levy must fund additional services. They have no financial incentive to inappropriately place children in care or to leave them in foster care any longer than necessary.

S. 1195 contains provisions that Wisconsin can support. We are concerned that Congress has struggled to reach consensus on a child welfare bill that can be passed in this session. I commend your colleagues in the House for the success in gaining nearly unanimous support for H.R. 867, the Adoption Promotion Act of 1997. States including Wisconsin appreciated the opportunity to meet with staff of the House Ways and Means Subcommittee on Human Resources as the legislation was being developed. We urge the Senate to work with the House to pass a solid compromise bill in this session. Children in the child welfare system and those of us responsible to serve them need your help now.

Reasonable Efforts and Safety Requirements for Foster Care and Adoption Placements

We fully support language that confirms our belief that children's health and safety are paramount. Clarifying that there are some circumstances in which reasonable efforts are not required will support good practice and assure child safety.

Given the clarifying language for reasonable efforts, we urge deletion of the phrase "when possible" which follows "reasonable efforts should be made to preserve and reunify families". That phrase can too easily be applied in cases where reasonable efforts should be made.

Termination of Parent Rights for Certain Children in Foster Care

We support the intent of this language to assure that children do not languish in foster care, but believe that states should be responsible to establish the specific statutory language to achieve the common goal of timely permanence for children.

Adoption Incentive Payments

Wisconsin supports this provision and the opportunity to allocate new resources to assure safety and permanence for our children.

Promotion of Adoption of Children with Special Needs

We support the bill's provision to give states the ability to claim Title IV-E for all special needs children and receive additional benefits to expand adoption services such as recruitment of families and post-adoption supports.

Adoption Across State and County Jurisdictions

While Wisconsin supports the provision for the study of inter-jurisdictional adoption issues, we believe it is premature and inappropriate to establish new standards prior to completion of the study. Any future proposals on this matter should address adoptions and not the temporary placement of children in foster care. Current federal law gives us the rightful obligation to consider proximity to families for children in foster care. The protections for children and states afforded by the Interstate Compact on the Placement of Children should not be threatened by this bill.

Permanency Planning Hearings

Wisconsin law is consistent with the requirement for a dispositional hearing for children placed in out-of-home care no later than 12 months after placement. We do urge deletion of the requirement for court review of cases every 6 months. Under current federal law now cases are reviewed every 6 months by either the court or an administrative review panel. This new provision imposes an immense burden on the court system and the human services system in terms of both time and cost. For

Wisconsin this would double the workload of the courts and take more valuable time from social workers, many of whom are currently straining under heavy, complex caseloads. The current requirement of either a court or an administrative review panel review every 6 months will better achieve the permanence outcome for the children we serve.

Coordination and Collaboration of Substance Abuse Treatment and Child Protection Services

We are all aware of the linkages between substance abuse and child abuse and neglect in this nation. Wisconsin supports collaboration of the service systems to produce better outcomes for families in the child welfare system. However, collaboration without appropriate, timely treatment services is not enough. My state is seeking a Title XIX waiver to allow us to continue time limited Medical Assistance coverage for parents whose children must be placed in out-of-home care in order to assure their safety. Continuation of Medical Assistance allows the parents to receive the mental health and substance abuse treatment they need in order for their children to safely return home. This is a short-term investment that will, in the long run, save the federal and state government money otherwise spent for foster care. Our proposal is one that Congress ought to support so that states have the proper tools to move children and their families to better outcomes.

Reauthorization and Expansion of Family Preservation & Support Services

Wisconsin is extremely pleased with the support for and expansion of Family Preservation and Support Services evidenced by this provision. The availability of time-limited family reunification services is an important component of a balanced public policy for child welfare goals of safety and permanence.

Allocation of Administrative Costs of Determining Eligibility for Medicaid and TANF

Clearly, the major problem area in S. 1195 is the funding mechanism. My Governor, Tommy Thompson, the NGA and APWA in the past have all expressed significant opposition to language which would prohibit cost allocation to appropriate programs for TANF, Food Stamps and Medicaid administrative services and require that all of these services be absorbed within the capped TANF grant. This will require that new child welfare services mandated by the federal government will be funded by state dollars due to loss of claiming allocations. Furthermore, at a time when two state programs serving families need to be better integrated, and various service agencies - both governmental and non-governmental – are seeking to work together, this funding mechanism will create barriers of animosity and non-cooperation because one program will be underwriting the costs of another. I urge you not to jeopardize a needed bill with a funding mechanism which will be viewed by the states as an unfunded mandate and will have states robbing Peter to pay Paul in a way that will sever the needed collaboration for families who are on TANF, Medicaid and Food Stamps.

Wisconsin, along with many other states, wants Congress to pass a strong bill that supports safety and permanence for our most vulnerable children. We stand ready to partner with you to pass such a bill in this session.

Again, I thank you, Mr. Chairman, for inviting me to comment on this promising legislation. I look forward to working with you to resolve these important issues. I would be happy to answer any questions.

TESTIMONY OF

FAITH S. LONEY

Chairman Roth and Members of the Senate Finance Subcommittee good morning and thank you for the opportunity to be here today. We feel an overwhelming sense of appreciation towards Senator Chafee, Senator Rockefeller, Representative Camp, Senator Levin, and all those who have worked so diligently to bring H.R 867, S.511 and now S.1195 to light. Mrs. Tammy Patton and I come to you from the Detroit Metropolitan area where our most important credential is that of parent/foster parent. We have been foster parents for five years and in addition to our own birth children, have collectively fostered eighteen boys and girls. I currently have three children placed in my home which is licensed for the care of up to four. It is a privilege to speak on behalf of our past and present foster children, and all those who languish in a system which purportedly protects them, but too often persecutes them as a result of loose and misconstrued terminology.

I am pleased to support the majority of changes in statues that comprise the Promotion of Adoption, Safety, and Support for Abused and Neglected Act or Pass. For over a decade the policies covering children's welfare has seemingly benefited everyone except the children by weighing parental rights against best interests. I have never believed the current wording of "reasonable efforts" was intended to be interpreted as "at all costs," yet everyday more children fall victim to false perceptions of this law. Additional barriers include agencies with overburdened caseloads, lanquid attorney representation, complacent attitudes by children's advocates, and lack of panoramic views when dealing with preservation of parental rights . I would like to briefly share with you the history behind three different cases and how the current system failed the children physically, emotionally, and mentally.

Case 1- 1993-1995
A grandmother was given custody of her grandchildren after the courts determined the mother was unfit to care for her four young children (ages 11 months, 21/2, 31/2, 7). The mother had a seven year history with protective services and the fathers were not involved. Five times during a two year period her these children were shuffled amongst relatives including maternal and paternal grandmothers. The children came into care because the grandmother had simply given the mother back custody of her children within two days. An agency initially placed the 11 month old in a foster home care, the 7 year old in a different foster home, and the 21/2 and 3 1/2 year old once again with the paternal grandmother. Two weeks later the grandmother voluntarily turned the girls in and they were placed into care with their 11 month old brother.

For two years the children lived with the foster family as temporary court wards. At that juncture the agency decided to file for permanency as mom was incarcerated for an extended time. No relative had come forth to care for these children now ages 2 3/4, 41/2, 51/2, 9). At the hearing for permanent custody the maternal grandmother was present and requested guardianship of the oldest and youngest child. The father never having interacted or visited with the children and not present in court was given custody of the girls whom actually returned to his mother. These children had histories of physical and sexual abuse at the hands of the mother and the maternal grandmothers boyfriend. The oldest child had been the primary caregiver prior to coming into care. The baby had been labeled failure to thrive, and all the children suffered various degrees of emotional trauma. The Michigan State Ombudsman office notified the foster parents that the Referee acted in good faith based upon "reasonable efforts for reunification."

Case 2- 1996-present
An infant is left abandoned in the hospital at birth. He is positive for cocaine but shows no immediate physical concerns. He is the eighth child born to his mother, none of whom she has raised. Issues she has faced include abandonment, neglect, physical abuse, and poor social interactions. All children have been adopted out through foster care or raised by relative placements. The infant has a brother one year older than him whose adoption was final just days before his birth. The mother does not respond to court orders for hearings and fails to respond for six months. At the permanent custody hearing the mother appears and says she wants to plan for her child. The child is now fifteen months old and has been a temporary court ward all of his life. His mother still needs magnificent amounts of success to be able to effectively care for herself and her child who is now considered medically fragile. "Reasonable efforts" could

literally cost this child's life. A supervisor for the case said "we know that if we send him home he will come back into care in a very short time, but the law says we must."

Case 3 - 1995 - present

Five siblings are placed in care in separate homes. Governmental Agency support has valiantly tried but failed in their attempts to rehabilitate both parents, and maintain the family. The children have suffered severe neglect, medical neglect, sexual and physical abuse. All the children were born positive for drugs. Two children are medically fragile, and all but the infants have emotional problems. The mom is now incarcerated and the Dad suffers physical limitations because of his past lifestyle. The father has no source of income, no place of his own to stay, and zero reliable resources. Due to the time the children have spent in care it is time to make some goals for permanency planning. The children spent two weekends visiting with their father at his mothers home. During both visits neighbors called protective services for substantiated neglect and physical abuse. The plan for family reunification continues to be pursued based on "reasonable efforts for reunification."

Based on these three cases you can see why I am most anxious to have some portion of this bill enacted. I am particularly encouraged by the decreased relevance of reunification over best interests, the removal of geographic barriers and county jurisdictions as determining factors for placement, and state accountability in the form of required documentation of efforts for permanency. Every day that we wait on this legislation costs children all over the United States a lifetime of unnecessary suffering. Unfortunately a significant number of these children have spent the entirety of their formative years within the foster care system.

Mrs. Patton and I have been accused of being overzealous in our efforts to assure children's rights are maintained. Often our concerns are met with acrimony, and we have endured various degrees of slander. However, we continue to be the voice for the inaudible cries of children we know are harmed by institutionalized (emotional) abuse. We believe that all children have the right to grow up in a stable environment, maintain their childhood innocence, and inherently have a sense of security. If biological families cannot provide these elements within a timely manner should children be forced to pay with mental instability, low self-esteem, no sense of belonging, and general apathy?

In Michigan the MARE book (Michigan Adoption Resource Exchange) is a recruiting tool to expose children that are left waiting for permanent homes. Many had opportunities for previous adoptive placements that fell through because after extensive periods parental rights had not been terminated. It is of the utmost importance that clarification be given to the term reasonable efforts. Children's welfare must be the primary consideration when enacting Child Welfare reform.

By removing geographical barriers more children will be available to parents like us who are willing to provide a loving home to these children. My husband and I have been waiting for a year and a half for a sibship of two to four children ages eight and under. Our attempts have been unsuccessful not because children are not available, but because of inter-agency politics and hoarding of prospective parents. Sharing of adoptive placement information for potential placements is very competitive especially amongst private agencies. Enacting an accountability clause and requiring documentation of efforts on a periodic basis will hopefully inspire agencies to manipulate matters to the child's advantage , and not from a financial view. .

General Concerns I have about S.1195 include Sec.104 Transition Rule for current foster care children, one year appeal period after termination of parental rights, requirements for criminal background checks for foster families and staff but not relatives, the financial burden of enacting these laws, private vs. state agency's enforcement of the act.

Mr. Chairman it concerns me deeply that none of the proposed changes affects children in foster care

right now. With the transition rule it would be more than a year before the hundreds of thousands of children in foster care today could hope to have some resolution in their lives. In the life of a child a year is a phenomenal amount of time. In the life of an infant it is a lifetime. Between the ages of birth and eighteen (twenty-one for boys), children change radically emotionally and physically about every six months. Just visualize the changes children undergo from one school year to the next, and remember we are asking these children to remain stagnate for one...two...three... possibly more consecutive years. the time for change is long overdue. Our children, my children, cannot endure additional years of uncertainty.

Criminal background checks need to be a prerequisite for anyone wanting to care for children. Currently foster parents must have a source of income, suitable home, adequate daycare, and clean criminal record. Parents and relatives are not required to have any of the aforementioned. Suitable housing for them can be residence with a relative in a one bedroom apartment without beds for the children to occupy. Crimes and offenses against mankind cannot continue to be overlooked because of blood ties.

This bill is a major undertaking and many of our prominent figures are already saying it is an unaffordable task. If portions or this bill in its entirety is enacted measures must be taken to ensure that these guidelines are adhered to. The children in today's system require that we all take accountability and do our parts to ensure them promising futures. Thank you for the time to express my myself here today.

Opening Statement on S. 1195, the Promotion of Adoption, Safety, and Support for the Abused and Neglected Children (PASS) Act

October 8, 1997

I thank the Chairman for convening this hearing on legislation designed to achieve two goals we all share -- ensuring the safety of children in the child welfare system, and finding permanent homes for as many children in foster care as possible.

These children, victims of abuse and neglect, are among the most vulnerable in our society. We are all familiar with the sad stories, like that of six-year old Elisa Izquierdo of Brooklyn, who was beaten to death by her drug-addicted mother in 1995. I am sure our colleagues know of similar cases from their own states. We owe it to these children to do our best on their behalf. And I am encouraged that a group of our colleagues has set out to work together -- on a bipartisan basis -- to develop this legislation, of which I am a cosponsor.

In the 1980's I was involved with the creation of the Independent Living program, which helps teenagers who "age out" of the foster care system adapt to living on their own. A study of the children in the program found that 58 percent experienced at least three living arrangements and that, unsurprisingly, 38 percent had been diagnosed as emotionally disturbed. We need to do better by these children, to help them have safer, more stable childhoods.

I thank those responsible for this bill for their hard work and look forward to hearing from our witnesses. I hope the Senate will act on this important legislation before we adjourn in November.

Statement of Senator John D. Rockefeller
United States Senate Committee on Finance
Hearing on the Promotion of Adoption Safety and Support (PASS) Act
Wednesday, October 8, 1997

Mr. Chairman: Everyone here today shares the fundamental belief that we cannot allow any child to slip through the cracks. This is especially true for our most vulnerable children — kids who, because of circumstances beyond their control, find themselves in the foster care system. We all wish that every child could be raised as part of a safe and loving family. Congress can help achieve this goal in some ways, but we also have to ask every parent, every family, and every community to do their part in making this country a safe and healthy place for children to grow.

The concerns about abused and neglected children — especially about the barriers that stand in the way of adoption — have brought together an extraordinary coalition of Senators. This consensus group has come together to address these issues in practical ways. The result of the this process of strong bipartisan compromise is the Promotion of Adoption Safety and Support for Abused and Neglected Children (PASS) Act, the vital first step in making sure that the needs of these children are addressed. I am very pleased to have been a part of this effort.

Before I address the strengths of this bill, I would like to thank my colleague Larry Craig, who has taken the lead in building an informed consensus around this issue. He has proved that compromise can yield good politics and good policy. I would also like to share my sincere thanks with my friend, John Chafee, whose strong leadership has been so enormously vital to our bipartisan efforts. Finally, I owe special appreciation to my colleagues who are cosponsoring this bill: Jim Jeffords, Mike DeWine, Dan Coates, Kit Bond, Mary Landrieu, Carl Levin, Bob Kerrey, Bryan Dorgan, and Daniel Patrick Moynihan. They have all worked extremely hard to offer concrete and practical solutions to the problems facing abused and neglected children.

For the first time, PASS will insist that a child's health, safety and *real* opportunity to find a loving, adoptive home are the paramount concerns when any decision is made about a child in the foster care system. We are talking about children in a system which, from the outset, was never intended to provide a permanent home. This point was emphasized in President Clinton's Adoption 2002 Report, which detailed the permanency limitations of the current abuse and neglect system and urged that adoption be used as the key tool to move foster children into more stable and loving homes. That report eloquently captures the tragic reality that, for too long, our child welfare laws have allowed abused and neglected children to wander aimlessly through the foster care system — no longer welcomed by their biological families but unable to be adopted into new and loving homes. One social worker called these children the "orphans of the living" — also the title of a recent book on America's foster care system. Although I find this an enormously disturbing description, it poignantly suggests that it is time to shift the focus of the foster care system from "legal limbo" and reunification at any cost towards permanency and adoption.

As a comprehensive package based on bipartisan consensus, PASS will accelerate and improve the response to these concerns, promote safe adoptions, and restore safety and permanency to the lives of abused and neglected children. The main objective of this bill is to move abused and neglected children into adoptive homes or other permanent situations and to do so more quickly and more safely than ever before. Right now, many foster care children are forced to wait years before being adopted. Some lose their chance for adoption altogether. Every year, thousands of American children become adults in the foster care system.

While PASS preserves the requirement to reunify families where appropriate, it does not require states to use "reasonable efforts" to reunify families that have been irreparably broken by abandonment, torture, physical abuse, sexual abuse, murder, manslaughter, and sexual assault. This measure is common sense. In reality, however, many children are returned to unsafe homes because the "reasonable efforts" standard has been interpreted as reunification at any cost.

PASS is a bold and innovative adoption bill that uses programs and funding to break down the legal, financial, and geographic barriers to adoption. PASS specifically encourages adoptions by rewarding States with bonuses for facilitating the adoptions of all children — especially those with special needs. Without the support and funding provided in this bill, these special needs children, the most vulnerable group of an already fragile population, will not be adopted. This is not because there are not loving families willing to take them in. It is because the average adoptive family — middle class parents who already have children — are simply not able to make the changes necessary to accommodate a special needs child. Expanding their home, making room for more than one sibling, or providing medical care or psychological therapy can mean financial ruin. PASS makes sure these willing families will have a base of support.

PASS also cuts by one-third the time that an abused and neglected child must wait to be placed with an adoptive family. In response to a candid and focused look at today's foster care system, the bill also seeks to rescue children from the limbo of the current system by requiring states to take the necessary legal steps to free children for adoption. PASS also prevents the further abuse of children in the foster care system by requiring criminal records checks for all foster and adoptive parents. PASS seeks to help the individual child but, equally importantly, fix the system.

This bill presents us with the unique opportunity to make real changes in a system that desperately needs reform. With strong bipartisan support and cooperation from the many child advocacy organization, child welfare workers, foster and adoptive parents, and state agencies, we can enact this important legislation this year. With this realistic goal in mind, I want to thank all my colleagues and the witnesses who have come here this morning to focus on these vital issues and urge their support of this bill.

COMMUNICATIONS

American Academy of Pediatrics

STATEMENT

on

S. 1195

"THE PROMOTION OF ADOPTION, SAFETY, AND SUPPORT FOR ABUSED AND NEGLECTED CHILDREN" ('PASS') ACT"

submitted by

THE AMERICAN ACADEMY OF PEDIATRICS

to the

SENATE COMMITTEE ON FINANCE

for the hearing record of

October 8, 1997

The American Academy of Pediatrics (the Academy) is an organization of 53,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical subspecialists dedicated to the attainment of optimal physical, mental, and social health for all infants, children, adolescents and young adults.

Foster care and adoption are among the issues addressed by the Academy's national Committee on Early Childhood, Adoption, and Dependent Care, which is composed of pediatricians with particular expertise in these issues. The Academy also has a national Committee on Child Abuse and Neglect, whose members have relevant expertise. The following comments were developed with the assistance of both of these committees.

We would like to applaud the efforts of the sponsors of S. 1195 to create legislation to address the serious needs of children who are under state protection. We are pleased that one of the main features of the bill is to clarify that the child's health and safety must be of paramount importance in all decisions regarding the child's placement, including the development and implementation of case plans and case plan reviews. The bill also includes important provisions that will help to ensure the safety of a child who is placed out of the home (*e.g.*, criminal background checks and standards for providers of out-of-home care).

In addition, we applaud the very significant step the bill takes to promote the adoption of children with special needs by "de-linking" eligibility for adoption assistance from the circumstances of the biological family, thereby making Medicaid and adoption assistance payments available to all adopted children with special needs. We also commend the bill sponsors for reauthorizing the Family Support and Preservation Act, since the monies available to states under that law can be used to *prevent* child abuse and neglect by providing services to support families.

We are also pleased that S. 1195 addresses some of the issues on which we commented with respect to S. 511. In particular, we appreciate the inclusion of the provisions: (1) requiring that foster parents and relative caretakers be given notice of, and an opportunity to be heard in, any review or hearing with respect to the children in their care (§105); (2) permitting states to use adoption incentive payments for post-adoption services (§201); (3) authorizing the U.S. Department of Health and Human Services (HHS) to provide assistance to states and localities to encourage expedited adoptive and pre-adoptive placement for children under one year of age (§203); and (4) permitting foster care payments to be made for children whose parents need treatment in residential facilities, and the inclusion of "post-partum depression" in the list of parental conditions that justify such payments (§306(c)).

Nevertheless, we have some concerns about S. 1195. In general, we are concerned that the bill's provisions will, appropriately, generate greater caseloads for state agencies and

courts, but that there may not be sufficient resources for agencies and courts to execute the law's requirements skillfully and effectively.

More timely decisions about permanent placement will require that families receive reunification services (if determined to be appropriate) in a more timely fashion than they do in the present. If such services are not provided, then the bill's time-lines could prompt states to seek terminations of parental rights (TPR) without giving families a decent chance to solve their problems. Agencies faced with resource limitations also could be prompted to funnel resources away from investigations of reported abuse or neglect, leading to additional child injuries or deaths. Therefore, we suggest that the legislation provide additional resources to states (as did the original Senate bill, S. 511) in order to carry out the activities necessary to achieve more timely placements of children into appropriate permanent living situations.

In the courts, the additional caseload (from more TPR petitions, and from more frequent hearings) could affect both the quality of decisions rendered and the efficiency of the court system. To ensure appropriate judgments about the welfare of children, it is imperative that all judges be educated about children's developmental and emotional needs; an increased caseload is likely to necessitate additional training. In addition, the goals of the legislation will be undermined if state courts are not assisted in operating as efficiently as possible. Court delays and continuances are responsible for many of the current delays in placing children into permanent homes. These delays will not be rectified (and may be exacerbated) by the provisions of the bill as drafted. For these reasons, we suggest additional funding for training judicial personnel and improving state family court administration.

We also note that the bill requires modifications in agency and judicial processes based on the assumption that these changes will result in better outcomes for children. As discussed in more detail below, we think it is important to establish sufficient monitoring of both processes and outcomes to ensure that children actually benefit from the mandated changes.

Additional concerns and suggestions for addressing them are enumerated below.

Section 101 -- Clarification of Reasonable Efforts Requirement. We strongly support the clarification that the child's health and safety must be of paramount concern in determinations of "reasonable efforts" to reunify families. We suggest several amendments to the provision, however.

Suggested changes:

(1) Delete the phrase "when possible" in amended section 471(a)(15)(B) of the Social Security Act. This phrase suggests that a state could forgo reasonable efforts for reasons other than those related to the child's best interests, such as limitations on resources.

(2) Change the word "parent" to "child" in amended section 471(a)(15)(C), in order to reflect that family reunification efforts are made on behalf of the child, not the parent(s).

Section 103(a)-- State Child Death Review Teams. While we heartily support the requirement that states maintain child death review teams (CDRTs), we are concerned about a very significant change that was made from a similar provision in the original Senate bill (S. 511). That bill mandated that child death review teams investigate any child deaths in which: there was a prior report of child abuse or neglect or there was a reason to suspect that the child death was related to child abuse or neglect; the child who died was a ward of the state or was otherwise known to the child welfare agency; *the child death was a suicide*; or the *cause of the child death was otherwise unexplained or unexpected.*

In contrast, the child death review teams established under S. 1195 are not required to investigate suicides or "unexplained" or "unexpected" deaths. As a result, a number of abuse or neglect related deaths could go unrecognized, and deaths from other causes also might be misidentified.

The Academy has long-promoted the establishment of CDRTs, which facilitate detection of child abuse or neglect, familial genetic diseases, public health threats, product safety hazards, and inadequate medical care. In addition, child death reviews aid in the understanding of Sudden Infant Death Syndrome (SIDS). The Academy's policy statement on this topic makes the following recommendations (among others):

> "(1) Pediatricians should advocate proper death certification for children, recognizing that such certification is not possible in sudden, unexpected deaths in the absence of comprehensive death investigation, including autopsy.
>
> (2) Pediatricians and AAP chapters should support state legislation that requires autopsies of all deaths of children younger than 6 years that result from trauma; that are unexpected, including SIDS; and that are suspicious, obscure, or otherwise unexplained. It should never be assumed that the death of a child with a chronic impairment occurred as a result of that impairment."

Suggested changes:

(1) Add back the provision from S. 511 requiring child death investigations in cases of suicide (at least pre-adolescent suicide), unexplained and unexpected child deaths, and specify that unexpected deaths include suspected SIDS deaths. (Please see attached AAP model state law for a definition of "unexpected death.")

(2) Add to the end of section (c)(1), following the word "including" the phrase "but not limited to," in order to clarify that the state child death review teams are not precluded from reviewing more cases than those specified in the federal law.

(3) Require that child death reviews include an autopsy, as it is otherwise impossible to establish accurately the cause of death, particularly in distinguishing SIDS from certain other medical causes of death. (Please see attached AAP model state law for a definition of "death investigation" and attached policy statements on "Investigation and Review of Unexpected Infant and Child Deaths" (1993), and "Distinguishing SIDS from Child Abuse Fatalities" (1994)).

(4) Require that review teams include pediatricians with expertise in "SIDS, diagnosis of child abuse and neglect, and pediatric pathology". (Please see AAP model state law for suggested composition of child death investigation team.)

Require states to provide data to the Federal Child Death Review Team, as appropriate. (See below.)

<u>Section 103(b) -- Federal Child Death Review Team.</u> If the Federal child death review team is expected to make recommendations to Congress, agencies, states and localities on policy and procedures related to child abuse and neglect, then it must have data and recommendations from the states. Moreover, aggregate data may help to identify trends in child fatalities that are not apparent at the state level (*e.g.*, environmental problems, hazardous products).

Suggested changes:

(1) Add language that would require the Federal review team to review and analyze (or refer to other appropriate agencies for analysis) the relevant aggregate data and recommendations from State child death review teams, and from regional or local child death review teams, in order to identify and track national trends in child fatalities and to identify effective strategies for investigations and interventions that will help to prevent additional fatalities from child abuse and neglect (or other causes identified as a result of data gathered in investigations).

(2) Clarify that the review of deaths by the federal death review team on military installations and other Federal lands, and on Indian reservations, is not intended to limit the activities of state teams to review such deaths.

Section 104 -- Termination of Parental Rights. The bill would require states to file petitions for termination of parental rights in any case where a child has been in foster care for 12 of the most recent 18 months or for 24 months in his or her lifetime, unless a state court or state agency has documented a compelling reason that filing such a petition would not be in the best interests of the child.

In general, we do not like the idea of setting arbitrary time-lines for determining when it is appropriate to seek termination of parental rights. Yet, we are also very concerned about the damage done to children under the current system, where they suffer multiple foster care placements and lengthy periods of time without relationships that they know are permanent and secure.

Therefore, we urge the federal government to do all it can to ensure that states are appropriately filing TPR petitions; that is, that they seek TPR based on the child's age, attachments to family, and chances for adoption rather than arbitrary deadlines. Time is perceived totally differently by a child (even an older child) than an adult. What adults might consider an insignificant period both *feels* longer to children (since it *is* a relatively greater percentage of their lives) and is more critical in terms of their development.

In our view, infants and very young children should be placed in permanent homes as expeditiously as possible. Therefore, it is important to guard against time-lines in the law becoming the *de facto* minimum in all cases.

Recent early brain research supports what pediatricians have long understood -- that there are certain "windows of opportunity" during the first three to four years of life in which to optimize the child's development of essential attachments, social skills, and learning capacity. Warm and responsive caregiving is important to the development process. Thus, permanency for infants and very young children is especially important. (Therefore, we support frequent case reviews; for infants, they should be conducted even more often than every six months.)

On the other hand, older children are further along in development and are likely to have more substantial attachments to their families of origin. Moreover, they are less likely to be adopted than young children, so TPR could render them legal orphans. Therefore, initiating a termination of parental rights is much more significant for older children and should be undertaken judiciously.

Suggested changes:

(1) **It is impossible to know whether the bill's time-lines for TPR and frequency of case reviews (Section 302) will result in the desired outcomes for children. Therefore, we urge that S. 1195 be amended to require that Congress revisit this issue in several years (*i.e.*, through a sunset).**

(2) Require the Secretary of HHS to submit relevant recommendations to Congress based on the data reported by the states and, if possible, hold public hearings around the country to assess whether the time-lines, and other provisions of the law, are achieving their intended results. (Also see comments on Section 206).

(3) We suggest that "or State agency" be deleted in amended section 475(5)(E)(ii), to ensure that agency decisions not to seek TPR are reviewed by the courts.

(4) We urge that additional funding be allocated to states to help them meet the new demands imposed by this legislation. Otherwise, we suggest that some accommodation for limited resources be made in the legislation. One possibility would be to require each state to submit a plan for how to balance the trade-offs between devoting resources to TPR actions and adoption efforts and providing the services needed to support and preserve families and to prevent neglect and abuse. Such State plans should be documented by data about the number of children in particular situations (*e.g.*, length of time in foster care, ages, whether free for adoption, etc).

Section 108 -- State Standards for Out-of-Home Care. We strongly support the establishment and complete implementation of standards for out-of-home care. In fact, the AAP worked closely with the Child Welfare League of America (CWLA) in 1987 to develop such standards, which are *not* adhered to in most jurisdictions in the country. We believe that it is important that states be directed to use standards developed by a standard-setting or accrediting organization such as CWLA to ensure the adequacy of the standards and to promote greater uniformity. We also believe that institutional settings and public agencies should be subject to appropriate standards.

Suggested changes:

(1) Change "guidelines" to "standards";
(2) Insert "standard-setting or accrediting" after "national";
(3) Require that standards apply to all out-of-home care, not just foster care;
(4) Add "public" to agencies which must comply with standards.

Section 204 -- Adoptions Across State and County Jurisdictions. It would be inappropriate to place children in foster care at any significant distance from their homes of origin, absent a concern for the safety of the child. Therefore, we suggest that the references to foster care in this section be deleted.

Section 206 -- Annual Report on State Performance. We applaud the concept of a report on state performance and, particularly, the development of outcome measures. Simply measuring the number of children moved from foster care into adoption, and similar numerical assessments does not go far enough, however. The whole purpose of this legislation is to ensure better lives for children. Therefore, the outcome measures should include information about the welfare of the children in the child protection

system. Since it would be difficult to report on the health and well-being outcomes for each individual child, some of these measures must be process-oriented. We recommend, however, that a sample of individual cases be analyzed to help determine whether the established standards and processes actually improve child well-being.

Suggested changes:

(1) To ensure that appropriate outcome measures on children's well-being are developed, require the Secretary to consult with appropriate experts, including health care professionals with expertise in child development and mental health.

(2) Require that all categories of data be supplied by age, with narrower age ranges reported for younger children (*e.g.*, 0-12 months, 1-2, 3-5, 6-10, etc.). This is important because younger children should be placed more swiftly than older children, for the reasons discussed above.

(3) Add to the categories to be measured: (a) the number of child abuse/neglect-related deaths of children who are not removed from their homes of origin after an initial report of child abuse or neglect has been lodged; (b) the number of child abuse/neglect-related deaths of children placed in adoptive homes; (c) data on the extent to which the children in foster care and other out-of-home placements receive appropriate initial assessments of physical and mental health, developmental screenings, periodic health evaluations, and appropriate follow-up treatment (including immunizations, psychological counseling).

(4) Require that states conduct an in-depth review of a sample of representative cases so that the effectiveness of the system in helping children can be better evaluated. Require the Secretary (in consultation with the same experts referenced in item 1 and state welfare representatives) to develop sampling and monitoring techniques for standardized use by all states.

(5) To help ensure that the federal law is meeting its intended goals, require the Secretary of HHS to submit recommendations to Congress based on the data reported by the states and, if possible, hold public hearings around the country to assess whether the time-lines and other provisions of the law are achieving their intended results.

Section 302 – Permanency Planning Hearings. We support the bill's provisions requiring an earlier permanency planning hearing than under current law (at 12 months instead of 18 months after placement) and more frequent judicial review of cases (every six months instead of every 12). We would like to see even earlier permanency planning hearings and more frequent reviews for the youngest children. (Please see our comments under section 106.)

Section 303 – Kinship Care. We strongly support a study on kinship care, but offer the following amendments:

(1) add "relative caregivers" to the membership of the advisory board.
(2) mandate that the state also document the relationship of caregiver and child.

Section 306 – Coordination and Collaboration of Substance Abuse Treatment and Child Protection Services. Again, we support the goals of this provision, but suggest the following modifications:

Suggested changes:

(1) Amend the language to require reports on how the needs are being addressed for all children in families where there are substance abuse problems, not just drug-exposed infants;
(2) Clarify that states may add their own funds for foster care payments for children residing in treatment facilities with their parents.

Section 307 – Reauthorization and Expansion of Family Preservation and Support Services. We strongly support the reauthorization and expansion of this program, since one of its purposes is to prevent child abuse and neglect. As discussed above, however, we think that the quality and efficiency of state courts is critical to ensuring that children are appropriately placed in permanent living situations. Since S. 1195 would increase burdens on state court systems, it is especially important that funds be provided for court improvement. This would permit states to implement the necessary changes identified in the assessments they conducted under the State Court Assessment Program.

Suggested change:

> Provide for a set-aside for state court improvement grants within the Family Preservation and Support program.

Section 401 – Preservation of Reasonable Parenting. This provision states:

> "Nothing in this Act is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting."

We are concerned that this provision -- particularly the reference to "reasonable methods of parental discipline" -- may be used to challenge actions of state agencies taken to protect children from child abuse or neglect. To ensure that state agencies are not inhibited in their protection of children -- when warranted under the state's child abuse and neglect laws -- we recommend deletion of all the material that follows "family life."

Thank you for providing the opportunity to comment on this very important legislation. The American Academy of Pediatrics looks forward to working with the Committee in the future to make additional improvements in systems designed to protect abused and neglected children.

Attachments:

- AAP policy statement: "Investigation and Review of Unexpected Infant and Child Deaths" (1993)
- AAP policy statement: "Distinguishing SIDS From Child Abuse Fatalities" (1994)
- AAP model law: "Child Death Investigation Act" (1993)
- AAP policy statement: "Developmental Issues in Foster Care for Children" (1993)
- AAP policy statement: "Health Care of Children in Foster Care" (1994)

American Academy of Pediatrics

Policy Statement

Pediatrics Volume 92, Number 5 November, 1993, p 734-735

Investigation and Review of Unexpected Infant and Child Deaths (RE9336)

AMERICAN ACADEMY OF PEDIATRICS

Committee on Child Abuse and Neglect and Committee on Community Health Services

A significant proportion of infant and child deaths are preventable. Of the 55 861 deaths of children aged 14 and younger in the United States in 1989, more than three fourths occurred in children under the age of 2 years. [1] Approximately one third of the latter were unexpected, including those due to sudden infant death syndrome (SIDS) or trauma, or deaths that were otherwise unexplained. Child abuse deaths occur in greatest numbers among infants, followed by those in toddlers and preschool children. [2] Children younger than 6 years of age are most vulnerable to abuse because of their small size, incomplete verbal skills, and often limited contact with adults other than their primary caretakers. [3]

With few exceptions, throughout the United States there is no uniform system for the investigation of infant and child deaths. Many jurisdictions lack appropriately trained pathologists, interagency collaboration that would facilitate sharing of information about the family, and a surveillance system to evaluate data regarding infant deaths. As a result, progress in the understanding of SIDS is inhibited, cases of child abuse and neglect may be missed, familial genetic diseases go undiagnosed, public health threats may be unrecognized, and inadequate medical care may be undetected. Lack of adequate infant and child death investigation is an impediment to preventing illness, injury, and death of other children at risk.

Adequate death investigation requires the participation of numerous individuals including medical examiner/coroner, public health officials, the patient's physician, the pathologist, and personnel from agencies involved with child welfare and social services and law enforcement. Collaboration between agencies enhances the ability to determine accurately the cause and circumstances of death. Information about the death of one child may lead to preventive strategies to protect the life of another.

ADEQUATE DEATH INVESTIGATION

An adequate death investigation includes a complete autopsy, investigation of the circumstances of death, review of the child's medical and family history, and review of information from relevant agencies and health care providers. A complete autopsy consists of an external and internal examination of the body, microscopic examination, and toxicologic, microbiologic, and other appropriate studies. When possible, the autopsy should be performed by a forensic and/or pediatric pathologist, using a standard infant and child death autopsy protocol. [4] Investigation of the circumstances of death should include a scene investigation and interview with caretakers and responders by trained death investigators who are sensitive to issues of family grief. By current national standards, the diagnosis of SIDS cannot be made without a complete autopsy with appropriate ancillary studies and scene investigation. [5]

Interagency cooperation and review of all relevant records are necessary parts of a death investigation. Relevant records include, but are not limited to, all medical records including those from birth on, social services reports including those from Children's Protective Services, emergency and

paramedic records, and law enforcement reports.

INFANT AND CHILD DEATH REVIEW

Thorough retrospective review of child deaths is one approach to ensure quality in death investigation. A centralized data base could aid in the proper functioning of infant and child death review and would allow for the identification of preventable deaths. Several models have been established and are operational at both state and local levels. [6] The American Academy of Pediatrics (AAP) also has developed a model bill on child death investigation. Infant and child death review requires the participation of many agencies. An appropriately constituted child death review team should evaluate the death investigation process, reexamine difficult or controversial cases, and monitor death statistics and certificates. Benefits of such death review include (1) quality assurance of death investigation at local levels, (2) identification of barriers to death investigation, (3) enhanced interagency cooperation, (4) improved allocation of limited resources, (5) enhanced awareness and education on the management and prevention of infant and child death, (6) better epidemiologic data on the causes of death, and (7) improved accuracy of death certificates.

RECOMMENDATIONS

Recommendations regarding child death investigation are as follows:

1. Pediatricians should advocate proper death certification for children, recognizing that such certification is not possible in sudden, unexpected deaths in the absence of comprehensive death investigation including autopsy.
2. Pediatricians and AAP chapters should support state legislation that requires autopsies of all deaths of children younger than 6 years that result from trauma; that are unexpected, including SIDS; and that are suspicious, obscure, or otherwise unexplained. It should never be assumed that the death of a child with a chronic impairment occurred as a result of that impairment.
3. Pediatricians and AAP chapters should support state legislation and other efforts that establish comprehensive child death investigation and review systems at the local and state levels.
4. Pediatricians should be involved in the training of death scene investigators so that appropriate knowledge of issues such as SIDS, child abuse, child development, and pediatric disease is used in the determination of cause of death.
5. Pediatricians should accept the responsibility to be involved with the death review process.
6. The AAP supports public policy initiatives directed at preventing childhood deaths, based on information acquired both locally and at the state level from adequate death investigations, accurate death certifications, and systematic death reviews.

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This statement has been approved by the Council on Child and Adolescent Health and the Council on Pediatric Practice.
The recommendations in this statement do not indicate an exclusive course of treatment or serve as a standard of medical care. Variations, taking into account individual circumstances, may be appropriate.

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American Academy of Pediatrics

Policy Statement

Pediatrics Volume 94, Number 1 July 1994, p 124-126

Distinguishing Sudden Infant Death Syndrome From Child Abuse Fatalities (RE9421)

AMERICAN ACADEMY OF PEDIATRICS

Committee on Child Abuse and Neglect

Public and professional awareness of sudden infant death syndrome (SIDS) has increased in the 28 years since the establishment of the National Sudden Infant Death Foundation, now called the National SIDS Alliance.[1] Similarly, awareness of child abuse has increased in the 30 years since the publication of the first article on the battered child.[2] In the majority of cases, when an infant younger than 1 year dies suddenly and unexpectedly, the cause is SIDS. Sudden infant death syndrome is far more common than infanticide. In a few difficult cases, legitimate investigations for possible child abuse have resulted in an insensitive approach to grieving parents or caretakers. This statement provides professionals with information and guidelines to avoid distressing or stigmatizing families of SIDS victims while allowing accumulation of appropriate evidence in the uncommon case of death by infanticide.

INCIDENCE AND EPIDEMIOLOGY

Sudden infant death syndrome, also called crib or cot death, is "the sudden death of an infant under 1 year of age which remains unexplained after a thorough case investigation, including performance of a complete autopsy, examination of the death scene, and a review of the clinical history."[3] Sudden infant death is the most common cause of death between 1 and 12 months of age. Eighty percent of cases occur before age 5 months, with a peak incidence between 2 and 4 months of age. Sudden infant death syndrome occurs in 1.5 to 2 per 1000 live births, resulting in 6000 to 7000 infant deaths each year in the United States.[4] While rates of infant mortality from other causes have declined over the past decade in the United States, the incidence of SIDS has not changed appreciably.

Death due to SIDS is much more common than death due to recognized child abuse. It is uncommon for death due to child abuse to be confused with SIDS. Although precise data are lacking, authors of a recent article estimate that less than 5% of apparent SIDS deaths are actually due to abuse.[5] In one recent study 170 infants dying suddenly and unexpectedly were given full postmortem evaluations including autopsy, full-body radiographs, and viral and bacterial cultures. Of the 170 deaths, 101 (59.4%) were classified as SIDS and 61 (35.9%) were attributed to natural causes other than SIDS. Six infants (3.5%) died as a result of abuse or neglect, and two other infants (1.2%) died under questionable circumstances.[6] To comfort a family whose infant has died unexpectedly, in the absence of evidence of injury, an immediate diagnosis of "probable SIDS" can be given. This diagnosis conveys to the family that they could not have prevented their infant's death, and is correct about 95% to 98% of the time.

ETIOLOGY

Despite nearly 3 decades of intensive study, the etiology of SIDS is unknown. There is no diagnostic test for SIDS. Recent research has focused on such diverse causes as sleep apnea, arousal

mechanisms, sleep-state organization, cardiac arrhythmias, thermoregulation abnormalities, occult viral infection, infant medications, sleeping position, allergy, metabolic disease, chronic hypoxia, and autonomic instability.[4,7-10] In the past, many causes of SIDS have been postulated and have either remained unconfirmed or have been disproved.

Risk factors associated with a higher incidence of SIDS include the following[4,8]

* low socioeconomic status;
* an unmarried mother;
* maternal age younger than 20 years at first pregnancy or younger than 25 years during subsequent pregnancies;
* maternal smoking during pregnancy;
* illicit drug use during pregnancy;
* inadequate prenatal care;
* an interval of less than 12 months since the preceding pregnancy;
* prematurity;
* low birth weight;
* low APGAR scores;
* prone sleeping position.[9]

Unfortunately, many factors associated with a higher risk of sudden infant death are also associated with an increased risk of child abuse and other causes of infant mortality.

CLINICAL PRESENTATION

The typical presentation in SIDS is the sudden unexpected death of a seemingly healthy infant. SIDS deaths are more common during winter months. The infant may have been suffering from a mild upper respiratory or gastrointestinal infection, and fed before taking a nap or sleeping at night. After some hours unobserved, the infant is found dead. Death is silent and occurs during apparent sleep. A review of the medical history, scene investigation, radiographs, and autopsy are unrevealing.

PATHOLOGY

Pathologists establish the diagnosis of SIDS by exclusion when they are unable to identify other specific causes for a child's death.[11] The pathologic feature considered characteristic, but not pathognomonic, of SIDS is intrathoracic petechiae.[8]

The autopsy finding of intrathoracic petechiae (on the thymus, heart, lungs, parietal pleura, pericardium, and diaphragmatic pleura) is suggestive, but not diagnostic, of SIDS. Research on animals indicates that intrathoracic petechiae can be caused by induced airway obstruction or by oxygen deficit in inspired air without obstruction. Petechiae are more common after repeated tracheal occlusion and vigorous efforts to breathe. In humans, petechiae are seen following suffocation and more commonly in suffocated neonates than suffocated adults. Intrathoracic petechiae are found in known cases of infant suffocation, carbon monoxide asphyxia, and drowning, but seem to be more common in SIDS.[12]

THE IMPORTANCE OF AUTOPSY, SCENE INVESTIGATION, AND CASE REVIEW

Without a complete autopsy, a careful scene investigation, and a review of the medical history a diagnosis of SIDS cannot be made. Without these measures, progress in the understanding of SIDS is inhibited, cases of child abuse and neglect may be missed, familial genetic diseases may go unrecognized, public health threats may be overlooked, inadequate medical care may go undetected, and product safety issues will not be identified. Through thorough investigation of apparent SIDS deaths, the potential hazards of products including defective infant furniture, water beds, and bean bag mattresses have been identified and remedied.[13,14]

A death should be ruled as due to SIDS when:

* a complete autopsy is done, including cranium and cranial contents, and autopsy findings are compatible with SIDS;
* there is no gross or microscopic evidence of head trauma, intracranial injury, cerebral edema, cervical

cord injury, retinal hemorrhage, or mechanical asphyxia;
* there is no evidence of trauma on skeletal survey;[15]
* other causes of death are adequately ruled out, including meningitis, sepsis, aspiration, pneumonia, myocarditis, abdominal trauma, dehydration, fluid and electrolyte imbalance, significant congenital lesions, inborn metabolic disorders, carbon monoxide asphyxia, drowning, or burns; and
* there is no evidence of current alcohol, drug, or toxic exposure.

A group of experts assembled by the National Institutes of Health has stated that infant deaths "without postmortem examination should not be diagnosed as SIDS. Cases that are autopsied and carefully investigated but which remain unresolved may be designated as undetermined, unexplained, or the like."[3]

There is a small subset of infants who die unexpectedly, whose deaths are attributed to SIDS, but who may have been smothered or poisoned. Autopsy cannot distinguish death by SIDS from death by suffocation.[8,11] A study of infants suffocated by their parents indicates that certain features should raise the possibility of suffocation. These include previous episodes of apnea in the presence of the same person, previous unexplained medical disorders such as seizures, age at death older than 6 months, and previous unexpected or unexplained deaths of one or more siblings or the previous death of infants under the care of the same, unrelated person.[16]

If appropriate toxicological tests are not done, the few deaths due to accidental or deliberate poisoning will be missed.[6,11] Two recent studies indicate that occult cocaine exposure is widespread and potentially lethal. One reviewer found that 17 (40%) of 43 infants who died before 2 days of age without an obvious cause of death at autopsy had toxicologic evidence of cocaine exposure.[17] A second review of 600 infant deaths revealed evidence of cocaine exposure in 16 infants (2.7%) younger than 8 months who died suddenly and unexpectedly.[18] The relationship between cocaine exposure and infant death found in these studies is not clear.

MANAGEMENT

The appropriate professional response to any child death is compassionate, empathic, supportive, and nonaccusatory. At the same time it is vital to discover the cause of death if possible. Unless there is a history of significant antecedent illness or there are obvious injuries, the parents can be told that death appears to be due to SIDS, but that only with a thorough scene investigation, postmortem examination, and review of records can other causes be excluded. It can be explained to the parents that these procedures will enable them and their physician to understand why their infant died and how other children in the family, including children born later, might be affected.

The family is entitled to an opportunity to see and hold the infant once death has been pronounced. A protocol may help in planning how and when to address the many issues that require attention, including baptism, grief counseling, funeral arrangements and religious support, cessation of breast-feeding, reactions of surviving siblings.[19,20] and the risk of SIDS in subsequent siblings. All parents should be provided with information about SIDS[21] and the telephone number of the local SIDS support group.

The majority of sudden infant deaths occur at home. Parents are shocked, bewildered, distressed, and often feel responsible. Parents innocent of blame in their child's death feel guilty nonetheless, imagining ways in which they might have contributed to or prevented the tragedy.[11,19] When it is appropriate, parents should be reassured that neither they nor a physician could have prevented their infant's death. Inadvertent comments as well as necessary questioning by medical personnel and investigators are likely to cause additional stress.

It is important for those in contact with parents during this time to be supportive while at the same time conducting a thorough investigation. Personnel in first response teams should be trained to make observations at the scene such as the position of the infant, marks on the body, body temperature and rigor, type of bed or crib and any defects, amount and position of clothing and bedclothes, room temperature, type of ventilation and heating, and reaction of the caretakers. Paramedics and emergency room personnel should be trained to distinguish normal findings such as postmortem anal dilation and lividity from trauma due to abuse.[11,22,23]

A family's anxiety can be further increased if there is a delay in notification of the autopsy results. In most cases parents can be informed promptly of the results of the gross autopsy without waiting for the microscopic examination results.

In many states multidisciplinary teams have been established to review child fatalities.[24] Sharing data among agencies helps ensure that deaths due to child abuse are not missed and that surviving and subsequent siblings are protected. Some child fatality teams routinely review deaths due to apparent SIDS. These teams should include physicians or other professionals with expertise in SIDS.

The American Academy of Pediatrics endorses the following management scheme for evaluating sudden and unexpected infant deaths:

* universal performance of autopsies on infants dying suddenly and unexpectedly;[25]
* a standardized protocol for child deaths;[19,26]
* prompt notification to the family of the autopsy results;
* use of the term SIDS when appropriate;
* training of first response teams;
* counseling for parents of SIDS victims; and
* follow-up through the pediatrician's office or the public health department.

If all professionals involved in handling infant deaths are well trained and cooperate in a multidisciplinary approach, most deaths due to child abuse can be distinguished from sudden infant deaths and grieving families treated with compassion. If we are able to alter the risk factors common to child abuse and SIDS, we may be able to decrease the incidence of both.

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The recommendations in this statement do not indicate an exclusive course of treatment or serve as a standard of medical care. Variations, taking into account individual circumstances, may be appropriate.

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Child Death Investigation Act

A BILL TO REQUIRE DEATH INVESTIGATIONS IN THE CASE OF UNEXPECTED DEATHS OF CHILDREN UNDER SIX YEARS OF AGE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____:

Section 1. Short Title. This act shall be known and may be cited as the "CHILD DEATH INVESTIGATION ACT."

Section 2. Legislative Findings and Purpose.

(a) The legislature hereby finds and declares that:

(1) Protection of the health and welfare of the children of this state is a goal of its people and the unexpected death of infants and young children is an important public health concern that requires legislative action.
(2) The threat of unexpected death is particularly acute in the case of children below the age of six (6) years, who are especially helpless, and whose welfare is generally not monitored outside of the home.
(3) The parents, guardians, or other persons legally responsible for the care of a young child who dies unexpectedly have a right to know the cause of death as determined by an autopsy.
(4) Collecting accurate data on the cause and manner of unexpected deaths will better enable the state to protect some infants and young children from preventable deaths, and thus will help reduce the incidence of such deaths.
(5) Identifying persons responsible for abuse or neglect resulting in unexpected death will better enable the state to protect other children who may be under the care of the same persons, and thus will help reduce the incidence of such deaths.
(6) Multidisciplinary reviews of child deaths can assist the state in the development of a greater understanding of the incidence and causes of child deaths and the methods for preventing such deaths and in identifying gaps in services to children and families.

(b) The purpose of this Act is to aid in the reduction of the incidence of injury and death to infants and young children by accurately identifying the cause and manner of death of children under six (6) years of age, by requiring that a death investigation be performed in the case of all unexpected deaths of children under six (6) years of age; and by establishing a State Child Death Review Panel to collect data from such investigations and report to the legislature regarding the causes of such deaths.

Section 3. Definitions. As used in this Act, the following terms have the following meanings:
(a) "Autopsy" means a post-mortem external and internal physical examination conducted in accordance with accepted medical practice and the laws of this State using a standardized child death investigation protocol performed by a forensic pathologist or, if a forensic pathologist is unavailable, a pathologist qualified to conduct such an examination under such laws.
(b) "Death investigation" means the process of determining the cause and manner of death by scene and circumstance evaluation, complete autopsy, and history and record review.
(c) "Unexpected death" means a death which is unanticipated, is the result of trauma, or the circumstances of which are suspicious, obscure or otherwise unexplained. A clinical diagnosis of death due to Sudden Infant Death Syndrome (SIDS) shall be deemed an unexpected death.
(d) "Medical Examiner" means the physician or other individual elected or appointed pursuant to state or

(d) "Medical Examiner" means the physician or other individual elected or appointed pursuant to state or local law to investigate certain deaths of human beings.

Section 4. State Child Death Review Panel.

(a) There is hereby established the State Child Death Review Panel within the [Department of Health].
(b) The State Panel shall:

(1) establish or approve a standardized child death investigation protocol which shall require at a minimum that all child death investigations be completed within ninety (90) days of the report of the death. The protocol shall include procedures for law enforcement agencies, district attorneys' offices, medical examiners, and departments of social services to follow in response to a child death;
(2) collect, review, and analyze child death certificates, child death summary data, including patient records or other pertinent confidential information (not withstanding the confidential nature of any such records or information), and such other information as the State Panel deems appropriate, to use in preparation of reports to the legislature concerning the causes and manner of child deaths;
(3) recommend interventions to the legislature that will prevent unexpected deaths of infants and young children based on an analysis of the cause and manner of such deaths; and
(4) recommend changes within the agencies represented on the State Panel which may prevent child deaths; and
(5) maintain the confidentiality of any patient records or other confidential information reviewed under this section.

(c) The State Panel shall be composed of at least twelve (12) persons. Members of the State Panel shall include:

(1) the State's chief medical examiner or a representative of the medical examiner system or his designee,
(2) the head of the State department of public health or his designee,
(3) the head of the State child protective services agency or his designee,
(4) the chief of the state law enforcement agency or his designee,
(5) the chief of the State's vital statistics bureau or his designee,
(6) the State's attorney general or his designee,
(7) a pediatrician with expertise in SIDS appointed by the Governor, for a term of three (3) years,
(8) a health professional with experience in diagnosing and treating child abuse and neglect appointed by the Governor for a term of three (3) years,
(9) a pediatrician appointed by the Governor for a term of three (3) years from a list submitted by the state chapter of the American Academy of Pediatrics,
(10) a pathologist with expertise in diagnosing and evaluating infant and child death appointed by the Governor for a term of three (3) years,
(11) a representative from the Governor's office, and
(12) a citizen of the State appointed by the Governor for a term of three (3) years.

(d) The State Panel may establish local or regional panels to which it may delegate some or all of its responsibilities under subsections (b)1, (b)2, and (b)4 of this section.
(e) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any member of the State Panel, or of any local or regional panel appointed under section 4(d), for any act or proceeding undertaken or performed within the scope of the functions of the State Panel if the member acts without malice.

Section 5. Requirements for Death Investigation.

(a) In the case of every unexpected death of a child under six (6) years of age, a death investigation shall be performed by the medical examiner or by another qualified physician appointed and supervised by the

medical examiner, in accordance with the child death investigation protocol established by the State Panel, or another child death investigation protocol approved by the State Panel. The results of the death investigation shall be reported to appropriate authorities, including the police and child protective services if appropriate, within three (3) days of the conclusion of the death investigation.
(b) Child death certificates shall be provided to the State Panel within one month of the conclusion of the death investigation.
(c) The cause of death as determined by the autopsy shall be reported to parents, guardians or other persons legally responsible for care of the child within ten (10) days of the conclusion of the death investigation.

Section 6. Report to Legislature. The State Panel shall report to the legislature annually concerning the causes and manner of unexpected deaths of infants and young children. The report shall include analysis of factual information obtained through review of death certificates.

Section 7. Effective date. This Act shall become effective sixty (60) days after being enacted into law.

February 1993

Return to Model Bills

American Academy of Pediatrics

Policy Statement

Pediatrics Volume 91, Number 5 May, 1993, p 1007-1009

Developmental Issues in Foster Care for Children (RE9311)

AMERICAN ACADEMY OF PEDIATRICS

Committee on Early Childhood, Adoption, and Dependent Care

Pediatricians who provide care for children in foster care have a unique opportunity and a special responsibility to assess the totality of the child's experience and to be a sympathetic and objective advocate for the child. [1] Many children in foster care have suffered repeated abuse and prolonged neglect and often have a myriad of unmet medical and mental health needs. [2] However, paramount in the lives of these children is their need for continuity and a sense of permanence. Legal responsibility for establishing where these children will live and which adults will have custody of them rests jointly with the child welfare system and the judiciary. Pediatricians and other professionals with expertise in child development should participate actively as advisors to social workers and judges about the child's needs and best interests, especially in the context of placement and permanency planning.

Maintaining the integrity of distressed families by providing adequate support services is generally in the best interest of the child. Keeping families together, however, may not be best for all children. Alternatives based upon an assessment of the developmental needs of the children and the capabilities of the family to meet those needs must be given consideration. As a society we value the rights of the birth family, sometimes hold them to be inviolable, and presume that families are competent. This belief and a lack of resources for assessment, planning, and services have resulted in inaccurate assessment of the child's relationships with his/her family by social service agencies and courts. Being inadequately informed, authorities make some placement decisions that are ill-conceived and detrimental to the child's well-being. Knowledge about child development, properly applied, would support better placement and custody decisions for children.

Knowledge of normal child development and family functioning helps identify children receiving insufficient and inappropriate care and who are at risk for abuse or neglect. An array of supportive services should be available to assist families in child rearing and to offer alternative and therapeutic parenting (ie, foster care) when temporary removal of the child from the home is required. Unfortunately, these services are rarely available as planned or required.

Though developmental and physical examinations may make it possible to identify that a child's current needs are not being met, clinical assessment inadequately predicts future consequences. It is also difficult to identify which placement decisions will be detrimental to the normal development of a particular child. Thus, in the absence of impaired development or physical harm, we are not equipped and agencies are less empowered to intervene to improve a child's chances for a safe and secure life, let alone optimal development.

Biologic ties usually are given considerable weight by child welfare agencies and the judiciary, even when considerable information exists to recommend against maintaining or reinstating parental custody. Also, the desire of parents to retain custody of their children, despite evidence that they cannot succeed as parents, sometimes prevents termination of parental rights, even when such a decision would have been in the best interest of the child. Foster care guardianship or adoption is not always considered when such arrangements would be best for the child. The following issues should be considered when social agencies intervene in the lives of families for the welfare of the child.

Reasonable Efforts

Reasonable Efforts

Courts with jurisdiction over families and children have been charged by Congress to ensure that "reasonable efforts" be made to preserve families. There is lack of agreement as to what constitutes such efforts. While the efforts that should be made to preserve families should not be constrained by the limited availability of a variety of social, economic, educational, and health care resources, in the current economic and political climate that often is not the case. An informed judiciary should try to make those resources available. The judiciary must then decide whether the application of available resources has been reasonable and appropriate. The measure of reasonable and appropriate should be the best interests of the child. The opportunities for the child to live safely and to develop normally within his/her family, or apart from it, should be the major determinant of whether efforts are reasonable, or whether further efforts to preserve the family should reasonably be made. Principles of child development and expert consultation can provide guidance, though not rules, to assist in determining what is in the best interests of the child and whether those interests can be met within the biologic family or another family.

Biologic vs Psychologic Parents

Our society believes that the biologic parents are, if not best suited to parent their child, at least initially entitled and expected to assume that role and its associated responsibilities. However, the physical realities of conception and birth are not the direct cause of emotional attachment of children to parents. A biologic basis for emotional attachment between a mother or father and their child (ie, bonding) has not been substantiated.

Optimal child development occurs when a spectrum of needs are consistently met over an extended period. Successful parenting is based on a healthy, respectful, and long-lasting relationship with the child. This process of parenting, especially in the psychologic rather than the biologic sense, leads a child to perceive a given adult as his or her "parent." That perception is essential for the child's development of self-esteem and self-worth. A child develops attachments and recognizes as parents adults who provide ". . . day-to-day attention to his needs for physical care, nourishment, comfort, affection, and stimulation." [3] Thus, a biologic relationship between parent and child is neither necessary nor sufficient to guarantee that children grow and develop normally in all spheres--physical, cognitive, emotional, and social. Studies of the changing structure of the American family suggest that a variety of parenting arrangements can provide the feelings of permanency, security, and emotional constancy necessary for normal development. [4]

Children's Sense of Time

Children are placed in foster care because of concern for their well-being. Any time spent by a child in temporary care may be harmful. Interruptions in the continuity of a child's caretaker are often detrimental. Repeated moves from home to home compound the adverse consequences that stress and inadequate parenting have on the child's development and ability to cope. Adults cope with impermanence by building on an accrued sense of self-reliance and by anticipating and planning for a time of greater constancy. Children, however, especially when young, have not much life experience upon which to establish their sense of self; in addition, their sense of time gives precedence to the present and precludes meaningful planning. For young children periods of weeks, let alone months, are not comprehensible, and even a day's disruption in either place or caregiver may be stressful: ". . . the younger the child and the more extended the period of uncertainty or separation, the more detrimental it will be to the child's well-being . . ." [3] Therefore, any intervention that separates a child from the psychologic parents should be cautiously considered and treated as a matter of urgency and profound importance.

Attachment

There is little empirical information about the psychologic and social consequences of separation of

a child from his or her biologic parents and placement with a foster family. Studies of temporary separations (ie, hospitalization) have little relevance, nor can anything but cautious extrapolations be made from what is known about the effects of institutional care. A few principles can provide some understanding.

Attachment refers to a dyadic relationship; it is an active process and not an individual characteristic. Consequently, the psychosocial context and the quality of the relationship from which a child is removed, as well as the quality of alternative care that is being offered during the separation, must be carefully evaluated. [5] The longer a child and parent have to form a strong attachment with each other (ie, the older the child) the less crucial will be physical proximity to maintain that relationship. Separation during the first year of life--especially during the first 6 months--if followed by good quality of care thereafter may not have a deleterious effect on social or emotional functioning. Separations during the subsequent 2 to 3 years, especially if they are prompted by family discord and disruption, are more likely to result in subsequent emotional disturbances. Partly this results from the stranger-anxiety characteristic and levels of language development at this age. Children older than 3 or 4 years placed for the first time with a new family are more likely to be able to use language to help them cope with loss and adjust to change. These young children are able to develop strong attachments and, depending upon the circumstances from which they are removed, may benefit psychologically. The emotional consequences of multiple placements or disruptions are likely to be harmful at any age. [5]

Visiting (Parent-Child Contact)

Children in out-of-home dependent care usually are accorded a schedule of visits with their parents. Such visits are intended to maintain the child-parent relationship and offer the social service agency an opportunity to evaluate the parent-child interaction and monitor the parents' compliance. Such visits are frequently brief encounters occurring at best on a weekly basis and often in a neutral setting, unfamiliar to the child. For young children such sporadic and brief visits are not sufficient to maintain a parent-child relationship. Such visits may minimally serve the parents' needs for ongoing contact with their child. On the other hand, for young children such visits may not be meaningful and may even be harmful. Young children's trust, love, and identification are based on uninterrupted, day-to-day relationships.' Weekly or other such sporadic "visits" stretch the bounds of children's sense of time and do not allow for a psychologically meaningful relationship with estranged biologic parents. Thus, because of the lack of meaning to the child, occasional or sporadic visits should not be employed to evaluate the biologic parents' compliance or the quality of their interactions with the child. Alternatively, when a child had established a strong attachment to the parent prior to entering foster care, and when visits are sufficient in frequency, length, and content to contribute to the child's continuing normal development, this contact should be valued by the agencies and the courts as they review the case.

Permanence vs Legal Custody

Children need to feel secure in their relationship with their world. Security, a sense of permanence and predictability, and a tangible continuity in relationships with family and friends are essential for a child's healthy development. Bureaucratic proceedings including the ascription of legal status are by and large of little or no consequence to children, whose needs are much more fundamental. Generally, assignment of custody should reinforce a child's perception of belonging and should not disrupt established psychologic ties except when safety or emotional well-being are in jeopardy. Similarly, sequential placement in multiple settings prevents continuity, is damaging to the child, and should be avoided.

Kinship Care

The increasing number of children entering foster care, the insufficient number of suitable foster homes, and the increased interest by extended families to care for their kin have led social service agencies to place children with their extended family. Placement with a relative has psychologic advantages for a child in terms of knowing his or her biologic roots and family identity. It may offer a

better chance for stability and continuity of caregiving. Little actually is known about the merits of kinship placement. Kinship care does not necessarily offer a superior psychologic home for the child. "The assumption that care is all right because of consanguinity is about as sensible as assuming that biological parenthood automatically assures sensitive and thoughtful parenting." [6] Supervision by social workers of relatives providing foster care is often less intense and family support services are less available than when a child is placed in other foster settings. Often relative placement leads to a circuitous, and unintended, return of the child to his/her parents.

The report by the National Commission on Family Foster Care states:

> The use of kinship care has expanded so rapidly that child welfare agencies are making policy, program and practice decisions that lack uniformity and/or a substantive knowledge base. Kinship care provides an opportunity to affirm the value of families. But the assessment process should include unique family strengths and needs, cultural and ethnic identification, necessary financial and service supports, continuity of care, and permanency goals. [7]

RECOMMENDATIONS

All placement and custody decisions should be based in part on an assessment of the child and family by a pediatrician, psychiatrist, or psychologist who is expert in child development. [8] Pediatricians should participate in placement and custody decisions for children for whom they provide care. [9] An ongoing professional relationship with the family can provide a pediatrician with valuable insights about a child's needs and the ability of a family to meet them. The following important concepts should guide pediatricians' activities as they advocate for the child:

1. Biologic parenthood does not necessarily confer either the desire or ability to care for a child adequately.
2. Parents should be given reasonable assistance and opportunity to maintain their family, but the present and future best interests of the child should determine what is reasonable.
3. Children need continuity, consistency, and predictability from their caregiver. Multiple placements are injurious.
4. A child's sense of time should guide the pace of decision-making.
5. Foster care placement with relatives as an alternative should be tempered by the lack of information about the outcomes of such placements. The use of kinship care should be based on a careful assessment of the needs of the child and of the ability of the foster family to meet those needs. As with all foster care placements, kinship care must be supervised adequately.

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This statement has been approved by the Council on Child and Adolescent Health.
The recommendations in this statement do not indicate an exclusive course of treatment or serve as a standard of medical care. Variations, taking into account individual circumstances, may be appropriate.

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American Academy of Pediatrics

Policy Statement

Pediatrics Volume 93, Number 2 February, 1994, p 335-338

Health Care of Children in Foster Care (RE9404)

AMERICAN ACADEMY OF PEDIATRICS

Committee on Early Childhood, Adoption, and Dependent Care

The foster care system in America has evolved as a means of providing protection and shelter for children who require out-of-home placement.[1] It is designed to be a temporary service, with a goal of either returning children home or arranging for suitable adoptive homes. In recent years, child welfare agencies have been directing greater efforts toward supporting families in crisis to prevent foster care placements whenever feasible and to reunify families as soon as possible when placements cannot be avoided. Increasingly, extended family members are being recruited and assisted in providing kinship care for children when their biologic parents cannot care for them. However, during the past decade the number of children in foster care has nearly doubled, despite landmark federal legislation designed to expedite permanency planning for children in state custody.[2] It is estimated that by 1995 more than 500 000 children will be in foster care.[3] In large part, this unrelenting trend is the result of increased abuse and neglect of children occurring in the context of parental substance abuse, mental illness, homelessness, and human immunodeficiency virus infection.[4] As a result, a disproportionate number of children placed in foster care come from that segment of the population with the fewest social and financial resources and from families that have few personal and limited extended family sources of support.[5]

It is not surprising then that children entering foster care are often in poor health. Compared with children from the same socioeconomic background, they suffer much higher rates of serious emotional and behavioral problems, chronic physical disabilities, birth defects, developmental delays, and poor school achievement.[6-13] Moreover, the health care these children receive while in placement is often compromised by inadequate funding, planning, and coordination of services as well as by poor communication among health and child welfare professionals. Many child welfare agencies lack specific policies for children's physical and mental health services.[14] Despite the broad range of supportive and therapeutic services needed, most children do not undergo a comprehensive developmental or psychological assessment at any time during their placement. State Medicaid systems, which provide funding for the health care of the majority of children in foster care, rarely cover all of the services these children require. Restrictions on covered services, fixed or declining reimbursement to health care providers, increased complexity of billing procedures, and delays in payment of physicians' fees have been linked to a dramatic nationwide decline in the number of physicians participating in state Medicaid programs.[15,16] As a result, many foster parents report difficulty finding health care professionals who are willing to care for these children.[17]

Pediatricians can play a critically important role in helping child welfare agencies, foster families, and biological families to minimize the trauma of placement separation and to improve the child's health and development during the period of foster care. Providing health care to these children requires considerably more time as compared with the time needed by the average pediatric patient. Physicians must be prepared to provide necessary care even when little or no specific information about the child is available at the time of the visit. The pediatrician should attempt to identify physical, psychosocial, and developmental problems and assist social workers and foster parents in determining the types of care and community services the child requires.[18]

This statement builds on a previous Committee statement[19] and provides specific suggestions for delivery of health services to children in foster care placement.

STANDARDS FOR HEALTH CARE SERVICES

In 1988, the Child Welfare League of America, in consultation with the American Academy of Pediatrics, developed Standards for Health Care Services for Children in Out-of-Home Care.[20] This document serves as a comprehensive guideline for developing and organizing health and mental health services for child welfare organizations. Child welfare agencies should be encouraged to adhere to these standards. Pediatricians should become familiar with these standards and assist child welfare administrators, caseworkers, and foster parents in implementing them.

Because children in foster care have a high prevalence of chronic and complex illnesses, establishing continuity of care and ensuring a comprehensive and coordinated treatment approach by all professionals involved in their care should be one of the highest priorities for child welfare agencies. Diverse characteristics of child welfare agencies, wide geographic distribution of foster homes in some states, and lack of comprehensive funding for children's physical and mental health care services contribute to the difficulty of providing an organized approach to the care of these children. To avoid fragmentation of care, a variety of health care delivery models can be developed for this population.

Regardless of the model developed in a locale, it should adhere to certain principles. Whether services are delivered by a single team of professionals under one "roof"[21] or as part of a planned program of care utilizing many different community resources,[10] all professionals involved in the care of each child should communicate effectively with one another. Furthermore, compassionate assistance, education, and training for foster and biologic parents should be included as an integral part of the overall program of services provided to children and their families during and after placement.

Pediatricians should be involved in the planning and development of systems of care for children in foster care. In addition to their role as primary health care providers, pediatricians may be contracted by child welfare agencies to serve as regional and statewide medical consultants and to develop and implement policies and programs that will improve the effectiveness and comprehensiveness of services for children in foster care.[16]

THE COMPONENTS OF HEALTH CARE SERVICES

Health care services may be divided into four components: initial health screening, comprehensive health assessment, developmental and mental health evaluation, and ongoing monitoring of health status.

Initial Health Screening

Every child entering foster care should have a health screening evaluation before or shortly after placement. The purpose of this examination is to identify any immediate medical needs the child may have and any additional health conditions of which the foster parents and caseworker should be aware. Careful measurement of height, weight, and head circumference may reveal growth delays and reflect poor nutritional or general health status. Because many children entering foster care have been the victims of physical or sexual abuse, all body surfaces should be unclothed at some point during the physical examination, and any bruises, scars, deformities, or limitations in the function of body parts or organ systems should be noted and recorded. If there is a history of physical abuse before placement, or if signs of recent physical trauma are present, appropriate imaging studies to screen for recent or healing fractures should be considered. Genital and anal examination of both sexes should be conducted and laboratory tests performed for sexually transmitted diseases when indicated clinically or by history. Other infections and communicable diseases, especially pediculosis, should be noted and treated promptly. The status of any known chronic illnesses should be determined to ensure that appropriate medications are available. The physician should discuss specific care instructions directly with the foster parents and not rely on an intermediary.

Comprehensive Health Assessment

Within 1 month of the child's placement, a comprehensive health assessment should be performed

by a pediatrician who is knowledgeable about and interested in the treatment of children in foster care and who can provide regular, ongoing primary care services. Child welfare agencies should make all pertinent past medical, social, and family information available to assist the physician performing the evaluation. Both the child's caseworker and foster parents should be present for the initial visit. Whenever possible, for this and subsequent visits, information should be obtained from the biologic parents, and they should be kept informed about the health status of their child. When appropriate, and as a part of the care plan of the child welfare agency, biologic parents may be encouraged to be present at health care visits and to participate in health care decisions. The historical review should include the circumstances that led to the placement; the child's adjustment to separation from the biologic family; adaptation to the foster home; developmental or school progress; and the agency's plans for a permanent placement (ie, return home, adoption, or long-term foster care). The physical examination should focus on the presence of any acute or chronic medical problems that may require further evaluation or referral. Screening tests should be performed according to the Recommendations for Preventive Pediatric Health Care of the American Academy of Pediatrics.[22] Because many young children entering foster care come from settings in which substance abuse and sexual promiscuity are common, they should be considered to be at high risk for human immunodeficiency virus infection, hepatitis, and other sexually acquired infections. Laboratory tests for these conditions should be performed when appropriate.[23]

Children entering foster care are likely to be incompletely immunized[7] and determining the actual types and number of immunizations that a particular child has received in the past may be difficult. By communicating directly with prior medical providers or reviewing previous medical records, it is often possible to reconstruct the child's immunization history. But, for some children, despite a thorough effort, little or no immunization information will be available. These children should be considered "susceptible" and immunized according to the schedules of the American Academy of Pediatrics.[24,25]

Developmental and Mental Health Evaluation

At each child health visit, pediatricians should attempt to assess the child's developmental, educational, and emotional status. These assessments may be based on structured interviews with the foster parents and caseworker, the results of standardized tests of development, and/or a review of the child's school progress. All children with identified problems should be further evaluated and treated as clinically indicated. When available, local consultants and community-based intervention programs should be called upon to assist in diagnosing and treating children with developmental and educational problems. Pediatricians may also assist social workers and foster parents by referring eligible children to the various federal and state "entitlement" programs in their community (eg, The Special Supplemental Food Program for Women, Infants and Children; Head Start, Birth-to-Three programs[26]; special education programs[27]; Title V programs).

In some communities, child welfare agencies may be able to access or establish multidisciplinary teams to routinely evaluate children entering foster care. By their very nature, multidisciplinary teams provide both a comprehensive and coordinated approach to assessment and are often an efficient and cost-effective means of accomplishing this task. A successful community-based program model utilizing this approach has been described.[10]

Regardless of how the comprehensive assessment is performed, the results and recommendations should be incorporated into the child's social service case plan. The caseworker and pediatrician should then help the foster parents to arrange for all the services recommended for the child.

Monitoring of Children's Health Status While in Placement

Placement in foster care is a stressful experience for most children. Often, problems arise during the course of placement that were not apparent at the outset. For example, a child's adjustment to separation from his or her family and adaptation to the foster home may be characterized by distinct behavioral changes over time.[18] Similarly, significant emotional distress may occur after visits with the biologic family members.[28] Therefore, all children in foster care should receive periodic reassessments of their health, development, and emotional status to determine any changes in their status and the need for additional services and interventions. Such reassessments should occur at approximately 6-month intervals in the first year of placement and at least yearly thereafter, depending on the stability of the placement and changes in the child's status. When changes in foster placement are planned, or when decisions regarding permanency planning are anticipated, pediatricians can help child welfare

professionals evaluate these decisions in light of the child's age and developmental level. Pediatricians can also work with both the child welfare agency and the court to determine what is truly in the child's "best interests."

TRANSFER OF MEDICAL INFORMATION

Up to one quarter of children placed in foster care experience three or more changes in foster homes. Furthermore, up to 35% of children reenter the foster care system after being returned to their family. These changes are usually accompanied by changes in health care providers as well.[29] As a result, available health information about these children is often incomplete and spread across many different sites. To enhance continuity of care, several states have developed an abbreviated health record, often called a medical passport.[16] This form is retained by the child's custodian and is designed to facilitate the transfer of essential information among health and mental health professionals. It provides a brief listing of the child's medical problems, allergies, chronic medications, and immunization data, as well as basic social service and family history. Foster parents are instructed to keep this document for the child and to bring it to all health visits. As the child's condition changes, health care providers should update the information on the form. If the child changes foster homes, or returns to his/her biologic family, the medical passport should be transferred too. Computerized health information systems are also being developed in several states that may make specific health information about children in foster care more readily accessible to practitioners and child welfare agencies. However, a foster parent-held medical passport has the potential to play a valuable role in the overall health care of children in foster care for some time to come. Computerized medical records for these children should be accorded the same confidentiality as written records.

THE IMPACT OF FOSTER CARE PLACEMENT ON CHILDREN

Society has always been reluctant to involuntarily remove children from their parents. Certainly, even brief separation from parental care is an unfortunate and often traumatic event for children.[30] Despite legal mandates to expediently formulate a "permanent plan," many children may remain in foster care interminably while the child welfare and legal systems deliberate their fate. However, concerns about time should be balanced against other evidence that suggests that foster care placement may be a positive and therapeutic intervention for some children. Significant improvements in a child's health status,[9] development, intelligence, school attendance, and academic achievement have been noted consequent to foster care placement.[31] Thus, for children who have suffered severe neglect and abuse, or whose families cannot adequately care for them, placement in foster care can be a significant opportunity to receive important intervention and rehabilitation and should not be considered only as an option of last resort.

RECOMMENDATIONS

1. Pediatricians should participate in the care of children in foster care as primary health care providers and as consultants to child welfare agencies. Child welfare agencies and pediatricians should work together to implement the standards for health care of children in foster care developed by the Child Welfare League of America and the American Academy of Pediatrics.
2. All children entering foster care should have an initial physical examination before or soon after placement. This examination should focus on identifying acute and chronic conditions requiring expedient treatment.
3. All children in foster care should receive comprehensive physical and mental health evaluations within 1 month of placement. Pediatricians and child welfare agencies should work together to ensure that children in foster care receive the full range of therapeutic services needed and participate in all federal and state entitlement programs for which they are eligible.
4. While in placement, the child's physical and mental health status and progress should be monitored at least twice a year in the first year of placement and at least yearly thereafter. However, more frequent reassessment may be indicated based on the child's age, change in foster home, or change in physical or mental health status. Individual social service case plans should include the results and incorporate the recommendations of health professionals.

5. Child welfare agencies should develop and implement systems to ensure the efficient transfer of medical and mental health information among professionals who treat children in foster care.

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AMERICAN ADOPTION CONGRESS

TESTIMONY SUBMITTED TO THE SENATE FINANCE COMMITTEE

REGARDING THE PASS ACT, S1195

OCTOBER 8, 1997

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The American Adoption Congress (AAC) is a national non-profit organization mainly comprised of the consumers of adoption services, i.e. adoptees, birthparents, and adoptive parents. Unlike a number of other organizations which have submitted testimony, we are not a trade association with a vested interest in anyone else but the folks whose lives are impacted directly. We want better protection and necessary services for the folks we represent and we would like our civil rights to be recognized and equally protected under the law.

Should you wish further input, you will find us quite willing to work with you.

We know that S1195, PASS, is intended to improve our plight and we applaud you for your efforts. There is much in S1195 we find beneficial. We know that you and your colleagues are in the process of reviewing the bill and preparing it for vote. We want to make sure that you are aware that there are major issues addressed that we want maintained. They are described below in the order presented within S1195 and not in our priority.

Sec. 105: Opportunity to be heard at hearings: Whoever has relevant information regarding the welfare of a child should be informed of and have the right to be heard at hearings regarding that child. In addition, the law should make it very clear that the child should be represented by an independent advocate who has no reason to be intimidated by the positions of others.

Sec. 106: Parent Locator Service: It will serve all parties if birthparents are located and informed of proceedings regarding their offspring.

Sec. 202-202: Delinking: The law needs to acknowledge that the needs of special needs children are exceptional and that such children should not deprived of support because their families do not fall under poverty levels. While perhaps there should be limits that require the well-to-do to meet costs, it has to be understood that lower income and middle income parents who would be fine, loving parents might not adopt special needs children realizing that they would be unable to sustain the high cost of services without help. When adoption is prevented or disrupted as a result of anticipated or actual post-adoption costs, children, families, and society suffer. Please remember that in the vast majority of situations, living with a caring family is better for the child and less expensive for taxpayers even though the family may need tax-supported assistance.

Sec. 203: Technical Assistance: To be able to move children more rapidly into permanent homes through reunification and kinship or non-biological adoption, requires the support of well-trained front-line personnel and supervisors. It will be important to muster the best of resources, package the information, and deliver training to state and local personnel that cannot afford to acquire such resources on their own. Federal participation bringing resources together and making sure that they are available to states is expedient and vital.

Sec. 204: Adoptions across jurisdictions: It is extremely important to distinguish between foster care and adoption in this section. If reunification or kinship adoption is within the realm of possibility, foster care should be delivered as close to the child's biological family as possible.

Sec. 205: Voluntary Registry: We understand that the National Council for Adoption (NCFA) is claiming that this section has the intent of opening sealed records. We would be dancing in the streets were this true. However, in the 80's the US Supreme Court made it clear that any federal move to open sealed records would be an infringement on state rights and therefore unconstitutional. Sec. 205 has nothing to do with opening records. It merely permits the Secretary of Health and Human Services to establish a mutual voluntary registry, at no net expense to the federal government. People who have been separated by adoption and want to find one another could register and, if a match were made, would be so notified. That has nothing to do with states and their records, but it has a great deal to do with rectifying an unintended wrong of yesteryear.

We citizens, whose lives have been impacted by that archaic wrong, know well the pain and suffering that can be mitigated by reunion. We also know that the prohibition of finding one another, kills. Yes, Congresspeople, generations of citizens are at risk of debilitating illness and premature death when information about their genetics is withheld from them. We resent that NCFA, funded by a small subset of wealthy adoption agencies marketing infants from home and abroad, purports to represent us and has attempted to mislead you into thinking that we adoptees, birthparents, and adoptive parents will be violated by finding one another.

We also resent that NCFA continues to spread the fiction that somehow the possibility of reunion will decrease adoption and increase abortion. It is questionable that any cause-effect relationship can be drawn between abortion, and adoption, reunion, or even open records. However statistics do exist that show that adoption rates are higher and abortion rates lower in those states with open records.

We understand that Sec 205 was changed from the time of its first insertion to its appearance on the floor. We have been told that the changes were made to make the section more acceptable to NCFA. The changes, involving lines 21 through 24, are totally unacceptable to us and should be stricken if the section is to stand at all.

Sec. 303: Kinship Care: Kinship care and adoption have been common approaches for providing homes for children since the beginning of time. Yet its value has been little appreciated and understood in officialdom. There have been different standards for approving kinship placements and there are situations in which children are at risk as a result. However investigation should demonstrate the workability of kinship placement and adoption and indicate needed standards and services to support families and protect children.

Sec. 304: Standby Guardianship: This is a simple and sensible item.

Sec. 305: Independent Living Eligibility: Yes.

Sec. 306: Coordination of Substance Abuse Treatment and Child Protection. This is one of the exciting and very progressive features of S1195. We see in the analysis of this Act by some organizations an unwarranted prejudice against drug addicted and dependent parents and caretakers. The assumption is that a drug abuser is a child abuser who will remain so if the drug abuse stops. That is contrary to both logic and experience. Recovering parents can be wonderful parents and caretakers. Making it possible for children to be with parents and/or caretakers during treatment is highly valid; making it impossible is bigotry. Further, the efforts of the Act to bring drug treatment and child welfare closer together is to be applauded.

Sec. 307: Family Preservation and Support Services: While we cannot comment on the technical and costs aspects of this section, we can say that we are very much in support of further development of family preservation and support services. We do not agree that action on this item should be put off until next year. The concept and its support are too important to delay if bipartisan support is currently present. We realize that a major reason to delay action on this matter is to increase the likelihood of the family preservation provision to die next year. Part of the reasoning appears to be that families who require such services should not be families and the children should become available for adoption into families that do not need such services. The promoters of the death of family preservation obviously have little appreciation of how families, even with problems, can love their children and how valuable it can be for children to grow up with biological parents when that is possible. We do not need to get more children out of their homes; our priority should be to get kids out of the system and into loving homes, biological or not.

There has been a recommendation for adding a provision to train judges and other court personnel. We strongly support that recommendation.

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STATEMENT OF ALLAN DAUL

Introduction

My name is Allan Daul, and I am executive director of Catholic Charities in Wilmington, Delaware. I submit this statement on behalf of Catholic Charities USA.

Catholic Charities is a community service agency responsible for directing and coordinating the charitable and social service programs of the Diocese of Wilmington, Delaware. From fifteen locations throughout Delaware and the Eastern Shore of Maryland, it operates a wide range of human services, including adoption, foster care, residential care, counseling, and substance abuse treatment, working in concert with other religious, non-profit, and public agencies, and in collaboration with the business and professional communities. Its purpose is to care for children, strengthen families and family life, ease the burden of poverty, and assist local church communities to carry out their social concerns efforts. Last year over 50,000 people were served by Catholic Charities' staff and volunteers.

Catholic Charities is licensed as a child-placing agency and as a child residential care agency. It works closely and cooperatively with state government in providing out-of-home services for children, youth, and their families. At any given time, it has in its care 50 children who are in the custody of the State of Delaware.

It is from this background that I wish to offer this statement regarding S. 1195 on behalf of Catholic Charities USA, the largest private network of non-profit human service agencies in the country.

Dual Goals of Catholic Charities

In pursuing ou. country's concern for children in foster care and adoptive families, Catholic Charities USA believes the law must embrace two vital goals. First, it must guarantee the health and safety of children by removing them from dangerous home situations, judiciously yet promptly terminating the parental rights of those who seriously abuse them, and expeditiously placing them in permanent adoptive homes.

Our second goal is to preserve and reunify families that deserve a second chance. In most situations, children suffer from abuse and neglect not because of malice, but because of ignorance and social stressors on the family. When such families are willing to work to remedy the situation, children can find a safe, healthy environment at home. In these instances, family preservation, reunification, and support services can make all the difference.

We actively support both of these goals, but we know that child safety must always come first. When there is serious risk of harm to a child's health, safety, or security, and there is no significant hope of improving the situation, we must move quickly and decisively toward the safety and permanence that adoption affords. The safety of the child must be paramount.

Catholic Charities USA supports the PASS Act because it takes positive steps toward these goals but emphasizes the importance of a child's well-being. We applaud the work of Senators Chafee, Craig, Rockefeller, Jeffords, DeWine, Coats, Bond and Landrieu to set forth a balanced solution to the intersecting interests of children and families. This bill makes great strides toward the first goal of preventing unnecessary harm to children that often comes with reuniting dangerously abusive families.

As for the second goal, we agree it is essential that the Family Preservation and Support Services Program be reauthorized. These services are often the only difference between a family that succeeds and a family that fails once again. This program currently funds services to prevent child abuse and neglect and to help families in crisis. As I will address, however, we were very disappointed that this bill does not provide additional funding for services to help move children back home or to adoptive homes, including services such as monitoring at-risk homes, counseling, and preservation services. In this area, we believe you can do more and we urge you to do so.

Ending Foster Care in Favor of Adoption

With regard to the first goal—removing children in danger and placing them expeditiously in permanent home settings—we support the requirement that States seek termination of parental rights after a child has spent 12 of the last 18 months in foster care. Foster care facilities in this nation are full of victims of cyclical abuse who have undergone the trauma of being repeatedly removed and then returned to abusive homes. These children are anxious and fearful. Without stability in their lives, they come to believe there is little reason to feel secure in themselves, about others, or in relation to the world around them. This bill's expedited approach to permanency placement reaches toward the goal of placing in adoption the children most at risk of growing up without ever having a permanent home, and it does so more rapidly than the similar legislation in the House.

Delinking Adoption Assistance and AFDC

In addition, we support making "special needs" children eligible for federal adoption assistance by delinking eligibility for adoption assistance from AFDC poverty status. This important procedural change is necessary to help children with disabilities, minority children, and sibling groups without permanent homes to be placed in adoptive homes. Of the thousands of children waiting in foster care for families that will adopt them, about 80 percent are children with special needs that make them more challenging to place. "Special needs" children should be given the same opportunity to receive a permanent, nurturing family as other foster care children: a child's eligibility for adoption assistance should not be determined based on the fortuitous circumstance of whether that child came into care at a point when the family was receiving or was eligible for AFDC.

Geographic Barriers to Adoption

In addition, this bill's prohibition against using geographical barriers to delay or prevent the permanent placement of children is an appropriate one. If it has been determined that a child cannot safely return home in a reasonable amount of time, the child, depending on where other strong emotional ties exist, should be considered for placement in a suitable adoptive home regardless of where it may be located. This legislation moves toward removing impediments that may keep children in abusive situations or let them languish in foster care. State and county borders should not stand in the way of finding these children safe, healthy, loving permanent homes.

Concurrency of "Reasonable Efforts"

We also support the provision in S. 1195 that allows States to make reasonable efforts to preserve and reunify families concurrently with efforts to place children in permanent adoptive care. Concurrent planning and services offer the best solution for sparing children and families from unnecessary, and sometimes extremely harmful, delay.

Aggravated Circumstances

We applaud the PASS Act's enumeration of the aggravated circumstances that release States from the requirement of making reasonable efforts to reunify families and that require States to seek termination of parental rights and permanent placement of children. Catholic Charities USA would favor expanding this list even further to include circumstances, for example, in which parents deliberately murder any child, not just a child of their own. We would also support an amendment to the provision on termination of

parental rights to emphasize the right of States to add to this list of aggravated circumstances. This option is included already in the "reasonable efforts" provision of this bill. States must know they are free to add crimes to the range of circumstances which do not require reunification efforts.

Death Review Teams

I was pleased to see the inclusion of child death review teams in this legislation. As a commissioner for the Delaware Child Death Review Commission, appointed by Governor Carper, I have seen first-hand the value of teams of public health nurses, physicians, forensics experts, law enforcement officers, child welfare officials, and child advocates examining the often tragic circumstances of children's deaths and recommending measures designed to prevent those deaths.

Adoption Incentive Payments

Finally, we strongly support S. 1195's "adoption incentive payments" to States to increase the number of adopted foster children. We particularly favor the additional financial incentives for States to increase the number of "special needs" children adopted. As mentioned above, "special needs" children are those who require additional services and support, and who most often do not reap the benefits of adoption. The PASS Act appropriately seeks to correct this problem.

Catholic Charities USA favors the larger adoption incentive payments in the House version, however, as more likely to encourage States to increase the number of adoptions. More importantly, though, we believe the House bill, which provides entitlement funding for these incentive payments, is preferable to the Senate version. If increased adoption is a serious goal, the welfare of these children should not depend on an annual struggle for appropriations.

Reauthorization of Family Preservation and Support Services

The second goal—family preservation and reunification—is equally crucial. S. 1195 recognizes that in some cases reunification may be the best permanent plan for a child. Services are necessary for families that make mistakes, show poor judgment, or find themselves in difficult situations. If they show potential for change, they must be given another chance, and they should have access to the services that will keep children safe and families strong.

For this reason, we strongly support the PASS Act's reauthorization of the Family Preservation and Support Services Program, which encourages and enables States to establish programs for a range of community-based family support services and crisis services for birth families, extended families and foster and adoptive families. We believe these programs are the key to putting at-risk families back on solid ground and providing the safe, healthy home environment every child deserves. They also can help stabilize foster and adoptive families for children.

Funding for Reunification

However, many families need extra support to function successfully—support this legislation does not provide. So while we believe that S. 1195 generally meets our first goal of permanent placement, it still falls far short of providing the services necessary to make prompt permanency decisions for children and to reunite families where appropriate. We are dismayed that this version of the Senate bill lacks new funding for services that help families reunite while protecting the health and safety of the children. It is not enough to have the goal of family preservation and reunification—we must provide the resources that make safe, stable home environments a reality.

Three Stages of Intervention and Services

In our experience, there are three crucial points at which services may be necessary. The first stage is prevention. Often families are at risk of inflicting abuse or neglect because of significant pressures related to employment, money, or domestic problems. At this stage, Family Support Centers and other family support programs offer essential information, counseling, and resource services, such as job readiness programs, marital and child health counseling, parenting classes, and money management training.

The second stage involves cases in which there is some level of abuse or neglect and the government is intervening, but the child can remain safely at home. At this stage, crisis services are a key component of recovery for families working to correct fundamental problems. It is in these first two stages that the reauthorization of the Family Preservation and Support Services Program is so vital.

Finally, the third stage involves children who have been removed from the home, but, in the opinion of professionals and state courts, should be helped to return home. On this point, I would like to emphasize that most children who enter foster care eventually are reunited with their families. It is crucial that children's health and safety not cease to be priorities when children re-enter that environment, even if they are deemed to be returning to a "safe" home. Funding is vital to continued monitoring and oversight of these children's well-being on a regular basis. In appropriate cases, States must have the

resources to continue services for family counseling, mental health services, domestic violence services, and substance abuse treatment for parents. Families should never be kept apart solely because States lack the resources to help them provide a safe, healthy environment for their children. This bill must recognize that and provide additional support at this third stage. We propose that you incorporate such support into the PASS Act.

Reunification Funding and Adoption Incentive Payments

This funding for services is also vitally important in light of the "adoption incentive payments" program. Catholic Charities USA believes that providing increased-adoption bonuses alone could send the wrong message to the state and local level. There is a danger that the bonuses will be a signal to state and local officials that they do not have to do anything to reunite families or keep them together, even when the abuse or neglect is not chronic or severe.

To avoid any misguided interpretations, the adoption incentives must be joined with funding for preservation and reunification services. While we strongly support termination of parental rights in cases in which children cannot be safe with their parents, we also recognize that in many cases, without help and oversight from local agencies, children will neither return home nor be freed for adoption, and will languish in foster care for years.

Parental Substance Abuse

This act also recognizes the relationship between parental substance abuse and entry of children into the child welfare system. It is my hope that the report required of the Comptroller General will, if the findings support it, prompt additional funding to States to purchase the substance abuse interventions necessary to ensure that families who are mandated to rehabilitate themselves have the resources to do so.

Accreditation

We have one final concern. Both the previous Senate bill and this bill require States to implement guidelines to ensure safe, quality care for children in out-of-home settings. But the previous bill pointed to guidelines issued by national accrediting bodies as models of proper guidelines for States. S. 1195 lacks such a reference to accreditation guidelines. Whether for-profit or non-profit organizations serve as foster care providers, it is important that both comply with national guidelines for out-of-home care established by

skilled national accrediting bodies. We should ensure that the people and institutions that most directly affect the health and safety of children in out-of-home placements do not fail to meet basic minimum standards.

Conclusion

Catholic Charities USA commends the Senate for striking the balance so long needed in child welfare legislation, and for serving the dual goals of preserving and reunifying families that deserve a second chance and expeditiously placing children in permanent settings when their families have used up all their chances. Catholic Charities USA supports this effort. Nonetheless, if these goals are to translate into successful realities, the PASS Act must supply States with the resources that help build the safe, healthy families that this Committee seeks and America's foster children deserve.

THE CHILD WELFARE LEAGUE OF AMERICA

The Child Welfare League of America (CWLA) welcomes this opportunity to submit testimony on S. 1195, the P.A.S.S. (Promotion of Adoption, Safety, and Support for Abused and Neglected Children) Act. We commend the efforts of the bill's bipartisan group of sponsors to make improvements in ensuring child safety and permanency.

CWLA's 900-member public and private agencies across the country work everyday to improve conditions for children and families at risk and in crisis. Serving over 2.5 million children and their families each year, CWLA member agencies provide a wide array of services including child protective services, family preservation, family support, adoption, family foster care, treatment foster care, residential group care, adolescent pregnancy prevention, child day care, emergency shelter care, independent living, and youth development.

We agree with the important goals of the legislation: to ensure child safety, improve timely decision-making and move children to permanent homes. Today we offer comments and recommendations on S. 1195. We strongly endorse the legislation's commitment of significant resources for adoption subsidies for all children with special needs and for the continuation of investments to strengthening and support families at the community level. We are, however, disappointed that the bill lacks additional resources for appropriate reunification services at the same time it moves more quickly and broadly to end a child's ties with his or her family.

NEED FOR ACTION

The need for child protection and family support has increased dramatically.

- In 1996, over 3.1 million children were reported to child protective services as alleged victims of child maltreatment. Of those reports, nearly one million children were confirmed victims of child maltreatment and 1,046 died as a result. From 1987 to 1996, the total number of children reported abused or neglected increased 45 percent.

- Five hundred and two thousand children live in out-of-home care—family foster care, kinship care, or residential care—because they cannot be safely be cared for at home. The number of children in out-of-home care increased by 74 percent in the 10 years from 1986 to 1995. Between 1990 and 1995 alone, the total number of children in out-of-home care increased 21 percent. Four states had increases in excess of 100 percent during that time period.

- Nearly one-half of all children in out-of-home care are in family foster care. Almost a quarter of the total (23 percent) are in kinship care—the placement of children with a relative. The use of kinship care placements has increased dramatically, rising 29 percent between 1990 and 1995. In certain parts of the

country, the increase in kinship care has been much greater. Other children receive care in group care settings, essential for some children whose needs are great. A small percentage of youths in care are in independent living.

- Most children in out-of-care return home. In 1990, over 60 percent of all children living in out-of-home care returned home.

- In 1996, 47 state child welfare agencies reported the legalization of 27,115 adoptions (CWLA, 1996). At the end of 1995, 74,954 children in 41 states were in out-of-home care with a goal of adoption, and 32,238 children were legally free for adoption. Nearly half (44 percent) of the children legally free for adoption and awaiting adoptive homes were African American. Ninety-seven percent of the children awaiting adoption were older than one year of age.

COMMENTS ON PROVISIONS OF S. 1195

We strongly endorse the provisions of the bill that will support needed services to achieve better decisionmaking and permanency for children. These provisions help to address a significant barrier to reunify families safely or to move children into other permanent homes.

EXTENSION OF FEDERAL ADOPTION ASSISTANCE TO ALL CHILDREN WITH SPECIAL NEEDS

What issue does this provision address?
Under current law, children with special needs from families that would have been eligible for the former Aid to Families with Dependent Children (AFDC) program (given the income and resource standards in place in each state on June 16, 1996) or who are eligible for Supplemental Security Income (SSI) are eligible for federal adoption assistance. Children with special needs from families that do not meet this poverty standard are not eligible for federal adoption assistance, even though all of the child's ties to this family have been legally severed and the child is free for adoption.

Special needs, as defined by individual states, include physical, mental, emotional or other special needs categories such age, race or sibling relationship. Currently, 65 percent of the children with special needs receiving adoption assistance are eligible for federal adoption assistance while 35 percent receive only state adoption assistance. State subsidies are frequently much lower than the federal subsidy level. Also, some children with special needs fall between the cracks and are not currently eligible for either federal or state subsidies since states frequently define which children are eligible for state subsidy more restrictively then the federal criteria. This greatly reduces the likelihood of their being adopted. Many potential adoptive families who could offer

nurturing and permanent homes to these children simply cannot afford to take on full financial responsibility for these children.

In addition, under current law, adopted children lose their adoption subsidy when an adoptive parent dies or if the child's adoption dissolves. Many times, this will mean that a child, after having suffered the death of an adoptive parent, must be placed back into foster care without the possibility of being again adopted with a federal subsidy.

How will this provision help children?
The P.A.S.S. Act would remove AFDC and SSI eligibility as a criterion for Title IV-E Adoption Assistance. By severing the link between a child's AFDC eligibility and the child's later eligibility for federal adoption assistance payments and basing eligibility solely on a child's special needs, all children with special needs waiting for adoptive families will be eligible for federal adoption assistance on an equal basis. Children would remain eligible for federal adoption assistance if the child's adoptive parent dies or the child's adoption dissolves.

With this change, all adopted children with special needs would be eligible for Medicaid. This is important in states where health coverage is not now extended to all children with special needs adopted with state assistance. It would also allow adoptive families to move out of their state without the risk of losing their child's health care coverage.

The elimination of administratively burdensome and costly eligibility requirements will expedite the adoption of children with special needs. The current requirement that states look back to AFDC eligibility standards from the past in determining eligibility for the federal adoption assistance program greatly increases the administrative complexity of administering the program.

S. 1995 also requires states to spend an amount equal to any savings resulting from this provision to provide services to children and families, including post-adoption services, that are allowable under Title IV-B and IV-E. This will result in the states redeploying their own resources to expand services to at-risk families.

CONTINUATION OF INVESTMENTS TO STRENGTHEN AND SUPPORT FAMILIES

What issue does this provision address?
This provision reauthorizes the Family Preservation and Support Services Program (FPSSP), a capped entitlement under Title IV-B, Subpart 2. FPSSP responds to the nationwide consensus that services to children and families should be more preventive, comprehensive and community based. FPSSP has provided states with the opportunity to begin fundamental reform of their child and family systems by providing funds for:

- initiating broad-based and ongoing planning to identify needs, resources, and capacities in the state and in communities, and to recommend improvements in overall service delivery;
- investing in community-based services designed to prevent child abuse and neglect and assist families in crisis.

While FPSSP does not provide the resources to address all the problems that plague children and families—for example, to treat substance abuse, homelessness, or severe mental illness, or to alleviate poverty among families raising children—it is intended to serve as a catalyst for improving the way services are delivered.

The goals of the Family Preservation and Support Services Program are to:

- Protect children
- Strengthen families' ability to promote their children's healthy development
- Contribute to the development of a more responsive, collaborative, child and family service system

Unless Congress takes action, this program will sunset at the end of FY 1998.

How will this provision help children?
S. 1195 would reauthorize FPSSP through 2002 at the following levels: $275 million in FY 1999; $295 million in FY 2000; $315 million in FY 2001; $335 million in FY 2002 and $355 million in FY 2003.

After just a few years with the FPSSP, states are reporting that the funds have, indeed, served as a catalyst for improving their child and family services systems. States took the planning directives of the Program seriously, inviting communities to join in the process of identifying needs and resources and recommending service improvements. This has resulted in greater community ownership of child protection and family support.

> *In Michigan, for example, FPSSP funds have assisted the state in moving to a much more community-based service delivery approach. Community providers, ordinary citizens, and consumers are playing a much larger role, as members of area networks, in determining what services are needed and how they will be delivered. As the postmistress in Empire, Michigan, put it, "Strong Families, Safe Children (Michigan's Family Support Initiative) is the best thing we've had."*

FPSSP funds have enabled states to develop locally sponsored programs that strengthen families' ability to promote their children's healthy development. Prior to this program, state funded programs designed to support families and prevent abuse and neglect were extremely limited. Family support centers, home visiting programs,

and other proven means of reaching at-risk families were far and few between. In addition, while more states provided family preservation services to respond to families in crisis, in no state were these services available to all families that needed them.

> *In Pennsylvania, FPSSP funds enabled them to move forward quickly to establish a statewide system of community-based family centers that serve as a central place for families to learn about parenting, to link to additional resources such as child care, and to join with other parents in their efforts to promote the healthy development of all children in their community.*

Outcomes for children and families have shown improvement. While it is too early to tie FPSSP directly to improved outcomes, a number of states that have combined FPSSP efforts with foundation and state-funded initiatives to reform their child and family service systems are reporting important early results. State data on child safety and well-being suggest that outcomes for children are improving in several areas, including:

- Improved safety for children
- Reductions in out-of-home care and length of stay in care
- An increase in the numbers of expedited adoptions
- Improved permanency for children in kinship care

Continuation of the Family Preservation and Family Support Services Program will enable states to strengthen and build upon the important community partnerships that have developed during the first four years of the program, enabling many more communities to build the capacity to truly protect children and strengthen families.

CWLA recommends deleting the provision in S. 1195 that requires states to devote at least 25 percent of their expenditures to each of three categories of services: community-based family support; family preservation; and one-year time limited family reunification. This change is recommended because current law for the Family Preservation and Support Services Program already includes family reunification services and activities that can help reunify families in the definitions of both "family preservation services" and "family support services." The 25 percent earmark and specific definition of family reunification services are not necessary and limit states flexibility in crafting their services to the needs of children and families served.

CWLA also recommends the continuation of the State Court Assessment Project as part of the reauthorization. The continuation of this program is particularly essential given the new demands that will be imposed upon the court by P.A.S.S. The court will have more permanency planning hearings and actions on petitions to terminate parental rights more frequently. P.A.S.S., however, does not include the additional resources proposed in previous bills to train judges, court staff, and staff of other agencies who are central to keeping children safe and moving them to permanence.

ESTABLISHMENT OF STANDARDS BY STATES TO ENSURE THAT CHILDREN IN OUT-OF-HOME CARE SETTINGS RECEIVE SAFE, QUALITY CARE

What issue does this provision address?
States vary widely in their performance and capacities. CWLA, the principal national organization responsible developing "best practice" standards and goals, strongly endorses encouraging states to develop and require that agencies serving abused, neglected, or otherwise vulnerable children meet acceptable standards of practice by a nationally recognized standard-setting or accrediting organizations that a state chooses. CWLA believes that quality care and good outcomes are the aim and goal of public and private agencies that serve abused and neglected children. Therefore, we urge that the provision apply to all agencies—public and private—that provide these services.

How will this provision help children?
The development and adherence to standards of quality care are key to making good initial assessments, monitoring progress, and judging and improving outcomes. This provision will help assure the quality of services, the safety and outcomes for children in care, and accountability of providers.

We support a number of additional features of the P.A.S.S. Act that will improve child safety and permanence, including the provisions to:

- clarify that child safety is paramount in decision-making; require reasonable efforts to move children towards adoption or another permanent home;
- require dispositional hearing within 12 months rather than the current 18 months;
- establish priority for substance abuse treatment for parents with children who are clients of child welfare agencies;
- increase treatment options for families by allowing Title IV-E dollars to be used for the care of a child (who would otherwise be placed in out-of-home care) with a parent in a residential program when the goal is reunification;
- require state and local death review teams;
- require criminal background checks for all prospective foster and adoptive parents and employees of residential facilities;
- expand the number of states that may have child welfare waivers from 10 to 15;

- provide bonuses for states that increase the number of foster children who are adopted;

- require that foster parents and relatives caregivers receive notice of reviews and hearings and have opportunity to be heard; and

- require the U.S. Department of Health and Human Services to create an advisory panel and make recommendations on kinship care.

AREAS OF CONCERN AND RECOMMENDATIONS FOR IMPROVEMENTS

While we applaud these provisions, we have several major concerns about the P.A.S.S. Act and suggestions for improvements.

One area of concern is the phrase "when possible" added to the reasonable efforts requirement in Section 101. While we strongly agree that reasonable efforts should not occur when a child's safety would be jeopardized, the current language in Section 101 is confusing and could well lead, especially given other requirements in P.A.S.S., to substantial misinterpretation and the denial of reasonable efforts when they are appropriate. CWLA recommends the deletion of the phase "when possible" which will leave the leave intact the clear exception to the reasonable efforts requirements but clarify that efforts towards reunification should not be undermined when they can be made safely.

CWLA also has concerns about the provisions in S. 1195 that require states to initiate or join proceedings to terminate parental rights of a child who has been in care for 12 of the most recent 18 months, or for a lifetime total of 24 months. Notably, the bill does provides two very important exceptions to this requirement: (1) at the state's option, if a child is being cared for by a relative; or (2) if a state court or state agency has documented a compelling reason for determining that filing the petition would not be in the best interests of the child. Even so, by requiring filing of a termination petition, the bill limits the state's options in pursuing permanency for each child. In fact, permanency can be achieved by a number of means. When reunification is not possible or desirable, parents can be helped to arrive at permanency for their child by relinquishing their parental rights or consenting to guardianship. Both of these options avoid the costly and painful court process required in terminating parental rights.

Our concerns also stem from the required initiation of termination of parental rights proceedings without offering any new resources for services to ensure that children are not moved back home or into adoptive families without appropriate services. The procedural change mandated in S. 1195 will not promote adoption unless it is accompanied by increased resources to address problems that bring children to the door of the child protection system. Changing timeframes without also intensifying services,

sends the message that government is abandoning its responsibility to help troubled families solve the problems that lead to child abuse and neglect. This could be interpreted by states as a signal for a retreat in the area of prevention and reunification for those children for whom these outcomes are appropriate.

If additional services were made available—and we urge the Committee and the Senate to provide greater support—it is much more likely that a timely permanency decision can be made within one year. If a family had access to services from the day the child enters care, caseworkers and judges would have a more realistic sense of the best permanency plan for the child. Many children would be able to return home safely; others will move to adoption quickly.

The proposal in S. 1195 to shorten the time limits could jeopardize the well-being of children by putting them at risk of being returned home prematurely or moved to adoptive homes inappropriately. As states try to comply with the new requirements in P.A.S.S., children could be rushed home or pushed to adoption without the services and supports they need to prevent them from moving in and out of care; or they will continue to linger in care because services to address their most pressing problems are not provided.

We also recognize that S. 1195 imposes new demands on the court without providing any additional support. As a result, court resources will be diverted to comply with the new termination requirements, court backlogs will grow and children will continue to wait for permanent, loving homes.

CWLA recommends that additional funding opportunities for permanency services and training be added to S. 1195, similar to those proposed in S. 511, the SAFE Act. Provisions in that bill allow states to be reimbursed for providing permanency services for a child and his/her family for up to one year from the day the child enters foster care. This will allow decisions about reunification or adoption to be made quickly and appropriately. S. 511 also provides funding for court staff and other agency training and retention so that staff are prepared to make prompt decisions. Well trained, experienced and well supervised workers with manageable caseloads are the best equipped to make good and prompt decisions about child safety, family capacity and permanence.

At the least, CWLA recommends eliminating the requirement that a termination of parental rights petition be filed when a child is in care 24 months during the child's lifetime. The lifetime of a child encompasses a great amount of time in which the circumstances under which the child might come into care could differ enormously. For example, a teenage mother could have placed her infant child in foster care voluntarily and that child could require care again as a teenager when his mother was battered. This provision would also be impossible to enforce. Although some states

are making progress in tracking the re-entry of children in care in a single state, there is not a mechanism in place for doing so across state lines.

CWLA also recommends that Section 204 of S. 1195 be amended to make it clear that the provision about geographic barriers applies only to adoptive placements. Geography is very relevant in deciding an appropriate foster care placement for a child. This change eliminates any suggestion that it intends to alter the requirement in current law (Section 474(5) of the Social Security Act) that children be placed in foster care in the least restrictive and most appropriate setting available and in close proximity to the parent's home, consistent with the best interest and special needs of the child.

CWLA is also concerned about the Section 401 of S. 1195 which states that "Nothing in this Act...to prohibit the use of reasonable methods of parental discipline." While we share the concern about unwarranted investigations and inappropriate interventions in suspected cases of child abuse and neglect, we believe that this phrase would have the negative effect of deterring the reporting of suspected child maltreatment and creating a shield for child abusers. There is no disagreement about the rights of parents to discipline their children. However, when harm and injury is done to children in the name of "parental discipline," investigations under state law are warranted. We are concerned about any language in federal law that would discourage appropriate investigations of such reports. If that happens, children's safety would be threatened in direct contradiction to the intent of the P.A.S.S. Act.

In sum, we again applaud the efforts of the senators who worked diligently in developing this measure which we believe can and should move forward with improvements. And we commend this Committee for continuing to in tackle these difficult and complex issues. We look forward to continuing to work with you to help children stay safe in loving, permanent homes.

METROPOLITAN COURT JUDGES COMMITTEE REPORT

Deprived Children: A Judicial Response

73 Recommendations

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

UNIVERSITY OF NEVADA
P O BOX 8970
RENO NEV 89507
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ORGANIZED MAY 22, 1937

LOUIS W McHARDY Executive Director

Dear Judge, Legislator, Child Protection Agency Official, Local Civic Leader:

The 73 Recommendations contained in this Report have been endorsed by the nation's juvenile and family court judges. They were developed by a Committee of Presiding Judges from the 40 largest urban courts in which over 60 percent of child abuse and neglect cases are heard. They were adopted by the National Council membership of over 2,000 judges and court executives.

If implemented in your communities, the Recommendations will ameliorate the problems of deprived children who require public custody and protection.

The Report provides a basis for review of state and local practices, laws, and resources. The goal is to provide more effective and better coordinated services for these children and their families.

As judges, we challenge you to enlist the support of your entire community in a concerned effort to preserve and strengthen families. To assure an adequate level of services to provide for at-risk children, we must come to terms with the costs. We must do more than just talk about the needs of children.

Solutions for the complex problems discussed in this Report can be achieved, but only through the determined commitment of government and the community, in partnership, to develop and rigorously apply all of their resources and talents.

Please contact the National Council for:

- Technical Assistance
- Speakers
- Education and Training
- Further Information

on the issues and Recommendations discussed in the Report.

Judge Marshall P. Young
President, 1986-1987

Planning and Development Office
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JUDICIAL LEADERSHIP AND NATIONAL POLICY DEVELOPMENT

This Report focuses the attention of juvenile and family court judges on the many facets of the national problem of abused, neglected and exploited children.

More than 4 million children are abused and neglected each year. A million or more children are missing, with many runaway or "throw away" children exploited into prostitution and crime. Only 25 percent of these children are ever reported to child protection services and many fewer offered effective help.

Lack of treatment resources and workable risk assessment criteria for the removal of abused and neglected children from their parents, or for their return home, creates problems for the community and revictimizes children. Preventative, family-based services must be utilized to eliminate unnecessary out-of-home placement. Resources must be re-allocated and courts provided appropriate authority and resources to assure necessary protection, treatment and services for deprived children. The lack of coordination between service agencies, the insensitivity of the legal system to the child victim, and the apathy and inability of the system to intervene with children who need help — all are problems calling for judicial leadership in every community.

The National Council's Metropolitan Court Judges Committee was created in 1982 and spent two years addressing problems of serious, violent and chronic delinquents. The "Juvenile Court and Serious Offenders: 38 Recommendations" Report has proven helpful, not only to judges, but also to State legislators, county officials and community leaders in addressing more effectively serious youth crime and its perpetrators.

This Report deals with the youth who now comprise the largest and fastest growing portion of most juvenile and family court caseloads.

Since January 1985, the Committee has met four times to develop the 73 Recommendations, and the Team Leaders and Co-Leaders have met on four other occasions to refine the Report and to present the Recommendations to the National Council's Boards of Trustees and membership. More than 2,200 volunteer judicial hours have been devoted to the development of this Report. It represents the best judicial thinking on the various issues impacting deprived children.

Judges are sometimes criticized for being reactive or not offering appropriate leadership on public policy issues. The reader will find that, regarding the positions and policies recommended in this document, the National Council has demonstrated a thoroughly active stance.

We owe much to the effective leadership of the Committee Chairman, David E. Grossmann, the Team Leaders and Co-Leaders and the Committee members. The project has been primarily funded by the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, which recognized the value of calling on the vast collective experience of the Metropolitan Court Judges to develop these Recommendations.

The Report was reviewed, discussed and approved by the Boards of Trustees and the membership at the 49th Annual Conference in July, 1986 at Providence, Rhode Island. Thus, it reflects the policy of the National Council of Juvenile and Family Court Judges.

Judge John M. Yeaman
President, 1985-1986
August, 1986

1985-1986
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DEDICATION

The National Council of Juvenile and Family Court Judges dedicates this publication to the goal of preserving and strengthening American families. Only by securing stable and nurturing family structures — with capable and caring parents and safeguarded and well cared for children — can our nation hope to surmount the tragedies of millions of children who are deprived primarily because of family failure.

The efforts of skilled and committed judges, legislators, law enforcement officers, health and child care workers, doctors, teachers, attorneys, volunteers and others involved in the lives of deprived children can do little without a rekindled national awareness that the family is the foundation for the protection, care and training of our children.

As judges, we challenge our colleagues and our government to actively enlist the support of the entire community to join in a concerted effort to preserve and strengthen families. To assure an adequate level of services to protect and provide for our nation's greatest resource — all its children — we are going to have to come to terms with the costs such services require. We, as a people, must do more than talk about the needs of "deprived children."

Answers to the complex problems of failing families can be achieved only by the determined commitment of government and the community, in partnership, to develop and rigorously apply the resources of the public and private sector in this struggle. For the sake of our nation and our children we can do no less.

DEPRIVED CHILDREN: A JUDICIAL RESPONSE
73 RECOMMENDATIONS

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INTRODUCTION

THE TRAGEDY OF DEPRIVED CHILDREN

The following recommendations reflect the concerns, from a judicial perspective, of a society struggling to become more responsive to the tragedies of child abuse, neglect and other deprivation. Children who are deprived of their essential needs not only are handicapped in their pursuit of happiness, they are a prime source of future crime and delinquency, and of future abuse of their own children. The judges of the Juvenile and Family Courts are particularly aware of these deprived children. They see them every day in their courts. They listen to their sordid descriptions. They read their social analyses and their psychological workups. And, they hear proposals for helping them.

The Council's Metropolitan Court Judges Committee, comprised of judges from the nation's forty largest cities, have debated these Recommendations extensively. The Council's Boards of Trustees and the membership have approved them. The judges seek to offer their best thinking, based on extensive experience, to reduce this deprivation of children and to provide a framework to solve many of the problems presently encountered.

Who Are They?

Deprived children are children without adequate parental or custodial care or control. They are neglected by not being provided adequate food, clothing, shelter, medical care, supervision, education, protection or emotional support necessary to insure physical, mental or emotional health. They are abused physically and sexually or not protected from such abuse by parents, custodians or others. They suffer emotional harm by verbal harassment, disrespect and denial of self-worth, unreasonable or chronic rejection, and failure to have provided the necessary affection, protection, structure and sense of family belonging. They suffer severe physical and emotional damage from family violence, unreasonable corporal punishment, alcohol and substance abuse, and sexual or other exploitation — often by those outside their family but more tragically and commonly in their own home by their own natural parents.

Children requiring foster care have most often suffered deprivation. Children who are habitually truant, or who have run away from home, or are homeless or chemically dependent are also deprived and at risk of being exploited for prostitution, pornography, theft or drug trafficking. Chronically incorrigible children — those who are found so unreasonably disobedient of the proper guidance or protection of parents or guardians that custodial supervision is called for — must also be considered to be deprived and at-risk.

Whether the harm is caused by a child's parent or family, by an acquaintance or stranger, or by the legal and institutional service systems, the problems are pervasive, most serious, and not open to easy solutions. A large proportion of millions of abused or neglected children are never reported. The reports of tens of thousands more are mishandled. Thousands move through the courts every year, and the judges see them. They see the mothers and the fathers. They hear about the neglect and the drinking, about the vicious punishments and the failure to support, and about the sexual demands of fathers. They hear of parents who have never learned how to bathe a child, when to take a child to a doctor, or what a child's nutritional requirements are.

The judges know that too often the processes of the system can exacerbate

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the abuse by its delays, procedures and rules which are insensitive to the feelings, perceptions and fears of children. The judges also know the resources in their communities are used inefficiently or are lacking. They know that agencies may override the rights of children in their zeal of help them, taking them out of their homes on mere assertion, placing them in foster homes, sometimes of another culture or at a distance from family, school and friends. They know that the coordination among social agencies, law enforcement officers and prosecuting attorneys, and divisions of the court is insufficient to balance the needs and rights of deprived children, their parents and the community. The judges know also that their own authority is often limited.

Increasing Numbers

It is estimated that as many as four or five million children are neglected or physically or sexually abused each year, with an additional two million vulnerable as runaways or missing.[1] The official number of abuse and neglect cases for 1984 was over 1.7 million.[2] Reported cases increased 156 percent between 1976 and 1984, a 20 percent annual increase.[3] Reports of child sexual abuse increased 58 percent during 1984.[4] Yet only one of five known cases of abuse or neglect are made known to child protection agencies.[5] Studies of all 50 states document that not only are reports of child abuse on the rise, but so too are the actual incidents of abuse.[6]

It is surprising how very few cases of child abuse or neglect ever come before the court. National statistics on children who have been abused or neglected show judges see only an average 3.4 percent of minor injury cases, 8.3 percent of major injury cases and 15.4 percent of sexual abuse cases.[7] By national averages, juvenile and family courts see only about 18 percent of the total abuse and neglect caseloads. About 172,500 dependency cases were before the courts in 1982.[8] This is in addition to 1.3 million delinquency cases in which the actual cause of the problem often could be attributed to previous abuse and neglect.[9] The fact emerges that our society, by its deprivation of children, is raising criminals.

Delinquency and Deprived Children

Family violence and child abuse are primary causes of delinquency, particularly violent offenses. Studies have indicated astounding correlations between child abuse and deviant behavior among violent juvenile delinquents and among adults who had committed violent crimes.[10] Most violent criminals have been severely physically abused as children. This connection between a child's history of neglect or abuse and subsequent delinquency, crime and other problems has been mostly ignored by our juvenile justice and social service systems. Those who experience violent and abusive childhoods are more likely to become child or spouse abusers than those who have not.[11] Child abuse is more prevalent in low socioeconomic status families,[12] but family violence, abuse and neglect can be found across the spectrum of society.

Teenage Parents

Children of teenage parents are most at-risk. Data indicates that infants born without the necessary prenatal care, particularly those born to black or teenage mothers, incur the greatest risks to survival. Today 58 percent of all black children are born out of wedlock.[13] The cost to society of sexually active children who are ill-prepared for the often undesirable consequences of such relations is high. Venereal disease, unwanted pregnancy, suicide, physical risks to

mother and child during pregnancy and at birth, abortion, failed marriages, and most certainly, a great potential for future abuse, neglect and other deprivations are too often the tragic result. Society has limited resources to deal with the risks inherent in immature and irresponsible sexual relationships. National support is needed for the position that intimate sexual activity among children should be appropriately discouraged, both by their parents and by a society which inculcates much of children's values through advertising, television, movies and music. Efforts to increase public awareness, parental support, appropriate sex education, and counseling children on reasons for sexual continence without inhibiting human intimacy are needed.

Characteristics of Abuse and Neglect

The number of children reported as being abused or neglected doubled from 1976 through 1982.[14] Less than half of those reports were substantiated by admission of the caretaker or by appropriate evidence.[15] Half of all abused children are under 3 years of age and 90 percent of deaths from abuse occur before a child is one year of age.[16] Incidents involving older children are less likely to be reported. Cases often perceived as less serious by child protective agencies, such as neglected teenagers, are not receiving adequate attention.[17]

A 1976-1982 national study showed that 64 percent of all reported cases involved child neglect; 25 percent involved physical injury; and 17 percent involved emotional abuse or neglect.[18] In 1983 almost 10 percent of reported cases involved child sexual abuse.[19] Due to recent public awareness and mandatory reporting laws, many communities are now experiencing increases in sexual abuse cases.

Infants and small children are most often affected by neglect. Sexual, physical and emotional abuse increases as children grow older.[20] The younger the parent, the greater the chances are for abuse.[21] Of all maltreating caretakers, 97 percent are legal parents and 85 percent are natural parents.[22]

Abusing or neglecting families are more than twice as likely to be headed by a female, and four times more likely to be receiving welfare assistance.[23] Neglect is often related to the psychological unavailability of the parent to meet the needs of the child as well as economic difficulties. Abusing families have in general an average income. Male parents are associated more with physical injury and sexual abuse, female parents more with neglect.[24] Adolescents experience three times more sexual abuse, but only slightly more physical injury and emotional maltreatment than young children.[25]

Sexual Abuse

National data does not distinguish among the various degrees and types of child sexual abuse. One study concludes that 10 percent of males and 25 percent of females have had sexual contact or penetration as children.[26] Of reported child sexual abuse, 85 percent of the victims are female and 15 percent male.[27] About 80 percent of all perpetrators are male; over 56 percent are perpetrated by natural parents and 77 percent by legal parents.[28] Only about 16 percent is attributable to relatives and only about 6 percent to strangers.[29] Sexually abusive families, when compared to all abusive or neglecting families, have higher incidences of health problems and alcohol, drug and spousal abuse.[30]

Economic and Social Costs

The immediate economic costs to society of child abuse and neglect are staggering. Initial costs for child protective services for each case opened are estimated to average $10,000.[31] Long-term costs for psychological or medical care for sexual abuse or severe neglect and abuse cases can be much higher.[32]

Temporary foster care costs $5,000 to $15,000 a year. Home-based services average $50 a visit and 40 visits a year.[33] At a conservative estimate of only $15,000 in costs per average case, and counting only the 650,000 cases actually serviced nationwide, annual costs amount to $10 billion. This does not include substantial law enforcement, hospital or court costs, nor the costs of future crime and child abuse perpetrated by the abused victim. The long range costs of failure to prevent, intervene and treat child deprivation are beyond calculation and have not yet received appropriate attention.

As adults deprived children are more likely to be on welfare, to have job difficulties, to have mental health problems, and to over-utilize the health care system.[34] Among deprived children, learning disabilities and substance abuse are more prevalent as are delinquency, truancy, running away and other problems. But, as Dr. Ruth Kempe writes, "By far the most disturbing and consistent finding of observation of young children who have been abused and neglected is the delay, or arrest, of their development."[35]

Emotional consequences of neglect and abuse fall into one of two patterns of behavior — withdrawal or aggression. Boys tend to react aggressively. Girls tend to show more inner conflict and anxiety. Studies of physically abused children show 30 percent to be retarded or to have neurological deficits.[36]

Standards for Child Protection

It was only in the early 1960s that medical diagnosis of child abuse as "the battered child syndrome" began. It was not until the 1980s that sexual child abuse, emotional abuse or neglect, and missing, exploited and runaway children came to the attention of the public. Governmentally provided child protection services began with the Social Security Act in 1935. Until then, privately funded "societies" were the primary intervenors and protectors of children.[37] As government intervention through child protection services and the courts has increased, private voluntary child welfare efforts have decreased. In recent years, possibly due to decreasing public resources, the use of volunteers, such as Court Appointed Special Advocates (CASAs), has begun anew.

Child care and protection standards and practice, such as decision-making criteria for removal of the child from the home, are often not well defined. A frequent complaint is that caseworkers are left to make too many decisions alone, without adequate supervision or guidelines. Case-by-case, jurisdiction-by-jurisdiction, disparities and variances of acceptable treatment and intervention levels abound. Nor are the many emotional needs of children always clearly understood by the intervening agencies. The assurance of a constant loving person in a child's life is critical, but often missing in the intervention process. Making available a constant caretaker with the child preferably remaining in his own home or finding a permanent home, rather than growing up in temporary foster homes, is crucial. But perhaps the most important concern remains the provision of an adequate level of services and treatment for deprived children.

Purpose of the Recommendations

Deprived Children: A Judicial Response is an effort to draw upon the experience and expertise of those judges who exercise jurisdiction over and who are involved daily in the lives of "deprived" children — those children who for many reasons must or should be brought under the custody of the court. Most juvenile and family courts are vastly different in scope and operation than just a decade ago. Measurement of current caseloads indicates a far greater number of family problems before the courts than ever. The huge increase in abuse and neglect, in custody and child support, and in foster care and family reunification matters can be partially attributed to such factors as higher divorce rates and

drug or alcohol abuse. But federal legislation such as the Child Welfare and Adoption Assistance and the Child Support Enforcement Acts also has had a significant influence on courts. These federal programs look to local juvenile and family courts for leadership in reducing institutionalized foster care, providing permanent families and expediting child support.

Require and Review Services

Increased judicial involvement is critical to improving the effectiveness of the overall child protection system. The public reasonably expects that courts are ultimately in control of what happens to the lives and liberties of the children and families who come to the attention of public authorities. The judges agree that they must exercise appropriate judicial leadership, responsibility, authority and accountability. They speak out on the basis of their concern and commitment as judges assigned or elected to family and juvenile courts, now often divisions of general trial courts. Their recommendations are intended to be helpful to community decision-makers, including state and local legislators, law enforcement, child protection and other social service agencies, attorneys, judges and the private sector. The key to solving immense problems is the establishment of a working and effective partnership of courts and public agencies with the full involvement of business, labor, private foundations and agencies, and citizen volunteers. Also essential to lasting solutions will be an emphasis on prevention and sensitivity to the rights of the individual child, the family and the rights and responsibilities of the parent as well as those of the courts, agencies and legislatures.

I. ROLE OF JUDGES

Needs of Children

1. Judicial Leadership
2. Authority to Require Services
3. Agency Cooperation
4. Public Awareness
5. Liaison With Schools
6. Resource Needs
7. Constituency for Children

Analysis

The public reasonably expects the judiciary is, or ought to be, ultimately accountable for what happens to abused or neglected children who are reported to or handled by governmental agencies. Yet juvenile and family court judges know that they are often being held accountable for the operation of statewide or local service systems which in reality are subject to limited judicial control and review. The courts should have the necessary order-making, review, monitoring and enforcement authority over the entire child protection process, from the initial report to intake and investigation, to intervention and treatment plans, through termination and permanent adoption or preferably, effective and responsible family maintenance or reunification. The nation's judiciary must be a responsible force for the improvement of child protection and treatment services.

Lack of coordination among various child-serving agencies and between child-serving agencies and the courts requires the development of jointly agreed upon decision-making criteria and treatment procedures. In each jurisdiction the judicial role should be clarified, and expanded resources made available to juvenile and family courts and the service agencies so they can more adequately meet the needs of deprived children.

The courts must have as their concern the provision of appropriate and effective protection for millions of abused, neglected or otherwise deprived children. Judges must exercise leadership and promote cooperation among the various systems which handle deprived children. They must protect the rights of all parties and insist upon appropriate intervention and treatment of each child. It is a difficult task.

1. Judicial Leadership

Judges must provide leadership within the community in determining needs and obtaining and developing resources and services for deprived children and families.

The judicial responsibility for impartiality does not preclude a judge from providing leadership within the community. Judges should examine their community's child protection system and process — including their own courts — to assure:

- appropriate prevention, detection, investigation, interviewing and reporting under uniform practices and procedures;
- clear, concise and purposeful procedures for substantiating, screening and servicing all reported abuse and neglect;
- adequate standards for identifying at-risk children and providing needed intervention and services;
- the use of day care, parenting training, homemaker and other services to keep families together;

- the availability of long-term, in-depth services and treatment for children and families, whether reunited or separated; and
- adequate facilities, trained parents and volunteers, adoption programs, and treatment within institutional or foster care settings.

Judges should promote cooperation among public and private agencies to provide needed facilities and resources. Development of citizen volunteers and auxiliary programs to serve the court, the agencies, and children and families should be actively encouraged.

2. Authority to Require Services

Juvenile and family courts must have the clear authority, by statute or rule, to review, order and enforce the delivery of specific services and treatment for deprived children.

The public looks to its court system to resolve disputes and to order enforceable and specific remedies. Society expects the judge to be an impartial decision-maker when a dispute and remedy involve the best interests of a deprived child under the jurisdiction of the court. It expects the provision of services or treatment necessary to protect and treat that child. In the interests of deprived children, juvenile and family courts must have the authority to order, enforce and review the delivery of specific services and treatment for deprived children, subject to due process and the presentation of sufficient evidence to support appropriate judicial intervention.

3. Agency Cooperation

Judges must encourage cooperation and coordination among the courts and various public and private agencies with responsibilities for deprived children.

Judges should work informally with members of the bench, bar, community and various agencies to establish unified procedures and to develop necessary resources.

Juvenile and family courts, probation services and child protection and health and mental health agencies should coordinate the management of services and treatment available and provided to deprived children. The court must bring about cooperation between itself and the various agencies involved.

4. Public Awareness

Judges and court personnel must make every effort to increase media and public awareness of the complex and sensitive issues related to deprived children.

The complex and often competing interests of deprived children, parents, guardians, social workers, attorneys, the law and the public interest need to be thoroughly explained to the public. Within the bounds of specific confidentiality requirements, judges should be available to provide general information on law and procedure. The media should be encouraged to understand the juvenile and family courts' emphasis on the "best interests of the child."

Judges must participate in community education programs on children's issues and court-initiated forums and training on abuse and neglect issues. The media should be urged to cover such programs and to assist in public education.

5. Liaison with Schools

Juvenile and family courts must maintain close liaison and encourage coordination of policies with school authorities.

There should be continuing communication between the court and school authorities for the protection and best interests of children. Judges should be supportive of school authorities in efforts to better serve children, particularly deprived children, including:

- Identifying and reporting learning disabled, abused and neglected, and problem children earlier and providing special classes, programs and counseling;
- Coordinating control of school suspensions and absences with the court;
- Offering parenting classes for both children and parents;
- Providing drug and alcohol education;
- Increasing use of school facilities for day care and child supervision;
- Developing special programs for at-risk children;
- Reducing dropout and truancy levels through better motivation, teaching, alternative education and enforcement programs;
- Initiating law-related education;
- Teaching moral and social values; and
- Teaching students how not to be victimized and other prevention efforts.

6. Resource Needs

Judges must exercise leadership in (a) analyzing the needs of deprived children and (b) encouraging the development of adequate resources to meet those needs.

In order to improve children's services, each community, under leadership of the juvenile and family court, should analyze the needs of children and encourage legislative, executive and taxpayer support for adequate resources for:

- Preventative programs and treatment facilities and services, such as day care, early childhood education, homemaker services, crisis nurseries, aftercare, mental health, foster care, school-located services, self-help groups and parenting training; and
- Cost-effective programs to limit excessive or lengthy out-of-home placements of children.

7. Constituency for Children

Judges should take an active part in the formation of a community-wide, multi-disciplinary "Constituency for Children" to promote and unify private and public sector efforts to focus attention and resources on meeting the needs of deprived children who have no effective voice of their own.

A "Constituency for Children" should:

- Identify and prioritize the treatment needs of children;
- Utilize available public "Children's Trust Funds" to finance prevention and treatment programs;
- Promote programs to help children achieve their full potential;
- Encourage cooperation and coordination and eliminate "turf-guarding" among public and private agencies;
- Evaluate what has and has not worked in addressing the needs and problems of children;
- Heighten public awareness of children's needs through the involvement and skills of community and business leaders;
- Enhance the quantity and quality of volunteer efforts for children;
- Establish realistic goals for meeting children's needs and work toward those goals; and
- Initiate a full, open and working partnership between the public and private sectors to benefit children.

II. COURT PROCEDURES

Judicial Issues

8. Court Stature
9. Sensitivity to Children
10. Initial Jurisdiction
11. Coordination of Systems
12. Priority for Abuse Cases
13. Manageable Caseloads
14. Attorney Training
15. Court Appointed Special Advocates
16. Citizen Advisory Boards

Legal Issues

17. Support Person for Child
18. Victim and Family Input
19. Evidentiary and Procedural Rules
20. Protective Orders

Analysis

A child's physical or mental health can be threatened through abuse or neglect by parents or through the insensitivity of rigid legal or administrative systems which have no regard for delay as a detrimental impact upon a child's life. The justice system tends to be over-formalized at the expense of the child victim.

Sensitivity to the needs of child victims, evidentiary and procedural reforms, specially trained attorneys and court workers, special volunteers, priority for abuse cases, reasonable caseloads and victim and family participation in the disposition of cases are required. The judicial process must reflect a greater awareness of the child as a child, and the child's treatment and service needs. In all cases of abused and neglected children, including those which require prosecution of the accused, the juvenile and family court must have initial jurisdiction to protect the interests of the child victim and ensure that services and treatment are provided. Protective orders must be available on a 24-hour basis.

8. Court Stature

Juvenile and family courts, to be effective, must have the same stature as general jurisdiction courts. Judicial assignments should be based on expressed interest and competence and be for a substantial number of years.

Courts exercising jurisdiction in juvenile and family matters should be equivalent in rank to trial courts of general jurisdiction to reflect their essential role in our society. Judges of juvenile and family courts should be elected or selected on the basis of their professed interest and competence in juvenile and family matters and assigned for a substantial number of years to insure adequate training and experience of the judge and control of the court. Where possible, the same judge should be assigned continuing review over an individual child and his family, foster care, and treatment progress to assure continuity.

Administrative procedures requiring rotation of judges to the juvenile and family court should also take into consideration professed interest and competency. The need for judicial continuity is nowhere greater than in this complex and specialized court.

9. Sensitivity to Children

All judges of all courts must ensure sensitivity in the courtroom and encourage sensitivity out of the courtroom to minimize trauma to the child victim.

The legal system must treat children with special courtesy, respect and fairness. Judges must work with attorneys, law enforcement, child protection agencies and state and local funding sources to improve facilities, services and procedures affecting children who appear in court. High priorities must be given to abuse and neglect cases, 24-hour emergency services, reduction of delays, and coordination with adult courts. Child care and counseling, child-size furniture and waiting or visitation rooms for parents and children must be available. Frequent recesses, confidentiality for name and address of the child, removal of courtroom observers during sensitive testimony, separation of victim and accused, testimony in chambers through closed-circuit television, expeditious return of evidence and other victim services should be assured to all children in court.

10. Initial Jurisdiction

Juvenile and family courts should have immediate and primary jurisdiction over children who have been allegedly abused to ensure protection and treatment for the child victim, notwithstanding pending criminal proceedings.

Immediate jurisdiction of the juvenile and family court over cases of alleged child abuse assures the protection of the abused child. Through initial intervention, for example, repetitive interviews by law enforcement, prosecution and the various attorneys can be limited. The court can immediately protect the child by a protective order. Necessary services and treatment can be provided as the first priority of the court. In cases where the juvenile and family courts' initial protection has been provided, the criminal adjudication process can proceed.

11. Coordination of Systems

Adult prosecution arising out of an allegation of abuse should be coordinated with juvenile and family courts.

The division of jurisdiction between adult criminal courts and juvenile and family courts often means that not enough concern is shown for the child victim when the prosecutor interviews the child and builds a case focused on obtaining a guilty verdict and punishing the perpetrator. There must be coordination to prevent duplications and inconsistencies of the sentences and orders of the various courts which may be involved in order to reduce the present and future trauma to the child victim. Since the hurt and the healing of the child is as important as the punishment of the perpetrator, the coordination should be by the juvenile and family court which can and should be the "hub of the wheel," coordinating the procedures of law enforcement officers, caseworkers, prosecuting attorneys, and sentencing judges.

12. Priority for Abuse Cases

Priority must be given to abuse and neglect cases in the trial court as well as in the appellate process.

Courts, through appropriate administrative and docketing processes, should give priority to petitions involving deprived children over other civil cases. Hearings, trials and appeals on child custody matters, particularly those related to the status of abused and neglected children, should be conducted as rapidly as is consistent with responsible decision-making and the child's sense of time.

13. Manageable Caseloads

Juvenile and family courts must have funding to allow reasonable judicial caseloads and an adequate number of judicial officers to assure the necessary time for each case.

Unreasonably large caseloads in juvenile and family courts impede justice for the deprived child. As the number of court interventions, placements or reviews of the status of deprived children increases, it will be necessary for each court to have an adequate number of court officers, attorneys and staff to assure sufficient time and reasonable caseloads.

Administrative or presiding judges of large juvenile and family courts should assure that sufficient court time, facilities and resources including competent judges and court officers, are assigned to custody and dependency matters. Juvenile and family court judges, particularly, must have time away from the courtroom to provide leadership within the community on behalf of deprived children.

14. Attorney Training

Court-appointed and public attorneys representing children in abuse and neglect cases, as well as judges, should be specially trained or experienced.

Successful completion of appropriate training and adequate experience in juvenile and family law should be prerequisites to appointment. A curriculum for a general understanding of child development and treatment resources, as well as specific legal skills and knowledge of relevant statutes, cases, court rules, interviewing skills, and special needs of the abused or neglected child should be developed and required for all attorneys and judges undertaking such cases. Continuing legal and judicial education programs should provide such special training.

Juvenile and family courts should not be the "training ground" for inexperienced attorneys or judges. Competent legal representation for all parties is crucial. District attorneys, city attorneys, public defenders, child protection agencies, the private bar and others who assign cases to attorneys should assign, whenever possible, adequately trained and experienced attorneys to cases in the juvenile and family court.

15. Court Appointed Special Advocates

Court Appointed Special Advocates (CASAs) should be utilized by the court at the earliest stage of the court process, where necessary, to communicate the best interests of an abused or neglected child.

A Court Appointed Special Advocate (CASA) is a trained volunteer appointed by the court to be an advocate for the best interests and well-being of the child before, during and after court proceedings. Juvenile and family courts should initiate the use of such volunteers to assist them in protecting deprived children.

A trained CASA can devote more time and attention to an individual case than an attorney and can assist the court in its determination. The CASA should make an independent investigation and recommend to the court actions which would be in the best interests of the child. Access to the assistance of a qualified attorney should be available to the CASA throughout the legal process.

16. Citizen Advisory Boards

Juvenile and family courts should consider the use of judicially appointed citizen advisory boards to assist the court with independent screening, monitoring and review of individual placements, services, facilities and treatment.

Juvenile and family courts should consider the use of Citizen Advisory

Boards or other types of independent and qualified panels to assist them in assuring adequate review of all screening, monitoring and placements. Such volunteer assistance can be an asset to a judge, provided the court is the appointing authority and such review boards operate under the judicial branch of government as part of an independent review process. Separate agency-initiated review systems and procedures are also necessary, but are not a substitute for continuing independent judicial review of placement, services and treatment.

17. Support Person for Child

A person supportive of the child witness should be permitted to be present in court and accessible to the child during the child's testimony without influencing that testimony.

The presence of a person providing emotional support for the child victim-witness may be necessary in obtaining testimony with a minimum of psychological harm to the child. Judges should assure that proceedings are conducted in a manner sensitive to the child and do all they can to lessen the trauma to the child.

18. Victim and Family Input

Family members should be permitted to offer suggestions or testify in aid of the disposition of the case.

To the extent possible, the court should hear or be made aware of the dispositional concerns of the child victim and family. The child victim, family members and other persons affected should have the opportunity to attend and testify at disposition hearings. In addition to the deprived child, grandparents, extended family members, and foster parents are among those who may be affected by dispositions in abuse and neglect or criminal cases. Although they are not "parties" with standing for purposes of required notice and the legal right to participate, they often represent service resources and are sources of relevant information. At the request of any party or the court, such persons may be permitted to testify as to the disposition. Caution should be exercised to prevent "fault-finding advocacy" which would polarize partisanship and delay or prevent family reunification.

19. Evidentiary and Procedural Rules

Evidentiary and procedural rules consistent with due process must be adopted to protect the child victim from further trauma.

Reforms must be made to improve the prosecution in criminal court of child abuse and neglect and to protect the abused or neglected child victim from further trauma in the courtroom. Measures for consideration include:

- Expanding use of hearsay and exceptions for out-of-court statements;
- Granting explicit judicial authority to control the examination of child witnesses;
- Lengthening statutes of limitations for crimes involving children;
- Removing the requirement for proof of non-consent by the child;
- Presuming the competency of the child witness or allowing the child to testify first with the judge to weigh the child's competency to testify;
- Using leading questions and narrative style testimony;
- Eliminating corroborative evidence requirements for a *primae facie* case;
- Modifying marital, medical and psychological privileges of confidentiality in cases involving the abuse of children;
- Allowing evidence of established patterns of prior sexual acts by the abuser;

- Using, where appropriate, video-taped or closed-circuit television statements by the victim.

20. Protective Orders

All courts should be granted authority to issue protective or restraining orders to prevent further abuse. Such orders should be freely used and vigorously enforced.

The use and enforcement of protective orders by the court is necessary to prevent additional trauma to a child. Statutes and rules should specifically authorize courts to make applicable to the abused, the abuser or others the following orders:

- Vacate or refrain from visiting the home;
- Limit or forbid contact with victim, other siblings, or any child;
- Maintain limited or supervised visitation with child;
- Prohibit physical, disciplinary and sexual contact;
- Obtain a mental health or substance abuse evaluation and participate in indicated treatment;
- Stay away from child's neighborhood, school, playground;
- Pay support for child or other family members, and costs of treatment;
- Refrain from use of alcohol and drugs, and obtain treatment; and
- Exhibit other definitive positive behavior in the best interests of the child.

Statutes and rules provide courts with the power to vigorously enforce these protective orders by fines, contempt proceedings, or other appropriate means.

III. DETECTING, REPORTING AND EVALUATING

Detection and Reporting

21. Identifying Deprived Children
22. Prompt Reporting
23. Signs of Abuse and Neglect
24. Voluntary Treatment
25. Follow-up Reports

Evaluation

26. Central Registry
27. Evaluation at Intake
28. 24-hour Availability
29. Coordinated Planning
30. Review of Emergency Removals
31. Removal of Offender
32. Child Interviews

Analysis

Reports of abuse and neglect are often not confirmed nor the child assisted because of an inability of child protection agencies to properly investigate. The reasons appear to be lack of available staff, programs and budget. When increased demand upon an already overburdened system cannot be handled, agency perception that some reports can be ignored or downgraded creates additional tragedy for the child who has been abused or neglected.

System improvements can enhance the detection of child abuse and neglect in each community and are often capable of being made without the expenditure of large amounts of money. These include:

- *Developing good practices and clear procedures for deciding when and how to report, screen, investigate and substantiate cases at the child protection agency, law enforcement, health, and school levels;*
- *Encouraging abusers to report themselves to agencies which can help them and protect the child victim;*
- *Enhancing public awareness and providing professional training directed at detecting and reporting of child abuse, neglect and other deprivation;*
- *Ensuring better handling of reported cases and follow-up responses;*
- *Coordinating investigation protocol and intake practice among law enforcement, prosecution, child protective agencies and the criminal and juvenile courts in order to minimize trauma and increase help for the child;*
- *Improving correlation of activities of child protection and other public and private agencies within the community, coordinating all available resources;*
- *Timely judicial review of emergency removal of a child from home, joint agency assessment and planning, and broader analysis of a child's problems at intake.*

21. Identifying Deprived Children

All persons who work with children on a regular basis should be trained to recognize indicators of abuse, neglect or significant deprivation.

All public and private agencies and citizens must share information to detect

at-risk children and to prevent abuse and neglect. Training must be required for all professionals in contact with children on a regular basis.

School personnel, particularly teachers, counselors and nurses, health and human service professionals and all others who work with or are regularly in contact with children should be aware of the indicators of abuse and neglect, and identify such children for child protection agencies. Children with severe parental conflicts, or appearing to be physically, sexually or emotionally abused, or neglected, require immediate evaluation.

Hospitals, health facilities and the medical, legal and social service professions must be encouraged to offer instruction and information to the community. All child care workers should be screened and trained, and facilities monitored. Child protective services or another appropriate agency should be required by law to review regularly child care practices and facilities in each community.

22. Prompt Reporting

All persons working with children must promptly report known or reasonably suspected abuse and neglect. Communication and witness privileges must not impede the reporting, investigation and adjudication of alleged child abuse.

Although reporting of child abuse or neglect is required in each state, it is apparent that compliance is far from adequate. Prosecutors must insist upon full compliance with all reporting requirements.

Where present statutes do not specifically indicate, prompt reports of child abuse or neglect should be required from a broad range of persons who, in their professional or official capacity, know or reasonably suspect abuse or neglect. Such persons should be advised of and acknowledge the established reporting procedures and express their intent to report as required. They also should be immune from civil and criminal liability for such reporting, but subject to appropriate sanctions if they intentionally fail to report, falsely report, or fail to cooperate with the court, the district attorney, or the appropriate child protection agency.

Statutes and court rules governing privileged communications should be reexamined to assure that such information is made available and acted upon to protect the child. However, it is not intended that confidential court records of juvenile and family court proceedings involving alleged child abuse be used in any manner which would be detrimental to the best interests of the child victim, as determined by the juvenile and family courts.

Standardized child abuse and neglect detection and reporting procedures must be developed and implemented by all hospitals, clinics and health or service providers, including the mental health profession, and all governmental agencies.

23. Signs of Abuse and Neglect

Appropriate governmental agencies, schools of medicine and social work, and the media should widely publicize in each community reliable indicators of vulnerable families, child physical and sexual abuse, and child neglect.

The American Medical Association's *Diagnostic and Treatment Guidelines* indicators[38] deserve broad dissemination.

Indicators of Vulnerable Families

- Socially isolated families - no external support systems
- Families where husbands and wives resort to violence on one another
- Individuals who were maltreated as children
- Parental expectations inconsistent with the child's developmental abilities
- Alcohol and drug misuse, inadequate housing and mental illness

Indicators of Physical Abuse in Children

- Injuries are more severe than those that can be reasonably attributed to claimed cause
- Bruises and welts on multiple body surfaces
- Bruises forming patterns often resembling the shape of the article used to inflict the injury
- Burns - cigars, cigarettes, immersion or patterned burns such as an electrical appliance
- Fractures - multiple or in various stages of healing
- Abdominal injuries which are unexplained
- Angry, isolated, or destructive children
- Displaying abusive behavior toward others

Indicators of Physical and Sexual Abuse in Children

- Pain in genital area
- Difficulty in walking or sitting
- Any sexually transmitted disease
- Wide range of psychological reactions such as:
  - fighting with a relative, friend or teacher
  - engaging in excessive masturbation or highly sexualized play

Indicators of Physical Neglect in Children

- Malnutrition
- Poor hygiene or inadequate clothing for circumstances
- Lack of appropriate adult supervision for age
- Failure to receive adequate medical attention

24. Voluntary Treatment

Abusive or potentially abusive persons should be encouraged to acknowledge their problem, seek help and participate in voluntary treatment for themselves and their families.

Successful treatment of the family and particularly the child victim often must be based on the involvement of the offending parent. Stays of prosecution, continuances of adjudication, confidentiality of legal records or incarceration contingent upon treatment outcomes should be used to protect the self-reporter's due process rights and to set realistic treatment or reunification goals in the best interests of the child.

25. Follow-Up Reports

Agencies must respond immediately to reports of child abuse and neglect and provide follow-up information to the reporter.

Too often reports are not properly investigated and serviced. To assure better coordination of services and treatment, child protection agencies must be required to provide follow-up on cases of reported child abuse.

Follow-up reports should include such information as the alleged victim's and perpetrator's names, relationship (if any), actions taken and status of the case, placement of victim, pending or actual criminal or civil action, medical or psychological diagnosis, casework plan and caseworker's name and telephone number. Recipient agencies must not be allowed to dismiss a report without further followup with the reporter. If acting in a professional capacity with the child, (for example, the family physician) the reporter must be consulted on appropriate intervention and treatment strategies.

26. Central Registry

A central registry of complaints of alleged abuse and neglect must be developed and maintained in each state with mandatory reporting of data from child protection and health agencies, as well as law enforcement and school officials, with access on a demonstrated "need to know" basis.

All courts, law enforcement, prosecutorial and child protection agencies must have access to a central registry of abuse-neglect cases, for the purposes of investigation and substantiation of suspected abuse and neglect. The registry should include reports of all missing children, as well as all reported, investigated, adjudicated or pending cases of abuse, neglect or other deprivation.

Law enforcement agencies must conduct a preliminary investigation immediately upon receipt of a missing child report. If the child is missing, descriptive information must be entered on national and local crime information center computers and cancelled after the child is located. To assist in locating missing, abducted, or runaway children, an effective identification system, workable on a national basis, should be established for all children.

It is essential to the operation of a central registry system that those granted access to the data be mandated to respect its confidentiality and assist in keeping it current.

27. Evaluation at Intake

A thorough assessment of a child's problems and family is needed at all public and private intake facilities.

All public and private child intake agencies should be required to conduct a comprehensive initial investigation and assessment of a child's problems and the child's family relationships. Intake agencies, when handling children, should attempt to ascertain the relation of the presenting problem to broader problems of the child and the family.

If the intake agency is not equipped for such evaluations, follow-up assessments by qualified agencies should be initiated. For example, a child found intoxicated should not be released by an intake agency (hospital, detention or police) until arrangements for further follow-up assessment for alcohol/drug problems have been made. Improved detection and treatment of child abuse, drug and alcohol abuse, fetal alcohol syndrome and other physical and mental injury to children is dependent upon interagency communication and coordination together with proper follow-up.

28. 24-Hour Availability

Child protection services and facilities should be available 24-hours a day to assure that allegations of serious neglect or abuse can be assessed and protection provided.

Each community should have a trained multi-disciplinary child abuse assessment team available on a 24-hour a day basis. Such teams should immediately assess reports of child abuse and facilitate a medical examination.

Reporting, investigation, treatment and emergency court intervention required to cope with the tragedies of child abuse and neglect must be provided at all times. Since a great proportion of child abuse occurs in the evening hours and on weekends, a flexible system of providing 24-hour child protection services would effectively serve the interests of families and children.

29. Coordinated Planning

Reports of abuse and neglect should be evaluated immediately and, where necessary, a coordinated plan of action should be developed by law enforcement, the child protection agencies and the prosecutor.

Procedures for coordinating the efforts of law enforcement, child protection, medical personnel and prosecutors should be developed. Joint assessment should lead to a coordinated plan of action to protect and treat the abused child.

30. Review of Emergency Removals

Emergency removal of the child from the home must be subject to prompt judicial review.

When a child is removed from home by a law enforcement or child protection agency a judicial hearing must be held the next court day, for the purpose of entering a court order to continue removal or to return the child home.

31. Removal of Offender

The alleged offender, rather than the child, should be removed from the home, whenever appropriate.

When family members must be separated as the result of abusive behavior, it is preferable for the child victim to remain at home. Depriving a child of his or her own bed, house, school, neighborhood and friends creates additional trauma and disruption. A protective order of the court should assure the alleged perpetrator's exclusion from the home and the child's safety in the care of a responsible adult.

After discovery of abuse, the child should be placed in a familiar setting, if possible, consistent with protection. Concern should be given to protecting the siblings of an abused child. They should only be removed from the home when necessary.

32. Child Interviews

A suspected child victim of abuse and the non-offending family members should not be subjected to repetitious and unsystematic interviews.

Interviews must be conducted with skill and as little trauma to the child as possible. All interviews of child victims should be conducted by persons with special interviewing skills. Investigative interviews should be coordinated among law enforcement, prosecution and the child protection agency, preferably using a single interviewer to minimize trauma and increase reliability of information. The initial interview should be complete, and unobtrusively video-taped, or at least, audio-taped to preclude the need for repeated interviews.

Frequency and duration of interviews, medical examinations and psychological or psychiatric evaluations conducted on child victims should be restricted consistent with the needs of the child.

IV. OUT-OF-HOME PLACEMENT

Preventing Removal

33. Removal of Child
34. Reduction of Placements
35. Reasonable Efforts Criteria
36. Cultural and Ethnic Values
37. Preventative Services

Review Issues

38. Voluntary Placements
39. Placement Reviews
40. Monitoring Facilities
41. Expediting Return

Analysis

Children in foster care are further deprived by "foster care drift" as they move from foster home to foster home and grow up without permanent family ties. All the hundreds of thousands of children now in foster care were placed there with the hope that one day they would either be reunited with their biological parents or provided with a permanent adoptive family. Many, however, continue their childhood without a family. The lost human potential is great.

The Council's Permanency Planing for Families Project effort[39] has as its goal the reduction of both the number and duration of out-of-home placements. In fact, the use of long-term foster care has declined dramatically, from 25.3 percent of all cases in 1976 to only 13.4 percent in 1982.[40] But a great many abused and neglected children receive only foster care as a "long-term service." Foster care can be a viable placement alternative only with appropriate screening, training and monitoring, ideally leading to either the permanent adoption by a foster family, or preferably, realistic reunification with the child's first family. Through this difficult time, the child must be appropriately protected and receive necessary treatment and services.

Under the Federal Adoption Assistance and Child Welfare Act reasonable efforts such as family-based services are required to keep a child out of foster care. The likelihood of family reunification is greatly reduced the longer a child remains in placement. The likelihood of adoptive placement for a child is also greatly reduced if a child remains in foster care longer than two years. The opportunity for reunification is greatest during the first months. The chances for adoption by another family are best between 12 and 24 months in foster care and diminish thereafter in spite of eventual termination of parental rights and legal availability for adoption.[41] This is why continuing judicial review of placement decisions is crucial. It is time to take a closer look at the entire child protection process, since wrong decisions can produce lasting damage to the child and society. The use of independent review boards can assist the court to monitor children's services and treatment.

33. Removal of Child

A child should not be removed from home until consideration is given as to whether the child can remain at home safely.

There is need for well-defined criteria to guide the removal or return of an abused or neglected child. Of similar concern is what "reasonable efforts" are

required to permit the child to remain safely in the home. The law is clear that no person or governmental agency may intrude upon the basic parental right to the care, custody and control of their children without convincing a court that such intervention is necessary. Frequently too many children are removed from home, for varying periods of time, without adequate services or treatment, judicial approval, or even later review.

Before approving the separation of the child from parents, except for emergencies, the court must determine whether the child protection agency has made reasonable efforts to prevent removal from the home. Consideration of such reasonable efforts under P.L. 96-272, the federal Adoption Assistance and Child Welfare Act, require attention to:

- The past or future provision of appropriate child care;
- Nursing and homemaking;
- Counseling and supervision;
- Continuing family, group or individual therapy;
- Alcohol and drug abuse treatment;
- Housing and job counseling;
- Parenting training; and
- Removal or exclusion of the offender by protective court order.

Consideration must be given to maintaining contacts among siblings and placing them together when appropriate.

34. Reduction of Placements

The number, duration and traumatic impact of out-of-home placements of deprived children must be reduced by "reasonable efforts" to seek alternatives consistent with the child's need for protection and treatment.

Courts, child protection agencies, advocates for parents and children, including court appointed special advocates (CASAs) and attorneys, and the parents and children themselves in all deprived children cases, must, by law, seek and consider alternatives to foster care placement of children consistent with the child's need for protection and treatment. The least traumatic and disruptive intervention should be used to safeguard the child's growth and development.

- Consideration should always be given to allowing the child to remain at home under protective orders of the court which could include removal of an alleged abuser and must include the delivery of supportive services in the home.
- When removal from home is necessary for protection or treatment of the child, willing and appropriate relatives close to the child's home should be considered for temporary placement.
- When it is not safe for the child to remain at home or to place a child temporarily in the home of a relative, a foster home close to the parents' home should be sought.
- When the child's need for therapy and treatment are such that a foster family and non-residential community resources are insufficient or inappropriate, professionally staffed group homes or residential treatment centers are appropriate placements for consideration.

In any child protection case, services must be both offered and provided to improve homemaking, parenting, and child care skills in addition to such therapy and counseling as is necessary to address problems of abusive behavior, chemical abuse or other issues which threaten the welfare of the child or the stability of the family unit.

Coordination is essential among juvenile and adult courts and social and mental health systems concerning the placement of the child, the conditions of placement, the involvement of the family in a treatment plan, and related prosecutorial interests.

35. Reasonable Efforts Criteria

Judges should evaluate the criteria established by child protection agencies for initial removal and reunification decisions and determine the court's expectations of the agency as to what constitutes "reasonable efforts" to prevent removal or to hasten return of the child.

Before a child is removed from home, or continues to remain away from home under state custody, a court must review the action of the child protection agency to determine if "reasonable efforts" have been made to avoid out-of-home placement, or to bring about reunification. It must also be shown that such services and treatment have not been successful to allow the child to remain at home or be returned home. The time a child must spend out of the home should be minimized consistent with the need for protection and service.

Judges must work with child protection agencies to develop risk assessment criteria for the removal and return of deprived children. Specific definitions and expectations of the court as to what constitutes "reasonable efforts" are critical to an effective system. Casework procedures and resources necessary to obtain measurable objectives within established timeframes should include:

- Age and abilities or disabilities of child and parent and the presence of a protecting adult in the home;
- Exhibited level of homemaking and parenting skills for child-rearing;
- Non-residential community resources and direct services to monitor the family, to minimize the risk of recurrence, and to meet the needs of child and parents;
- Exhibited willingness of parents to cooperate in a treatment plan and the desire of the parents and the child to remain together;
- Appropriate placement facilities;
- Provision of appropriate services and treatment such as homemakers, day care, counseling, parenting and child care classes; and
- Consideration of applicable federal and state legislation and court rules or decisions.

36. Cultural and Ethnic Values

In placing children, courts and child protection agencies must give consideration to maintaining racial, cultural, ethnic and religious values.

Many families have distinct differences which may provide unique support systems in child-rearing and in preventing or solving deprivation, neglect and abuse. Some of these unique family support systems include extended relationships and particular religious and social institutions.

37. Preventative Services

Programs which promote family preservation and prevention of out-of-home placement by providing early intensive services for the at-risk child and family must be developed and utilized in all communities.

Family-based services and counseling should be used to prevent out-of-home placements. Prevention of out-of-home placements does *not* mean *never* removing a child from home. There will always be some children who must be removed to assure their protection. However, the availability of intensive family-based programs will make the choice not to remove a child easier. Such family-

based intensive services focus on family preservation and provide crisis intervention, family counseling, reduced caseloads for social workers, evening and weekend caseworker availability, specialized training for direct service delivery, and emphasize the full use of all community resources.

38. Voluntary Placements

Agreements between parents and a child protection agency which voluntarily place a child out of the home should be in writing, filed with the court and reviewed by the court within 30 days.

Frequently, children are removed from the home and placed under state custody for varied periods of time and for various reasons, under a process known as "voluntary placement." Usually the parents "voluntarily" place the child with the child protection agency. To protect against possible abuses of this process and to avoid unnecessary long separations, public and private agencies should give early notification to the court. Voluntary placement with an agency should not be continued beyond 30 days for foster care or other public custody without judicial approval. Prior notification of the court should be required if the child is not to be released from such custody and returned home within 30 days.

A child should be placed into the custody of a public agency only after specific criteria are established and agreed upon in advance. Agreements and treatment plans should be written and signed to include:

- An explanation of why the parental placement is necessary, what alternatives were considered and why they were rejected, prior efforts undertaken to solve the problem, an explanation of why they were not successful, and the goals necessary to be reached in order for the child to be returned home.
- A statement by the agency of the services and resources to be used to assist the child and the family, the date the child will be returned home, and instructions to the parents regarding what they must do to facilitate the child's return.
- An acknowledgement by the parents that they have the right to refuse placement, the right to withdraw the child from placement unless a court order is issued within 72 hours, excluding weekends and holidays, after their request for return, and the right to notice, hearing and an attorney to secure return of the child if a court order is sought by the agency to continue the placement.
- An advisory to the parents that they have the right to reasonable visitation, the right to be consulted on decisions involving the child's medical, psychological and educational care, the right to be notified of the child's progress or of any significant changes in condition during placement, and the right to be notified of the child's location and caseworkers.

Copies of such voluntary agreements should be provided to all parties and to the court immediately after notice is filed to initiate, extend or terminate such voluntary placement.

39. Placement Reviews

As required by federal law, independent judicial review of all placements by the court or by a judicially appointed citizen review board must be conducted at least every six months. Eighteen months following placement, the court must conduct a full hearing to review the family service plan and the progress of the child for the purpose of establishing permanency planning for the child.

Until a child is returned home or adopted, assuring appropriate, frequent, independent and in-depth court review of out-of-home placements and denials of adoptive placement by child protection agencies is crucial to protect the interests of deprived children. Where the parental abuse, neglect or disability precipitating

removal of the child is determined as unlikely to change within a reasonable time, or when the agency and the parents cannot agree on a treatment plan, the court should receive such information immediately and schedule a review as soon as possible.

Stability and appropriate treatment for the child can best be provided when custody, visitation and service and treatment decisions are made at the beginning of the placement proceeding rather than weeks or months later in the ultimate dispositional order. Such decisions are not intended to be permanent and are subject to modification at subsequent review hearings.

40. Monitoring Facilities

Provision must be made for minimum standards and frequent review and inspection of all out-of-home placement facilities, staff and treatment programs.

Statutory mandates should assure that all out-of-home facilities, including residential treatment centers, group homes, foster homes and emergency shelters utilized for deprived children, are regularly and comprehensively inspected. Both the adequacy of the facilities and the professional ability of foster parents or residential staff should be carefully examined.

Child protective services should be required, as part of their routine responsibilities, to compile and make available current evaluative information on the various child treatment programs within the community.

Courts or independent judicially appointed citizen review boards should periodically review the effectiveness of child protection agency services and treatment, including all placement facilities.

41. Expediting Return

A child removed from home must be returned to the family as soon as conditions causing the removal have been substantially corrected and safeguards established.

In the same manner that "reasonable efforts" require a court to assure that all means to keep a child in the home safely have been exhausted, courts and child protection agencies also are required to make "reasonable efforts" to hasten the reunification of a child removed from his family. By federal law, courts or independent review boards must conduct a thorough review of each child removed to state custody on a regular basis, at maximum, every six months. If a child can be safely returned home, even with the assistance of appropriate treatment or services such as homemaking, nursing or counseling provided to the family, then that child and family should be given the opportunity to reunify under necessary court-ordered supervision, safeguards and protections.

A child victim of abuse should be reunited with an abusing parent or family member only after the following conditions have been met:

- stringent safeguards for protection within the home are established;
- the abusing parent has sufficiently progressed in treatment;
- the abused child is determined ready to return home; and
- the court has approved.

An infant or child hospitalized or in institutional or residential care as a result of parental abuse or neglect presents special problems and requires careful planning and case-by-case management by the medical community, child protection agency and court before being returned home.

In determining whether or not parents can provide adequate care following hospitalization, institutional or residential care of the abused child, these considerations apply:

- Their understanding how the injury and abuse occurred in relation to their own actions;
- Their possessing a new understanding of their child's physical and emotional needs through successfully accomplished treatment and training;
- Their willingness to cooperate with medical supervision, counseling, home visits and other safeguards or protective orders by the court and to have sufficiently indicated that necessary changes have or will be made;
- The relation of any existing physical or mental illness, including depression, drug or alcohol abuse, a negative, punitive or indifferent attitude toward the infant, or any other impediment of the parent which would endanger the child's physical or mental health; and
- The child's physical and emotional readiness to be returned home.

V. TREATMENT AND PLANNING

Treatment Requirements

42. Immediate Treatment
43. Family Focus
44. Parental Responsibility
45. Positive Parental Behavior
46. Substance Abuse
47. Mandated Treatment
48. Youthful Sexual Offenders

Paying for Support and Treatment

49. Payment by Offender
50. Victim Assistance Funds
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Providing Services

52. Qualified Treatment Personnel
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56. Children with Special Needs
57. Shelter for Homeless Children

Permanency Planning

58. Termination of Parental Rights
59. Alternative Permanent Plans
60. Expedited Adoption Process
61. Subsidized Adoptions

Analysis

Nationally, multiple or sexual "maltreatment" and abandonment of children receives the highest ratio of services, while neglect and minor injury receives the least.[42] Despite the fact that neglect causes about half of all child fatalities each year, in-home assistance, such as homemakers, remains a low budget priority.[43] These services do not, of course, reach the substantial amount of child victims never reported, or reported but not substantiated.

Although child victims frequently require help to alleviate the guilt they are experiencing about their family's problems, they are often placed into foster care without additional supports or necessary therapeutic intervention. The lack of immediate and effective treatment and coordinated planning and resources represents serious problems. Providing an adequate number of foster homes, trained foster parents, special homes for special needs children, emergency shelter care facilities and other alternatives prior to termination of parental rights are also critical. After termination, providing resources for the treatment and subsequent adoption of deprived children is the wisest investment society can make. An abused or neglected child, whether removed from the home or remaining in the home, needs assistance which is often not provided.

Although 80 percent of all substantiated cases of abuse or neglect receive "casework counseling,"[44] given the excessive caseloads, this response must be seen as more paperwork than counseling. (The ratio of cases to workers in some large jurisdictions has exceeded an unrealistic 150:1, allowing less than an hour per month for each deprived child). When caseloads are this high, it is clear that insufficient services are being provided. Only 46 percent of substantiated cases

receive long-term or support services such as foster care, day care, homemaking services and, mental health counseling. Only 11 percent receive emergency care or what is termed "crisis services."[45] It is increasingly apparent that mental and emotional illnesses of deprived children are factors that need systemwide attention.

Neeessary guidelines and policies for child protection workers are frequently not available or implemented in practice, and service and treatment program effectiveness and quality are often questionable. Caseload size and lack of resources work against clear, concise, purposeful professional services. Workers are frequently left alone to make case decisions without adequate guidance, or adequate diagnostic and treatment facilities.[46] Perhaps the greatest shortcoming is the failure of society to provide the necessary resources to cope with the problems of deprived children. Reducing, rather than increasing, treatment and services in a time of voluminous caseloads and abandoned reports and investigations is only putting off the problem to the prisons of the next century.

42. Immediate Treatment

Treatment of an abused and neglected child must be immediate, thorough and coordinated among responsible agencies.

Treatment, therapy or counseling for the child victim should begin as soon as the assessment process has determined it necessary. Interim therapy and treatment should not be delayed pending adjudication. When a multi-disciplinary team has determined that treatment is necessary, a single therapist should be assigned to the child. A CASA should ensure that treatment is provided.

The lack of mental health resources for deprived children and their families is a national disgrace. Adequate treatment for the mentally ill or emotionally disturbed can be expensive but must not be avoided. Such noble notions as "deinstitutionalization" are often misused to avoid the expense of necessary inpatient care. Moreover, it must be recognized that emotional abuse is as rampant and lethal as physical abuse and also requires intensive treatment.

43. Family Focus

Treatment provided to the child through court or agency intervention should involve the entire family or focus on family relationships as they impact on the child, and should stress the primary responsibility of the parents for the child's welfare and protection.

Family involvement, where at all possible, should be stabilized rather than disrupted as a result of intervention and treatment. Early intervention is always better. Effective treatment of the parents and positive behavior by them, such as successful completion of an alcohol abuse or violence prevention program, is important to the child's healing and to normalization of family relations.

To facilitate a family approach to all rehabilitation efforts, there should be intensive, home-focused treatment and services. Information should be shared among probation, welfare, child protection and other family agencies. There should be widespread publicity in the community regarding available programs.

44. Parental Responsibility

Child protection agencies and the courts should require parental responsibility for a child's well-being.

Courts and child protection agencies should encourage the basic responsibility of parents to care for and control their children. Facilitating such parental responsibility should be the goal of all interventions. Public policy should not, in any way, work against or impede parents from competently retaining, assuming or reassuming such responsibilities.

45. Positive Parental Behavior

Judges, as part of the disposition for the child, must have authority to order

treatment for the parents, to require other positive conduct, and to impose sanctions for willful failure or refusal to comply.

The best interests of a child who is in need of supervision, or is a victim of abuse or neglect or other deprivation, often requires that a parent participate in a course of treatment or demonstrate other positive conduct. Judges should have the authority to order such treatment or conduct and to sanction by contempt or other means, the willful failure or refusal of parents to comply with such an order. To this end, it must be clear that parents are parties to the action and warned of potential sanctions. Appropriate statutory changes should be made where necessary to provide such authority.

46. Substance Abuse

Substance abuse treatment, where appropriate, should be mandated for the parents and the child.

Courts must exercise leadership in the development of cost-effective alcohol and substance abuse identification and treatment programs. Residential facilities for children are encouraged to include substance abuse counseling for children and parents.

47. Mandated Treatment

Judges must have the authority to order the treatment determined to be necessary and should regularly review the efficacy of such treatment.

Courts are responsible for the protection and best interests of deprived children. Treatment plans should be required to be submitted at all dispositional and post-dispositional review hearings, with the court evaluating and approving the plan to determine whether conditions set forth facilitate permanency objectives for the child.

Courts should hold child protection agencies accountable, require progress reports at appropriate intervals, and schedule other review hearings when needed or at the request of any party. Child protection agency supervision must assure that all children in foster care receive regular medical examinations and care, including psychological testing as appropriate, and that any reasonable course of treatment recommended by a physician or psychologist be considered.

48. Youthful Sex Offenders

Judges must require appropriate treatment for youthful sexual offenders, most of whom have been victims of sexual abuse.

The cycle of young victims of sexual abuse who later become perpetrators of sexual abuse must be broken. Unless intensive intervention and effective treatment of such youthful sexual offenders is provided, with or without juvenile or criminal court-imposed sanctions, the cycle will continue. The earlier the intervention, the greater the likelihood of success.

49. Payment by Offender

The court should require the offender to pay the costs of treating the child victim.

Courts should be authorized by statute to include in dispositions a requirement that offenders make restitution to parents or governmental agencies for the costs incurred in providing medical, psychiatric, psychological, and other treatment for families and children who were victimized by the offender's abuse. Attorneys' fees, CASA and guardian ad litem costs and other expenses directly resulting from the abusive behavior should likewise be considered for reimbursement.

When the perpetrator is an immediate family member, the court must weigh

the value of such restitution against the long-term effect or burden of such reimbursement. Restitution should not be destructive of therapy for the child victim or impede reunification.

50. Victim Assistance Funds

Child victims of abuse or neglect should be eligible for victims assistance and compensation programs.

Statutes must provide that child victims are eligible to receive the services and compensation offered by Victim Assistance programs. Child protection agencies must assure that child victims in their custody receive the compensation for which they are eligible.

51. Private Insurance

In child support, custody and dependency hearings, if parents have or can obtain health care insurance, the court should order coverage.

Whenever possible, juvenile and family courts should make certain that parents who have, or can obtain, health insurance, apply that coverage to the children and that third party payments for agency-initiated treatment and therapy are authorized.

52. Qualified Treatment Personnel

Child protection caseworkers must be screened, trained and certified in order to improve child protection services and treatment.

Development of employee screening practices, certification standards and caseload guidelines, adequate compensation and training will assure the effectiveness of child protection services. Caseworkers should be certified to practice on the basis of education, training and experience. Caseworker training must be a part of formal education and a condition for licensure.

A detailed background investigation must be performed to qualify persons who work with deprived children.

53. Volunteer Assistance

Screened, qualified and trained volunteers should be used to enhance the quality of services to deprived children and families.

In addition to using Court Appointed Special Advocates (CASAs), courts should encourage the use of volunteers to meet the many needs of abused and neglected children and their families from the time of initial report through final court order and review. The acute lack of resources for deprived children in most communities provides opportunities for volunteers to assume such functions as foster parents, foster grandparents, substitute families and court workers. Citizen review boards, child protection and law enforcement aides, aides for victims and witnesses and pro-bono legal services and other donated professional services should be considered for volunteers. Senior citizens are an excellent source of volunteers.

Volunteer efforts are enhanced by appropriate titles, status, training, insurance, immunity, appearance priority and similar benefits. Judges should recognize that social service agencies are, in most cases, under-funded and that volunteers should supplement, not substitute for, an adequate and mandated level of professional services.

54. Foster Homes

A sufficient number of foster homes, adequately reimbursed and provided with access to treatment and support services, should be established.

Foster home care and foster parenting, however temporary, is an important

resource. Strict screening, improved recruiting, professional training, licensing requirements, and adequate compensation will encourage quality foster care.

All prospective foster parents should be required to participate in effective foster parent training. Since these children have been previously abused, it is particularly important to provide foster parents with training in using nonviolent forms of discipline and crisis management.

To enhance recruitment of qualified foster parents, consideration should be given to providing:

- Reimbursement for actual costs incurred;
- Medical and dental insurance coverage for the foster child;
- Continuing support, services and treatment by the child protection agency;
- Foster parent support groups;
- Community recognition for foster parent service; and
- Other inducements to assure an available network of foster homes.

55. Foster Care Drift

Frequent movement of children from foster home to foster home is detrimental to a child's physical and emotional well-being and must be reduced.

Foster homes should be carefully selected, matched to the needs of the deprived child, and encouraged to provide the child the most loving and permanent home possible.

The older a foster child gets or the more time the child spends in foster care, the less likely he or she is to be adopted. Special efforts must be made to provide alternatives to foster care drift.

56. Children With Special Needs

Specialized foster homes and foster parents should be established in each community for children with special needs.

Older, minority, disabled or seriously abused children require particular care, with specialized foster homes, trained foster parents, and continuing agency assistance tailored to their needs. Particular attention and added inducement must be given to providing specialized homes. The use of adoption exchanges and placements made through interstate adoption compacts expands the opportunity to find permanent homes for difficult to place children.

57. Shelter Homeless Children

Homeless and runaway children must be provided proper emergency shelter facilities as well as necessary services.

Much of the problem of at-risk or exploited children could be alleviated by improved and expanded emergency shelter facilities, with necessary services and counseling. Children "broke and on the streets" are particularly vulnerable. Shelters and services should be easily accessible for all children in trouble or at-risk to voluntarily avail themselves of such assistance. Such at-risk children and, if possible, their parents, should be evaluated for related abuse and neglect, drug or alcohol abuse or other problems preventing their return home.

58. Termination of Parental Rights

When there is clear and convincing evidence that the conduct of the parents would, under law, permit the termination of parental rights, and it is in the best interests of the child to do so, termination should proceed expeditiously.

If reasonable efforts have been made to reunify, reasonable time has been allowed, and the parents remain unfit or unable to protect and provide for the child, the court must find a way to provide a permanent and loving home for the

child. Termination proceedings, difficult as they are, are often legally necessary to accomplish this result. The immediate availability of adoptive parents should not be required to terminate parental rights. However, the availability of qualified foster parents willing and able to adopt their foster child is often a good indicator that expeditious termination proceedings may be appropriate.

59. Alternative Permanent Plans

When reunification is not possible or termination of parental rights is not in the best interests of the child, courts should consider other permanent plans.

In some cases, terminating a parent's rights is inappropriate and the court should examine such alternatives as:

- ***Long-term custody*** — in a homelike setting, such as placement with relatives, substitute or extended families, and foster grandparents;
- ***Permanent or temporary guardianship*** — after a finding of dependency and removal; or
- ***Any other solution*** short of termination leading to permanency for the child.

60. Expedited Adoption Process

When needed, adoption should proceed expeditiously. Foster parents should not be precluded from adopting their foster child.

Consideration for parental rights and hope for eventual reunification of the natural family must be weighed against the importance of the sense of time and the developmental process of each child in foster care. It is crucial that the child be found a permanent home and loving parents without languishing in temporary care.

The search for prospective adoptive parents should begin with careful selection of the child's foster parents. Traditional discrimination against foster parents becoming permanent adoptive parents should be eliminated. Capable and willing foster parents must be given an equal opportunity to adopt or to seek permanent guardianship or custody of a foster child. Where the chance to reunify the foster child with his or her family is remote, placement in a "pre-adoptive" home with foster parents readied and encouraged to permanently adopt the child should be considered.

Judges, attorneys, CASAs and child protection workers should analyze and regularly review the status of each child in foster care and the barriers to a safe and effective reunification within a reasonable time. When such reunification is not possible due to the continuing unfitness of the parents, termination proceedings to free such a child for permanent adoption should proceed.

61. Subsidized Adoptions

Subsidized adoption programs should be more widely available and used for special needs and hard-to-place children.

Subsidized adoption programs permit disabled children or children with special needs to be placed for adoption with financial assistance from the government for the extra costs involved. Many foster parents who are aware of the possibility of adopting a child do not do so because they believe they cannot afford a special needs child without a subsidy. This is particularly true for those foster parents who might care for handicapped children or a large sibling group. Finances need not be a barrier to providing a loving and permanent home.

Subsidized adoption can often expedite the adoption of all children, but is especially intended to facilitate the placement of "special needs" children. These children include the handicapped, large sibling groups, minorities and older children. Subsidized adoption programs are a most important aspect of providing permanent placement for foster children.

VI. PREVENTION ISSUES

Analysis

The response of society to the tragedy of deprived children has been after-the-fact and ineffective, and the costs of responding with adequate treatment are enormous. As the recommendations discuss, treating the problem rather than preventing it has been the primary method of responding to the issue of deprived children. The estimated $10 billion[47] spent each year on treating child abuse and neglect has not produced good results. Only about 1 percent is estimated to be spent on primary prevention, stopping the disorder or problem before it starts.[48] Prevention of child abuse and neglect requires the awareness and involvement of the entire community. Deprived children are everyone's business. Their social and economic costs affect all Americans now and in the future. The court and all segments of the community should take active roles in balancing treatment and prevention.

Support programs for new parents, runaway programs and shelters, parenting training and child care opportunities, self-help and family-based prevention services, early and regular screening, and life-skills training to protect children from abuse and to cope with crisis are all vital.

Children and parents with special problems, for example, learning disabled, emotionally disturbed, mentally ill or otherwise physically or developmentally disabled, are often inadequately served. Lack of coordination, inadequate screening, unreasonable restriction on involuntary mental health commitment and the unwillingness or inability of mental health agencies to treat delinquent, abused, neglected or other deprived children are serious problems.

All children at-risk, including runaways, habitual truants, the chronically incorrigible and those not receiving any or inadequate child support, must be considered when providing prevention services.

62. Priority for Prevention

Prevention and early intervention efforts must receive a high priority, with a greater emphasis placed on providing adequate services to prevent child abuse, neglect and family break-ups through adequate education, early identification of those at risk, and family-based counseling and homemaker services.

Prevention, as opposed to only identifying or treating the problem after the fact, is the most cost effective and comprehensive strategy to reduce the frequency and severity of deprivation among children. It is necessary to develop cost-effective methods such as public and professional education, heightened public and system awareness and extensive community-wide campaigns to identify potentially at-risk children.

Parents, children and the community must be encouraged to call for help. Professionals must be aware of the indicators of deprivation and the resources available to prevent future tragedies. Prevention must encompass parents, schools, churches, business, the private sector, media, volunteers, a coordinated government response, and, particularly, children themselves.

63. Parenting Education

Continuing education in parenting and in understanding the physical and emotional needs of children and families should be widely available in schools, health care systems, religious organizations and community centers.

The teaching of parenting skills and family management, including economics, must begin in preschool and continue through high school, then begin again upon pregnancy and continue for both the parents throughout their children's adolescence. Such parenting training must be required and provided for all abusing and neglecting parents. Parenthood preparation classes, training for good parenting and child development should be widely available.

Special training in prenatal health, bonding, and caring for the newly born must be available, at reasonable cost, for all new parents regardless of economic status. Necessary parenting support should be provided through qualified home visitors and parenting clinics established through both the public and private sectors.

64. Teenage Parents

Communities must provide special parenting education and services for pregnant teenagers as well as teenage parents, including counseling on relinquishment and adoption.

An alarmingly high proportion of child abuse and neglect is perpetrated by parents who are children themselves and who lack the patience, emotional stability, sound judgment, knowledge and other parental attributes which increase with maturity. Family members, friends, and others often mistakenly encourage prospective teenage parents to keep their babies with well-intentioned but unrealistic or unfulfilled promises to help or support. Child-parents, both mothers and fathers who choose to keep their child, must be provided with intensive and specific counseling and parenting training, beginning at pregnancy and continuing through the critical first years of their child's life.

Counseling on relinquishment and adoption should be available and provided to assure that parents or pregnant single women have a full opportunity to consider alternatives without being made to feel guilt or a sense of failure by relinquishment.

65. Child Care Facilities

Adequate child care facilities and services, with training, licensing and monitoring of the providers, should be available to all parents needing such services.

Adequate child care services and facilities, including nurseries and crisis care, should be developed and available in each community for all parents needing such services. Employers are increasingly providing on-site day care for their employee's young children, finding it has a positive effect on employee recruitment, absenteeism and turnover.

Licensed child care facilities should be available for all working parents. Child protective agencies should be required to regularly review and monitor the current status of child care practices and resources, including needs, costs, licensing requirements, standards of care, rights of parent to inspect facilities, and strategies to invoke community and parental awareness of child care needs.

66. Employee Assistance Programs

Employer-sponsored assistance and counseling programs for family violence and child abuse or neglect, such as those used for alcoholism and drug abuse, should be established.

Employer-sponsored assistance and counseling programs for the prevention and intervention in family violence can have good immediate and long-range effects not only in the work place, but also within the at-risk family. Employers should develop such educational, awareness and intervention programs similar to the many successful drug and alcohol abuse programs now operated by employers. Information on identification, company policy, insurance and treatment options and general resource materials on family violence and child abuse and neglect, emphasizing early detection and prevention through employee assistance counselors and other community or company resources, should be provided to employees.

Employers should encourage the abuser and potential abuser to seek help, and should facilitate placing the employee in an appropriate treatment program. Such action will result in rehabilitating valued employees, preserving the family and preventing future abuse. Employers are also in a favored position to assure coverage for such treatment through company health insurance policies.

67. Children's Disabilities

Identification and assessment of the physically, mentally or emotionally disabled or learning disabled child must occur as early as possible.

A community based effort to identify and treat the physically, mentally or emotionally disabled child, including the learning disabled child, at an early stage before later difficulties begin, must receive the highest priority. The public must be educated and resources provided to better serve the needs of all disabled children.

Easily usable assessment tools for non-medical professionals must be developed and put into use in every community by parents, teachers, and social workers to identify learning or emotional disabilities and to distinguish such disabilities from more severe emotional disturbances or mental illness.

Most commonly left unidentified and treated are learning disabilities. These are manifested by significant difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities. Such disorders are intrinsic to the individual child and presumed to be due to central nervous system dysfunction.

68. Help for Disabled

Services and education must be designed for and provided to mentally ill, emotionally disturbed and physically or developmentally disabled children and parents.

Appropriate services must be developed and their application assured to all those who are mentally ill, emotionally disturbed or physically or developmentally disabled. When a physically or developmentally disabled child comes within the jurisdiction of the court as an abused or neglected child, a foster care placement, or even as a child being returned home, appropriate treatment and services, including schooling and therapy, must be provided, within the community if possible, and by judicial order if necessary. For example, mentally ill or severely

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emotionally disturbed juveniles are frequently released from mental health facilities prematurely due to lack of space and resources. Such children should not be discharged without court approval.

Special programs must also be developed and provided to assist physically, mentally or emotionally disabled parents to better protect and care for their children. Such parents often need assistance to enhance their parental abilities. To prevent unwarranted removal of a child from the home, present programs for the disabled or handicapped need to include training in parenting skills within the limitations of each particular disability.

69. Child Support Enforcement

Judges must assure that child support orders are expedited and vigorously enforced and urge cooperation among all components of the child support enforcement process and all federal and state government agencies which may impact on child support enforcement proceedings.

Non-payment or inadequate levels of child support and unenforced visitation rights of the non-custodial parent impact upon a child's care, standards of living and potential, often leading to other deprivation.

Non-support of children by their parents has reached crisis proportions, placing huge burdens on government and society. Over $3 billion in child support payments during 1983 were defaulted on.[49] Unsupported or inadequately supported children are often forced to live below poverty levels. Lack of compliance with court orders for support is shocking. Even where support has been initially paid, in many cases, it is reduced or vanishes. Court support orders are often disparate and insufficient to meet basic needs. Over half of all custodial parents are without a support order.[50] Courts must take a leading role to support and implement effective child support establishment and enforcement programs. It is in the best interests of children to have contact with both parents, and the right and duty of the absent parent to participate in the parenting of their child.

A good child support enforcement program includes:

- An efficient pre-adjudicatory and adjudicatory expedited child support process through uniform court rules, contempt procedures, a quasi-judicial hearing or mediation process and any other procedures necessary to assure the quick establishment and enforcement of adequate child support orders and visitation rights;
- Assurance that child support and social services are widely publicized and readily available to every family;
- Mandatory and voluntary automatic wage withholding mechanisms, both interstate and intra-state, including state income tax refund intercepts, property liens and performance bonds;
- Appropriate support formulas and guidelines for use by courts and by quasi-judicial or administrative officers;
- Efficient processes of determination of paternity and support obligations;
- Improvement of information systems technology for child support matters, including utilization of available federal funds;
- Legislative awareness of needs and resources to improve the child support enforcement process; and
- Education programs for judges, attorneys and others involved in child support enforcement.

70. Exploited Children

Persons convicted of exploiting children by means of pornography, prosti-

tution, drug use or trafficking must be severely punished. High priorities also must be given to national efforts to curtail the availability to children of pornography and excessively violent materials.

Exploiting a child by means of pornography, prostitution or drugs is serious child abuse. Additional legislative sanctions and strengthened enforcement against those who import child pornography or create child pornography must receive high priority. The creation, manufacture, distribution and display of all child pornography must be halted in order to protect all children from potential exploitation. Display and access laws to restrict the availability of pornography to children are necessary.

Legislatures should enact sanctions commensurate with the seriousness of these crimes. The mere possession of child pornography should be illegal. All photofinishing laboratories should be required to report suspected child pornography discovered during film processing. Legislative sanctions should be established in relation to the new methods of computer transmission of sexually exploitive materials, particularly pedophiles' use of computer bulletin boards listing potential child sex partners, establishing contacts with other pedophiles, and setting up assignations.

Law enforcement and prosecutorial agencies must place higher priority on apprehending and prosecuting adults who exploit children by means of pornography, prostitution, or drug use and trafficking. Courts must use the full force of the law in dealing with convicted offenders.

71. Runaway and Incorrigible Children

Courts and communities must provide services and courts must intervene, where necessary, to assist homeless, truant, runaway, and incorrigible children. Parents must be held personally and financially accountable for the conduct of their children.

Juvenile and family courts must re-establish the preventative role they once conducted by intervening, fairly but forcefully, in cases of homeless, truant, runaway or incorrigible children. The community must recognize the correlation of runaway children, school dropouts, habitual truants and chronically incorrigible children with the possibility of abuse and neglect at home, the potential for becoming delinquent, or exhibiting other problems for which immediate assistance should be provided. Such children often are those who create the greatest problems in providing safe schools and appropriate school discipline. They often have been deprived of a loving parental relationship and a home. The inherent preventative, rehabilitative and enforcement role of the juvenile and family court requires that increasing attention be paid to the problem of runaway, habitually truant or chronically incorrigible children as children at-risk, and often dangerous to themselves and others. Courts are responsible for the provision of justice for the community's children, and do neither the child nor the community justice when troubled and uncared for children are allowed to go without help. As an unintended consequence of the federal deinstitutionalization movement, such at-risk children are too often ignored and not provided help by social service systems.

Runaway children, many already chronically incorrigible and obviously truant, many already abused and neglected, often end up exploited as victims of pimps, pornographers or drug or theft rings. Often forced return of the child home to run again is not an answer. More available and workable responses need development. Emergency shelter, hot-lines and crisis care, half-way houses, substitute parents, foster care, adoption, job and drug counseling and special education programs must be employed. However, social service systems should not be used to absolve nor supplant parental responsibility. Parents must be held accountable,

personally and financially, for the conduct of their children, and interventions should in no way encourage relinquishment or avoidance of such responsibility.

72. Truancy and School Dropouts

Courts should cooperate with schools and other agencies, to substantially reduce truancy and dropouts by coordinating and providing services and assistance to the habitual truant.

A child deprived of an education is a serious community-wide problem. A habitually truant child is a child heading for trouble and a possible runaway, and the best diagnostic and treatment services available should be provided, for the good of the child and the community. Juvenile and family courts, by legislative re-establishment of court jurisdiction when necessary, must be called upon to intervene and order provision of services in cases of habitual truancy.

The prevention of truancy and school dropouts, the provision of special and alternative programs to keep children in school and the goal of increasing school attendance and student performance must be considered high priorities by both schools and courts.

73. Security and Custody

The courts should have authority to detain, in a secure facility for a limited period, a runaway, truant or incorrigible child whose chronic behavior constitutes a clear and present danger to the child's own physical or emotional well-being, when the court determines there is no viable alternative.

Ignoring the problem of vulnerable and at-risk children is not in the best interests of protecting certain juveniles whose behavior clearly endangers their physical or emotional well-being. Sometimes the needed response is secure or staff-secure care until further investigation and evaluation can be completed and a viable alternative placement provided.

CONCLUSION: THE AMERICAN FAMILY

Although our recommendations on deprived children specifically relate to the tragic results of failing families, the central theme we emphasize throughout is that of preserving and strengthening the family. As stated in the dedication, ". . . the family is the foundation for the protection, care and social education of America's children." In addressing the issue of deprived children and their families, it is fitting to conclude our thoughts with a tribute to the vast majority of well functioning American families which in spite of a rapidly changing society and with the caring patience, discipline and foresight typical of most parents manage to flourish and grow together. We must remember that, in spite of the often shocking statistics and the several millions of deprived children and families who require intervention and assistance, the fact remains that by far the greater number of families give and receive the love, protection and care which we continue to attribute to the meaning of the word "family."

However, we also must conclude with a warning. The concept of "family" as the foundation of our society is undergoing new and significant pressures. Never before has our pluralistic society included families with such vast numbers of single parents, ethnic and cultural variables, working mothers and latch key children. Never have the costs of providing child care, medical care and education been so high. Never have adverse influences and values outside the home or through television been so great. It is often against tremendous odds that many families are able to fulfill their traditional and vital functions. As the data shows, it has been much more difficult for those parents who must function as single parents, or if female at near poverty levels without child support, or for those who receive public assistance, or for adolescents who are themselves parents. The cycle of abused and neglected children who have become abusing and neglecting parents with their children in turn being abused, neglected, running away, acting out and often ending up before the courts has not been broken. The cycle of teenage pregnancies and teenage mothers without partners or providers, leading to dependence upon welfare and social services, and often to another generation of abused or neglected children continues.

Solutions to the problem of deprived children attempted by the assistance and protection of public and private agencies, legislatures and courts, regardless of the levels of resources ever to be available, cannot be successful without a continuing reliance on individual responsibility and the family. There are indications that parents are relinquishing their responsibility for raising their children to schools, child care providers, churches and government agencies. There are indications that misdirected public policy and procedure often discourages family unity and succeeds only in breaking up families. The most glaring result of our nation's high divorce rate and single parent families is the lack of parental guidance. Children need both parents or at minimum a father or mother "figure," if not in the home, then at least nearby and available to provide additional nurturing and discipline. This is not the responsibility of teachers, coaches or neighbors. Fathers or father "figures" need to counsel their sons on the responsibility of being a man and a parent. Teenage girls should not bear the burden alone. Until the American male can accept and act upon his responsibility to care and provide for his children, we will continue to produce the millions of deprived and dependent children — the subjects of our recommendations.

Both parents — natural, adopted or foster parents or parent substitutes — must actively demonstrate the love, trust, care, control and discipline which result in secure, emotionally happy and healthy children. It is the role of society to

engender within its citizens the awareness of what it is to be a good parent. No public or private agency, child care, social worker, teacher or friend can replace the parent in the child's mind. To the extent that family life is damaged or failing, our children, their children and the nation will suffer. The high calling of "parenthood" must be more adequately recognized, respected and honored by our society. Therein lies the future of our nation.

FOOTNOTES

[1]ten Bensel, Robert, et al., "Child Abuse and Neglect," *Juvenile and Family Court Journal,* (Reno: National Council of Juvenile and Family Court Judges, 1985) p. 1.

[2]Statistics obtained from Children's Division, American Humane Association, Denver, Colorado, January 2, 1986.

[3]Ibid.

[4]Child Welfare League of America, study released February, 1986.

[5]ten Bensel, Robert, et al., "Child Abuse and Neglect," *Juvenile and Family Court Journal,* (Reno: National Council of Juvenile and Family Court Judges, 1985), p. 1.

[6]National Center on Child Abuse and Neglect, "Report on the National Incidence Study," 1981.

[7]Russell, Alene B. and Trainor, Cynthia M., *Trends in Child Abuse and Neglect: A National Perspective,* (Denver: Children's Division, American Humane Association, 1984) p. 41.

[8]National Center for Juvenile Justice, Pittsburgh, Pa., p. 14.

[9]Ibid., p. 8.

[10]"Research: Aftermath of Physical Punishment," *The Last Resort,* Vol. 9, No. 2, (November/December, 1980) cited by ten Bensel et al., "Child Abuse and Neglect," p. 4.

[11]Park, R.D., Collmer, C.W., "Child Abuse: An Interdisciplinary Analysis" in Hetherington, M., *Review of Child Development Research* (Vol. 5) (Chicago: University of Chicago Press, 1975) pp. 1-102.

[12]Steinmetz, S.K., "Violence Between Family Members," *Marriage and Family Review,* 1(3):1-16, 1978.

[13]"TV: Sex and the Single Teen," *The Wall Street Journal,* January 27, 1986, p. 24 citing "CBS Reports" *The Vanishing Family —Crisis in Black America,* narrated by Bill Moyers.

[14]Russell and Trainor, *Trends in Child Abuse and Neglect,* p. 16.

[15]Ibid., p. 16.

[16]ten Bensel, et al., "Child Abuse and Neglect," p. 33.

[17]Russell and Trainor, *Trends in Child Abuse and Neglect,* pp. 22-24.

[18]Ibid., p. 21.

[19]ten Bensel, Robert, et al., "Child Abuse and Neglect," *Juvenile and Family Court Journal,* (Reno: National Council of Juvenile and Family Court Judges, 1985) p. 1.

[20]Russell and Trainor, *Trends in Child Abuse and Neglect,* p. 22.

[21]Ibid., p. 23.

[22]Ibid., pp. 23 and 25.

[23]Ibid., p. 24.

[24]Ibid., p. 25.

[25]Ibid., p. 29.

[26]Finkelhor, D., "Sexual Abuse: A Sociological Perspective," paper presented at the Third International Conference on Child Abuse and Neglect, Amsterdam, 1981, cited by ten Bensel et al., in "Child Abuse and Neglect," p. 30.

[27]Russell and Trainor, *Trends in Child Abuse and Neglect,* p. 34.

[28]Ibid., p. 35.

[29]Ibid., p. 35.

[30]Ibid., p. 34.

[31]ten Bensel et al., "Child Abuse and Neglect," p. 2.

[32]Ibid., p. 2.

[33]Ibid., p. 3.

[34]Ibid., p. 2.

[35]Ruth Kempe in Kempe, C. Henry and Helfer, Ray E., *The Battered Child,* 3rd ed., (Chicago: University of Chicago Press, 1975) cited by ten Bensel et al., in "Child Abuse and Neglect," pp. 7-8.

[36]Diamond, L.J., and Jaudex, P.K., "Child Abuse in a Cerebral-Palsied Population," *Developmental Medicine and Child Neurology,* (1983) 25, pp. 169-174.

[37]Russell and Trainor, *Trends in Child Abuse and Neglect,* p. 7.

[38]*Journal of the American Medical Association,* August 9, 1985, pp. 796-803, and the assistance of Dr. Robert ten Bensel.

[39]The NCJFCJ Permanency Planning for Children Project, started in 1972, has established interdisciplinary task forces in many states under the auspices of State Supreme Courts. Members include judges, legislators, lawyers, social workers and lay child advocates. This interdisciplinary team approach is producing:

- enhanced resources for abused and neglected children;
- improved prevention and reunification services;
- improved adoption laws and practices;
- increased public awareness of foster care problems and grassroots support;
- increased volunteerism; and
- a reduction in the number of children who unnecessarily remain in foster care.

[40]Russell and Trainor, *Trends in Child Abuse and Neglect,* p. 40.

[41]This is the Council's own well-considered and experienced opinion, initially based on the Committee's adaptation of T. Stein and T.L. Repnicki's *Decision-Making at Child Welfare Intake* (1983) p. 4, which states the likelihood for reunification is greatest during the first 12-18 months, that the chances of a child leaving the system after 3 years are greatly diminished, and that the chances for adoption are best between 18 and 36 months.

[42]Russell and Trainor, *Trends in Child Abuse and Neglect,* p. 40.

[43]Ibid., pp. 40-42.

[44]Ibid., pp. 40-42.

[45]Ibid., p. 41.

[46]Ibid., pp. 49-51.

[47]See introduction to this document for a discussion of treatment costs.

[48]Statement of Dr. Robert ten Bensel, Project Consultant, at Metro Courts Committee Meeting, November 1, 1985, Reno, Nevada.

[49]Office of Child Support Enforcement, U.S. Department of Health and Human Services.

[50]Ibid.

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EXECUTIVE SUMMARY
DEPRIVED CHILDREN: A JUDICIAL RESPONSE
73 Recommendations

ROLE OF JUDGES

1. Judges must provide leadership within the community in determining needs and obtaining and developing resources and services for deprived children and families.

2. Juvenile and family courts must have the clear authority, by statute or rule, to review, order and enforce the delivery of specific services and treatment for deprived children.

3. Judges must encourage cooperation and coordination among the courts and various public and private agencies with responsibilities for deprived children.

4. Judges and court personnel must make every effort to increase media and public awareness of the complex and sensitive issues related to deprived children.

5. Juvenile and family courts must maintain close liaison and encourage coordination of policies with school authorities.

6. Judges must exercise leadership in (a) analyzing the needs of deprived children and (b) encouraging the development of adequate resources to meet those needs.

7. Judges should take an active part in the formation of a community-wide, multi-disciplinary "Constituency for Children" to promote and unify private and public sector efforts to focus attention and resources on meeting the needs of deprived children who have no effective voice of their own.

COURT PROCEDURES

8. Juvenile and family courts, to be effective, must have the same stature as general jurisdiction courts. Judicial assignments should be based on expressed interest and competence and be for a substantial number of years.

9. All judges of all courts must ensure sensitivity in the courtroom and encourage sensitivity out of the courtroom to minimize trauma to the child victim.

10. Juvenile and family courts should have immediate and primary jurisdiction over children who have been allegedly abused to ensure protection and treatment for the child victim, notwithstanding pending criminal proceedings.

11. Adult prosecution arising out of an allegation of abuse should be coordinated with juvenile and family courts.

12. Priority must be given to abuse and neglect cases in the trial court as well as in the appellate process.

13. Juvenile and family courts must have funding to allow reasonable judicial caseloads and an adequate number of judicial officers to assure the necessary time for each case.

14. Court-appointed and public attorneys representing children in abuse and neglect cases, as well as judges, should be specially trained or experienced.

15. Court Appointed Special Advocates (CASAs) should be utilized by the court at the earliest stage of the court process, where necessary, to communicate the best interests of an abused or neglected child.

16. Juvenile and family courts should consider the use of judicially appointed citizen advisory boards to assist the court with independent screening, monitoring and review of individual placements, services, facilities and treatment.

17. A person supportive of the child witness should be permitted to be

present in court and accessible to the child during the child's testimony without influencing that testimony.

18. Family members should be permitted to offer suggestions or testify in aid of the disposition of the case.

19. Evidentiary and procedural rules consistent with due process must be adopted to protect the child victim from further trauma.

20. All courts should be granted authority to issue protective or restraining orders to prevent further abuse. Such orders should be freely used and vigorously enforced.

DETECTING, REPORTING AND EVALUATING

21. All persons who work with children on a regular basis should be trained to recognize indicators of abuse, neglect or significant deprivation.

22. All persons working with children must promptly report known or reasonably suspected abuse and neglect. Communication and witness privileges must not impede the reporting, investigation and adjudication of alleged child abuse.

23. Appropriate governmental agencies, schools of medicine and social work, and the media should widely publicize in each community reliable indicators of vulnerable families, child physical and sexual abuse and child neglect.

24. Abusive or potentially abusive persons should be encouraged to acknowledge their problem, seek help and participate in voluntary treatment for themselves and their families.

25. Agencies must respond immediately to reports of child abuse and neglect and provide follow-up information to the reporter.

26. A central registry of complaints of alleged abuse and neglect must be developed and maintained in each state with mandatory reporting of data from child protection and health agencies, as well as law enforcement and school officials, with access on a demonstrated "need to know" basis.

27. A thorough assessment of a child's problems and family is needed at all public and private intake facilities.

28. Child protection services and facilities should be available 24-hours a day to assure that allegations of serious neglect or abuse can be assessed and protection provided.

29. Reports of abuse and neglect should be evaluated immediately and, where necessary, a coordinated plan of action should be developed by law enforcement, the child protection agencies and the prosecutor.

30. Emergency removal of the child from the home must be subject to prompt judicial review.

31. The alleged offender, rather than the child, should be removed from the home, whenever appropriate.

32. A suspected child victim of abuse and the non-offending family members should not be subjected to repetitious and unsystematic interviews.

OUT-OF-HOME PLACEMENT

33. A child should not be removed from home until consideration is given as to whether the child can remain at home safely.

34. The number, duration and traumatic impact of out-of-home placements of deprived children must be reduced by "reasonable efforts" to seek alternatives consistent with the child's need for protection and treatment.

35. Judges should evaluate the criteria established by child protection agencies for initial removal and reunification decisions and determine the court's expectations of the agency as to what constitutes "reasonable efforts" to prevent removal or to hasten return of the child.

36. In placing children, courts and child protection agencies must give consideration to maintaining racial, cultural, ethnic and religious values.

37. Programs which promote family preservation and prevention of out-of-home placement by providing early intensive services for the at-risk child and family must be developed and utilized in all communities.

38. Agreements between parents and a child protection agency which voluntarily place a child out of the home should be in writing, filed with the court and reviewed by the court within 30 days.

39. As required by federal law, independent judicial review of all placements by the court or by a judicially appointed citizen review board must be conducted at least every six months. Eighteen months following placement, the court must conduct a full hearing to review the family service plan and the progress of the child for the purpose of establishing permanency planning for the child.

40. Provision must be made for minimum standards and frequent review and inspection of all out-of-home placement facilities, staff and treatment programs.

41. A child removed from home must be returned to the family as soon as conditions causing the removal have been substantially corrected and safeguards established.

TREATMENT AND PLANNING

42. Treatment of an abused and neglected child must be immediate, thorough and coordinated among responsible agencies.

43. Treatment provided to the child through court or agency intervention should involve the entire family or focus on family relationships as they impact on the child, and should stress the primary responsibility of the parents for the child's welfare and protection.

44. Child protection agencies and the courts should require parental responsibility for a child's well-being.

45. Judges, as part of the disposition for the child, must have authority to order treatment for the parents, to require other positive conduct, and to impose sanctions for willful failure or refusal to comply.

46. Substance abuse treatment, where appropriate, should be mandated for the parents and the child.

47. Judges must have the authority to order the treatment determined to be necessary and should regularly review the efficacy of such treatment.

48. Judges must require appropriate treatment for youthful sexual offenders, most of whom have been victims of sexual abuse.

49. The court should require the offender to pay the costs of treating the child victim.

50. Child victims of abuse or neglect should be eligible for victims assistance and compensation programs.

51. In child support, custody and dependency hearings, if parents have or can obtain health care insurance, the court should order coverage.

52. Child protection caseworkers must be screened, trained and certified in order to improve child protection services and treatment.

53. Screened, qualified and trained volunteers should be used to enhance the quality of services to deprived children and families.

54. A sufficient number of foster homes, adequately reimbursed and provided with access to treatment and support services, should be established.

55. Frequent movement of children from foster home to foster home is detrimental to a child's physical and emotional well-being and must be reduced.

56. Specialized foster homes and foster parents should be established in each community for children with special needs.

57. Homeless and runaway children must be provided proper emergency shelter facilities as well as necessary services.

58. When there is clear and convincing evidence that the conduct of the parents would, under law, permit the termination of parental rights, and it is in the best interests of the child to do so, termination should proceed expeditiously.

59. When reunification is not possible or termination of parental rights is not in the best interests of the child, courts should consider other permanent plans.

60. When needed, adoption should proceed expeditiously. Foster parents should not be precluded from adopting their foster child.

61. Subsidized adoption programs should be more widely available and used for special needs and hard-to-place children.

PREVENTION ISSUES

62. Prevention and early intervention efforts must receive a high priority, with a greater emphasis placed on providing adequate services to prevent child abuse, neglect and family break-ups through adequate education, early identification of those at risk, and family-based counseling and homemaker services.

63. Continuing education in parenting and in understanding the physical and emotional needs of children and families should be widely available in schools, health care systems, religious organizations and community centers.

64. Communities must provide special parenting education and services for pregnant teenagers as well as teenage parents, including counseling on relinquishment and adoption.

65. Adequate child care facilities and services, with training, licensing and monitoring of the providers, should be available to all parents needing such services.

66. Employer-sponsored assistance and counseling programs for family violence and child abuse and neglect, such as those used for alcoholism and drug abuse, should be established.

67. Identification and assessment of the physically, mentally, emotionally or the learning disabled child must occur as early as possible.

68. Services and education must be designed for and provided to mentally ill, emotionally disturbed and developmentally disabled children and parents.

69. Judges must assure that child support orders are expedited and vigorously enforced and urge cooperation among all components of the child support enforcement process and all federal and state government agencies which may impact on child support enforcement proceedings.

70. Persons convicted of exploiting children by means of pornography, prostitution, drug use or trafficking must be severely punished. High priorities also must be given to national efforts to curtail the availability to children of pornography and excessively violent materials.

71. Courts and communities must provide services and courts must intervene, where necessary, to assist homeless, truant, runaway, and incorrigible children. Parents must be held personally and financially accountable for the conduct of their children.

72. Courts should cooperate with schools and other agencies to substantially reduce truancy and dropouts by coordinating and providing services and assistance to the habitual truant.

73. The courts should have authority to detain, in a secure facility for a limited period, a runaway, truant or incorrigible child whose chronic behavior constitutes a clear and present danger to the child's own physical or emotional well-being, when the court determines there is no viable alternative.

National Council of Juvenile and Family Court Judges: Serving Judges, Youth and the Community

The National Council of Juvenile and Family Court Judges has been dedicated, since its founding in 1937, to improving the nation's diverse and complex juvenile justice system. The Council understands that an effective juvenile justice system must rely on highly skilled juvenile and family court judges, and has directed an extensive effort toward improving the operation and effectiveness of juvenile and family courts through highly developed, practical and applicable programs and training. Since 1969 the Council, through its Training Division, the National College of Juvenile Justice, has reached more than 65,000 juvenile justice professionals with an average of 50 training sessions a year — a record unparalleled by any judicial training organization in the United States.

The Council recognizes the serious impact that many unresolved issues are having upon the juvenile justice system and the public's perceptions of the problem as they affect, through legislation and public opinion, the juvenile court.

Serving as a catalyst for progressive change, the Council uses techniques which emphasize implementing proven new procedures and programs. Focus on meaningful and practical change and constant improvement is the key to the Council's impact on the system.

The Council maintains that juvenile justice personnel, and especially the nation's juvenile and family court judges, are best equipped to implement new concepts and other proposed improvements. The most effective method of bringing about practical and necessary changes within the juvenile justice system is through that system, and particularly through the judges themselves. Continuing, quality education is a keystone in producing this change.

The Council facilities, located at the University of Nevada, Reno, include modern classrooms and a law library. The Council uses its own housing facility to provide economical lodging and meals for both faculty and participants. These facilities offer an attractive environment for judges to explore practical solutions toward the betterment of juvenile justice. The Council, with its National Center for Juvenile Justice in Pittsburgh, maintains a staff of more than 50.

Testimony Submitted by
The National Association of Homes and Services for Children

Brenda Russell Nordlinger
President and Chief Executive Officer

The National Association of Homes and Services for Children (NAHSC) is pleased to share its views concerning S 1195, the Promotion of Adoption, Safety and Support for Abused and Neglected Children (PASS) Act. NAHSC is mindful that the PASS Act is the result of months of negotiations between cosponsors of the Safe Adoptions and Family Environments (SAFE) Act, and senators who support the House-passed Adoption Promotion Act (HR 867), and other legislation. We appreciate the bipartisan effort that went into producing this consensus bill to enhance children's safety and find permanent homes for children in foster care. NAHSC supports many provisions of S 1195, and hopes that the bill will be strengthened further to promote the best possible outcomes for children.

NAHSC members include close to 350 charitable nonprofit organizations employing more than 30,000 employees that provide services in almost 1,000 communities nationwide. They serve over a quarter of a million children yearly and provide over $1.3 billion in direct care and services to children and families in 48 states and the District of Columbia. NAHSC members provide a full range of direct care services to children and families in crisis. Most of the children cared for are victims of physical, sexual, or emotional abuse, neglect, or abandonment. Other children need help because of family crisis due to severe health problems, alcohol or substance abuse, or incarceration.

Reasonable Efforts
NAHSC is particularly pleased that the PASS Act includes several provisions from the SAFE Act (S 511), which NAHSC endorsed in testimony last May. Like S 511, the PASS Act would amend the requirement in current law that states make "reasonable efforts" to prevent the placement of a child in out-of-home care (or to reunify families if removal is necessary) by clarifying that the child's health and safety shall be the paramount concern in placement decisions. S 1195 also explicitly states that reasonable efforts are not required if the parent has killed or assaulted another of their children, or if a court has determined that returning a child to his or her home would pose a serious risk to their health or safety. NAHSC supports these changes. They provide needed clarification to states in implementing the reasonable efforts requirement, while continuing the federal policy of not giving up on troubled families, when doing so does not endanger a child's safety.

Child Safety
S 1195 includes another important provision from the SAFE Act to address the safety of children. It requires criminal records checks and state child abuse registry checks for prospective foster or adoptive parents and employees of child care institutions, before the parents or institutions are finally approved for placement of a child.

Standards for Quality Care
S 1195 also addresses the quality of care by requiring states to develop guidelines to ensure quality services for children in out-of-home placements. We support this approach and urge that Section 108 of the bill be strengthened further by requiring states to develop quality standards that are in accord with the recommended standards

of national standard setting or accrediting organizations for ensuring quality services that protect the safety and health of children in out-of-home placements with public, nonprofit and for-profit agencies.

Adoption Assistance
NAHSC is pleased that S 1195 includes the key SAFE Act provision to expand eligibility for federal adoption assistance payments under Title IV-E of the Social Security Act to all children with special needs. Under current law, federal adoption assistance is available only to children with special needs who are eligible for Supplemental Security Income (SSI), or whose families of origin were eligible for Aid to Families with Dependent Children (AFDC) when adoption proceedings began. NAHSC believes it is unfair to deny assistance to any child awaiting adoption solely on the basis of the income of the family from which the child is permanently severed. Currently, approximately one-third of children with special needs receiving adoption assistance are eligible only for state, not federal, assistance. S 1195 would make them eligible for federal adoption subsidies, and ensure that vital Medicaid coverage follows them into their adoptive homes, which currently is not always the case. In addition, S 1195 further requires that any state savings resulting from this provision be used for services to children and families now allowed under Titles IV-B and IV-E, including post-adoption services. NAHSC strongly supports these provisions, which would promote adoption as a permanency option for more children in foster care.

Keeping Families Together
Similarly, we are pleased that the PASS Act includes the provision from S 511 to allow Title IV-E foster care payments to be made on behalf of a child placed with their parent in a residential treatment program when the parent is attempting to overcome substance abuse, domestic violence, or homelessness, or has special needs due to teenage parenting. Current law only allows foster care payments to children placed in a foster family home or child care institution. This provision would increase treatment options for parents and could shorten the time a child spends in foster care by strengthening the family. S 1195 expands on the SAFE Act to allow such payments also when the parent is attempting to overcome post-partum depression. We support this change.

Substance Abuse Treatment Priority
Another important provision from S 511 included in the PASS Act establishes a priority for substance abuse treatment services to parents who are referred for treatment by child welfare agencies. Substance abuse is among the two most frequently cited problems in families reported for child maltreatment. For children who can be safely reunified with their families, this provision could facilitate a more timely reunification.

We applaud these provisions. Taken together, they will improve children's safety and help more children in foster care find permanent homes. However, we have several concerns about the PASS Act that we hope will be addressed prior to a vote on the bill by the Senate.

Family Reunification
Most significantly, we are concerned about the implications of not including in S 1195 the SAFE Act provision to allow reimbursement under Title IV-E foster care for family reunification services for one year after a child is removed from the home. NAHSC supported this key provision of S 511 because we believe it would enable child welfare agencies to determine sooner whether a child may be returned safely home, or whether adoption or other permanent living situation should be the goal. Too often under current practice, children remain in foster care and are not freed for adoption because judges are understandably reluctant to terminate parental rights in the absence of services provided to a troubled family to determine whether a child may be returned safely home. When reunification services begin the day a child enters care, it is much more likely that a permanency decision will be made within one year. This provision of the SAFE Act was designed to give states the resources to provide those services.

Our concern is that by not expanding Title IV-E to cover family reunification services, the bill would continue to leave states without adequate resources for family reunification. The omission of this key provision tips the balance toward adoption as the permanency goal, even when family reunification services could ensure the child's safe return home. This is particularly true in the context of the bill's requirement that states file a petition to terminate parental rights for children in foster care for more than a specified period of time, discussed further below.

As an alternative, S 1195 would reauthorize the Family Preservation and Support Act, and require that not less than 25 percent of funding for that program be used for family reunification services. NAHSC supports reauthorization of the Family Preservation and Support Program with increased funding levels. However, since Family Preservation is a capped entitlement program with limited funding, it would result in far fewer federal resources for critical family reunification services. In any case, the set-aside for family reunification services should be deleted. States should continue to be given the flexibility to allocate resources appropriately under the program to meet the needs of children and families.

Cross Training of Staff
Another important SAFE Act provision that unfortunately was not included in S 1195 would allow Title IV-E funds to be used for training of court workers and staff of substance abuse, mental health, and other agencies working with abused and neglected children. Because staff from these agencies often have little understanding of the needs of children and families in the child welfare system, services are not maximized toward providing permanent homes for children. This provision also would help alleviate the backlog of child welfare cases awaiting court action. We urge its inclusion in S 1195.

Clarifying Training Options for States
S1195 needs to clarify that states can contract with nonprofit organizations to provide short-term training for current and prospective adoptive and foster care parents, and

state licensed or approved child serving agencies and their staff, to increase their ability to provide support and assistance to foster and adoptive children.

Title IV-E Foster Care Section 472(b), and Adoption Assistance Section 473(a)(B)(i) allow private child serving agencies to receive Title IV-E reimbursement for children served under contract with the state agency administering those programs.

Section 474(a)(3)(B) provides seventy-five percent reimbursement for short-term training of current and prospective foster and adoptive parents and staff of approved child caring agencies whether incurred directly by the state or under contract.

However, in practice many states feel they can not contract with nonprofit organizations that conduct proven, cost-effective, relevant and high quality training programs to improve services to children because those organizations do not provide direct adoptive and foster care services. States should have the flexibility to contract with a wide range of organizations to secure the most appropriate training option. S1195 can provide this needed clarification.

Termination of Parental Rights

We also are concerned that the PASS Act provision requiring states to file a petition to terminate parental rights for certain children in foster care goes too far. S 1195 goes beyond a similar provision in HR 867 by requiring states to file a petition to terminate parental rights in the case of a child who has been in foster care for 12 of the most recent 18 months, or for a lifetime total of 24 months. By contrast, the House bill would only require states to file a petition to terminate parental rights in the case of a child *under ten years of age* who has been in foster care for *18 of the most recent 24 months* (with no lifetime total). Also, the House bill would not require states to file a petition in cases in which the state has not provided appropriate services to the family to facilitate the child's return home. S 1195 does not include this important exception.

We support amending S 1195 to mirror the House language. In particular, since the bill does not provide adequate resources for family reunification services, we view the House language as providing important safeguards against inappropriate termination of parental rights. We also suggest that states should only be required to file a petition when the goal for the child is adoption, and that the "transition rule" in S 1195 that would apply this requirement to children currently in foster care should be dropped.

Adoption Incentive Program

Finally, we support substituting the provision in S 1195 establishing the Adoption Incentive program with the House-passed provision, which provides for higher per child incentives and greater certainty of funding in the form of an entitlement to the states, rather than an appropriation. We further urge that the Innovation Grants program be made an entitlement to the states, as in S 511, rather than an appropriation, as in S 1195. This change would ensure the availability of resources for innovative strategies to promote permanence for children.

We thank the committee for this important hearing and the opportunity to provide our comments on the PASS Act. NAHSC would be pleased to continue working with the Senate Finance Committee to further strengthen and support the PASS Act and we urge its passage.

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October 23, 1997

Honorable William V. Roth, Jr.
Senate Finance Committee
United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Roth:

It has come to my attention that the Senate Finance Committee held a hearing on S. 1195, the Promotion of Adoption Safety and Support for Abused and Neglected Children Act ("PASS Act") on October 8, 1997. The proposed PASS Act would extend for four years the Family Preservation and Support Act ("FPSA"), Part 2 of Title IV-E of the Social Security Act. Although extending FPSA, the proposed PASS Act does not continue the current funding set aside for the court improvement project. I understand that the American Bar Association ("ABA") has proposed legislative language that will amend S. 1195 to include a funding set aside for the court improvement project. I support the inclusion of legislative language reauthorizing the court improvement project. Continuation of the court improvement project is vital to improving the lives of abused and neglected children due to the critical role the courts play in deciding life altering decisions such as placements -- guardianship, foster care and adoption, and termination of parental rights.

Sincerely,

William C. Vickrey
Administrative Director of the Courts

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NATIONAL
BLACK
CHILD
DEVELOPMENT
INSTITUTE, INC.

TESTIMONY OF THE NATIONAL BLACK CHILD DEVELOPMENT INSTITUTE

SUBMITTED TO

THE COMMITTEE ON FINANCE
UNITED STATES SENATE

ON

S. 1195, PROMOTION OF ADOPTION, SAFETY, AND SUPPORT FOR ABUSED AND NEGLECTED CHILDREN (PASS) ACT

OCTOBER 8, 1997

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SUMMARY

The National Black Child Development Institute (NBCDI) is pleased that S. 1195 includes the following provisions:

- *Expansion of eligibility for federal adoption assistance payments to all children with special needs.* By de-linking the child's AFDC eligibility from eligibility for federal adoption assistance, S. 1195 promotes equal access among all children with special needs to federal adoption assistance and to the opportunity to find permanent homes.

- *Provision of an advisory panel, report and recommendations on kinship care* as a means of determining how this critical resource to children in foster care can be utilized, when appropriate, to increase the placement of children in safe, nurturing homes.

- *Coordination and collaboration of substance abuse treatment and child protection services.* Substance abuse is a leading contributing factor to children's entrance into foster care. Therefore, the ability to evaluate and respond to the problems of families suffering from substance abuse in a timely manner requires collaboration between child welfare and substance abuse prevention and treatment agencies and cross-agency staff training.

    - *Study and report on sources of support for substance abuse prevention and treatment for parents and children and collaboration among state agencies.* More research is needed on collaborative efforts and cross-agency staff training between child welfare and substance abuse prevention and treatment agencies to direct the development of future policies and service improvements that not only meet the needs of families suffering from substance abuse, but *prevent* substance abuse from occurring in families.

    - *Priority for substance abuse treatment for caretaker parents who are referred for treatment by the child welfare agency.* When family reunification is the goal, establishing priority for parents to receive substance abuse treatment would promote the timely reunification of families and decrease the amount of time children spend in foster care.

    - *Payment of Title IV-E foster care maintenance funds on behalf of children with parents in residential treatment facilities.* This provision promotes the timely provision of services to families by providing parents with more flexibility of treatment options and recognizing that some parents need residential treatment to overcome substance abuse. This, in turn, could shorten the amount of time children spend in foster care when reunification is the goal.

NBCDI has the following recommendations for changes and improvement.

- *Provide additional funding for family reunification and support services.* Adopt a provision, similar to that in S. 511, the SAFE Act, that provides federal reimbursement for family reunification services for up to one year after a child is removed from home. If reunification services begin the day the child enters foster care, the courts will be able to make a timely and informed decision about whether the child can safely return home or whether adoption or some other permanent living arrangement is appropriate. This could decrease the amount of time children spend languishing in foster care.

- *Provide additional funding for training.* Adopt a provision, similar to that of S. 511, that provides federal reimbursement for training of staff of child welfare and related agencies, and courts. Continuing education and training of staff should be a part of every child welfare agency's plan to reduce the occurrence of accidents, and increase productivity and the quality of services.

- *Include the relationship of the relative caregiver to the child in the required contents of the report on kinship care* by the Secretary of Health and Human Services. Information on the relationship of the caregiver to the child is needed in order to make policy recommendations that respond to the needs of kinship caregivers and those of the children they care for.

- *Include in the Comptroller General's study on substance abuse and child welfare agency collaboration an emphasis on cross-agency staff training* and its availability and effectiveness in the areas of child welfare and substance abuse prevention and treatment.

The National Black Child Development Institute (NBCDI) is pleased to submit testimony on S. 1195, the Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act. We commend the efforts of the bill's bi-partisan sponsors to promote the placement of children in foster care in safe, permanent homes.

NBCDI is a national, non-profit, charitable organization that exists to improve and protect the lives of African American children and youth on the national and local levels. NBCDI and its 45 nationwide volunteer affiliate chapters focus on the areas of health, child welfare, education, and early care and education.

The National Black Child Development Institute has a 27-year history of dedication to improving the child welfare system on the national and local levels.

Beginning in 1971, when concern was raised regarding the large numbers of African American children languishing in foster care, NBCDI launched the **Black Child Advocacy Adoption Project**. This national project examined the barriers that prevent African American families from adopting children and identified progressive agencies and programs that could be replicated. Conferences were held in 10 cities to recruit families from throughout the United States to adopt African American children.

NBCDI's work extended beyond the United States in 1973 to Vietnam, where the Institute led a group of African Americans to encourage the placement of children fathered by black servicemen with African American families.

The Institute has also served as a resource to agencies through its publication, *Guidelines for Adoption Services to Black Families and Children*, which provides information to facilitate the inclusion of African American families in the adoption process.

We also have been a leader on the legislative front, providing testimony for the record on **H.R. 867, the Adoption Promotion Act of 1997**, testifying before the House Ways and Means Committee on the impact of substance abuse on the child welfare system in 1991, analyzing proposed regulations for the **Adoption Assistance and Child Welfare Act** (P.L. 96-272) in 1980, and participating in hearings on the **Opportunities for Adoption Act of 1977**.

In 1983, the Institute brought together administrators from state and private adoption agencies to analyze policies that perpetuate the disproportionate representation of African American children in the system. Later that year, NBCDI published the adoption conference's recommendations in *A Child Waits*.

In 1986, NBCDI mounted a national study on the status of African American children in the foster care system. *This was one of the first national studies to establish the dramatic link between substance abuse and child abuse and neglect.* The Institute published the results in 1989 in *Who Will Care When Parents Can't?*, which profiles foster children and their families and

offers recommendations for policy change.

In 1991, NBCDI published a report, *Parental Drug Abuse and African American Children in Foster Care*, on the link between substance abuse and child abuse and neglect established in the 1986 study.

Our affiliates continue to work on permanency planning for African American children. Most recently, NBCDI has been active on the local level. Our Seattle, Washington affiliate is currently running the African American Initiative, a program that seeks to eliminate the barriers to permanency placement for black children in foster care by increasing the capacity of the child welfare system to respond to the unique cultural, developmental, and other service needs of this vulnerable population.

Disproportionate Representation of African American Children in Foster Care

African American children are disproportionately represented in the foster care system. Approximately 46 percent of the children in foster care nationwide are black and 36 percent are white (AFCARS, 1996). However, African American children only comprise 15 percent of the child population, while white children make up 66 percent (United States Census Bureau, 1997). Although the number of white children entering foster care is greater than the number of black children, white children tend to leave foster care at a faster rate (Spar, 1997). In 1995, the estimated median length of stay in foster care was 1.5 years (18 months) for white children and 2.5 years (30 months) for black children (AFCARS,1995).

NBCDI ANALYSIS OF S. 1195, THE PASS ACT

Expansion of Eligibility for Federal Adoption Assistance Payments to All Children with Special Needs

NBCDI is pleased that S. 1195 expands eligibility for Title IV-E federal adoption assistance payments to all children with special needs. Under current law, federal adoption assistance eligibility is limited for children with special needs to those who are eligible for Supplemental Security Income (SSI) or who enter foster care from families who would have been eligible for AFDC under rules in effect on June 1, 1995. All children with special needs should have access to federal adoption assistance payments based on the needs of the child, not the income of the family from whom the child has been removed. By de-linking the child's AFDC eligibility from eligibility for federal adoption assistance payments, S. 1195 promotes equal access among all children with special needs to federal adoption assistance and to the opportunity to find permanent homes.

Further, S.1195 provides for the Medicaid eligibility of all adopted children with special needs. This is particularly important in states where health coverage is not extended to all children with special needs adopted with state assistance. S. 1195 promotes the adoptions of children with special needs by allowing adoptive families to move across state lines without losing health coverage for their children.

Prospective adoptive parents are sometimes reluctant to adopt children with special needs who are not eligible for federal adoption assistance and Medicaid due to the financial responsibility of meeting the medical and other needs of these children. S. 1195 effectively addresses this barrier by expanding eligibility for federal adoption assistance and Medicaid for children with special needs.

De-linking federal adoption assistance from AFDC eligibility is also cost-effective. It eliminates administrative costs of determining the child's eligibility based on the biological family's economic status. Additionally, given the high cost of keeping children in foster care, de-linking is a cost-saving measure because it reduces the amount of time children spend in foster care by promoting timely adoptions.

Kinship Care

NBCDI fully supports the provisions of the PASS Act on the development of an advisory panel, and report and recommendations on kinship care as a means of determining how this critical resource to children in foster care can be utilized, when appropriate, to increase the placement of children in safe, nurturing homes.

Kinship care is the fastest growing form of care for children in foster care. Particularly in larger states, there are increasing numbers of children entering kinship care. Research suggests that children in kinship care remain in the child welfare system longer than children in non-relative foster care (Barth et al., 1994, George, 1990). There is also growing evidence that children in kinship care are reunited with their parents at a slower rate that those placed in non-relative care (Barth et al., 1994).

Kinship care has been identified as an enduring cultural strength of African American families (Hill, 1972, 1997). A two-and-one-half year study of black children in foster care mounted by NBCDI in 1986 points to the role of relatives in caring for black children in foster care. Relatives provided assistance for 401 children out of the total study population of 1,003. Relatives were considered by agencies as placement resources for children for 73 percent of the total population. In all five cities, (Detroit, Houston, Miami, New York, and Seattle) at least 50 percent of the study population had relatives that were considered by the agency as potential resources for the children. Where there was some agency consideration of relatives, 57 percent of the relatives offered some kind of assistance, with a high of 80 percent in Detroit. *This finding suggests that in Detroit, where there was more flexibility in use of relatives who can receive foster care payments, there were more children who received assistance from relatives* (Walker et al., 1989).

Our recommendation for strengthening this provision is discussed later.

Coordination and Collaboration of Substance Abuse Treatment and Child Protection Services

NBCDI is pleased with the provisions of the PASS Act that promote the coordination and collaboration of substance abuse treatment and child welfare agencies. Many children who enter the foster care system come from families with multi-faceted problems that cannot be addressed

by one agency alone. Substance abuse is a leading contributing factor to children's entrance into foster care. Forty percent of confirmed cases of child abuse involve the use of alcohol or other drugs. This suggests, that of the 1.2 million confirmed victims of child abuse, an estimated 480,000 children are mistreated each year by a caretaker with alcohol or other drug problems (National Committee to Prevent Child Abuse, 1996). Therefore, the ability to evaluate and respond to the problems of families suffering from substance abuse in a timely manner requires collaboration between child welfare and substance abuse prevention and treatment agencies and cross-agency staff training. Yet, a 1991 report by the National Black Child Development Institute on 1003 African American children in foster care, indicated that services to address problems, including drug abuse, which contribute to placement in foster care, were either unavailable, or insufficiently brokered or coordinated among agencies. The receipt of collaborative services by families not only helps prevent children from entering foster care in the first place, but for those who do, promotes the timely reunification of children with their families or placement of children into, safe, permanent and nurturing homes.

Study and Report on Sources of Support for Substance Abuse Prevention and Treatment for Parents and Children and Collaboration Among State Agencies
NBCDI fully supports the provision of S. 1195 that requires the Comptroller General of the United States to conduct a study on the collaborative activities of state child welfare and substance abuse prevention and treatment agencies, including, the availability and results of joint prevention and treatment activities by state substance abuse and child welfare agencies, barriers to substance abuse treatment, the ability of state child welfare and substance abuse prevention and treatment agencies to collaboratively address families' needs, fund substance abuse prevention and treatment, train and consult with staff, and evaluate the effectiveness of programs serving families. We are particularly pleased that this provision directs the Comptroller General to include in the study recommendations for federal legislation to address the needs of families with substance abuse problems and promote collaboration between state child welfare and substance abuse prevention and treatment agencies.

This provision is critical given that substance abuse is a leading contributing factor to child abuse and neglect. More research is needed on collaborative efforts and cross-agency staff training between child welfare and substance abuse prevention and treatment agencies to direct the development of future policies and service improvements that not only meet the needs of families suffering from substance abuse, but *prevent* substance abuse from occurring in families.

Our recommendations for strengthening this provision are discussed later.

Priority in Providing Substance Abuse Treatment
The PASS Act establishes priority for substance abuse treatment for caretaker parents who are referred for treatment by the child welfare agency. When family reunification is the goal, establishing priority for parents to receive substance abuse treatment would promote the timely reunification of families and decrease the amount of time children spend in foster care.

Payment of Title IV-E Foster Care Maintenance Funds on Behalf of Children with Parents in Residential Treatment Facilities

NBCDI supports the provision of the PASS Act that would allow Title IV-E foster care maintenance payments to be made for children placed with a parent in a residential treatment facility when reunification is the goal, the safety of the child can be assured, and the range of services provided by the program appropriately addresses the needs of the parent and child. This provision applies to parents who are attempting to overcome substance abuse *and are complying with an approved treatment plan*, homelessness, or who have been a victim of domestic violence, or have special needs resulting from being a teen parent. It is important to note that S. 1195 states that the amount of the foster care maintenance payments made under this section would not exceed the amount of such payments that would otherwise be made on behalf of the child.

This provision promotes the timely provision of services to families by providing parents with more flexibility of treatment options and gives recognition to the fact that there are parents who need residential treatment to overcome a substance abuse problem. This, in turn, could shorten the amount of time children spend in foster care when reunification is the goal.

NBCDI RECOMMENDATIONS FOR CHANGES AND IMPROVEMENTS TO S. 1195, THE PASS ACT

Although NBCDI endorses many of the provisions of the PASS Act, we do have several areas of concern and have delineated our recommendations for improving and strengthening the legislation.

Family Reunification and Support Services

NBCDI is very concerned about the lack of additional funding for family reunification and support services. We recommend that S. 1195 adopt a provision similar to that of S. 511, the SAFE Act, that provides federal reimbursement for family reunification services.

S. 511 allows Title IV-E foster care maintenance payments to be used for family reunification services for up to one year after a child is removed from home. If reunification services begin the day the child enters foster care, the courts will be able to make a timely and informed decision about whether the child can safely return home or whether adoption or some other permanent living arrangement is appropriate. This could decrease the amount of time children spend languishing in foster care.

NBCDI's concern is exacerbated by the significant increase in the number of children for whom termination of parental rights petitions must be filed under the PASS Act and the suggestion that the state agency must file for termination even when the services the agency deemed necessary have not been provided. We are concerned that the termination of parental rights requirement of the PASS Act, combined with the lack of additional resources for family reunification services, could harm children. It could lead to inappropriate termination of parental rights without provision of appropriate services. It could also cause children to be returned home to unstable

families or moved into adoptive homes prematurely.

Staff Training and Retention

The lack of additional training resources for agency and court personnel is also an area of concern for NBCDI. We recommend that S. 1195 adopt a provision similar to that of S.511 that would provide federal reimbursement for training of staff of child welfare and related agencies, and courts.

Recent statistics show dramatic increases in the number of abuse and neglect reports received by states, pointing to the need to increase the capacity of child welfare agencies to respond to this trend. In 1995, the number of children reported for maltreatment was 49 percent higher than in 1986 according to the National Committee to Prevent Child Abuse (Spar, 1997).

The child welfare field is highly complex requiring staff to make decisions in life-threatening situations. In order to protect the lives of children and adequately serve families in need, agency staff must be well trained to make sound judgements. This points to the need for high quality staff training. Continuing education and training of staff should be a part of every child welfare agency's plan to reduce the occurrence of accidents, and increase productivity and the quality of services (McMaster 1980, CWLA, 1991).

Some of the provisions of S. 1195, such as the termination of parental rights provision, would place additional demands on the child welfare system. This points to the need for additional funding for training and retention of agency and court staff.

Report on Kinship Care

NBCDI recommends that the relationship of the relative caregiver to the child be included in the required contents of the report on kinship care by the Secretary of Health and Human Services.

Information on the relationship of the caregiver to the child is needed in order to make policy recommendations that respond to the needs of kinship caregivers and those of the children they care for.

The American Association of Retired Persons reports that, in 1994, 3.7 million children were living in grandparent-headed households. According to an NBCDI study of African American children placed in foster care in 1986, grandparents continue to be a leading resource to children. Of the relatives providing assistance to children, 53 percent were grandparents, with highs of 62 percent in Detroit and 61 percent in Seattle and a low of 29 percent in Miami. A substantial number (39 percent) of the relatives providing assistance included aunts, siblings, cousins and uncles.

Study and Report on Sources of Support for Substance Abuse Prevention and Treatment for Parents and Children and Collaboration Among State Agencies

We strongly recommend that an emphasis be placed in the Comptroller General's study on cross-agency staff training and its availability and effectiveness in the areas of child welfare and substance abuse prevention and treatment.

NBCDI has an additional recommendation for strengthening this section. Included in the contents of the study of the Comptroller General is a description of how state child welfare and substance abuse prevention and treatment agencies address the needs of infants who are exposed to substance abuse. This should be broadened to include how these agencies address the needs of *children in families where there are substance abuse problems, including* infants who are exposed to substance abuse.

Finally, we point to the need to provide families with the multi-faceted services they need to nurture and care for their children. Problems associated with poverty, such as substance abuse and lack of adequate housing, contribute to the placement of children in foster care. NBCDI's study of black children in foster care indicated that while most of the study population (75 percent) entered foster care because of abuse or neglect, many of these placements were also attributable to environmental stresses caused by chronic poverty. In 25 percent of the study population, poverty itself was a significant factor in placement (Walker et al., 1989).

The PASS Act - with additional funding for family reunification and support services and staff training - presents us with an opportunity to more fully improve the lives of children in foster care. In order to do this, we must ensure that the PASS Act more directly addresses problems related to poverty through additional funding for services to families. However, our long-term challenge is to more directly address the issues of poverty through job creation, education and the availability of affordable, low-income housing.

In closing, we look forward to working with the Senate Finance Committee to improve the PASS Act so that it moves forward and is able to truly improve and protect the lives of children in foste care.

Testimony Submitted by
National Council For Adoption

William L. Pierce, Ph.D.
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Senate Finance Committee
Hearing on S. 1195, the Promotion of Adoption, Safety and Support for Abused and Neglected Children (PASS) Act

October 8, 1997

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About NCFA

The National Council For Adoption, Inc. (NCFA) is a 501 c 3 charity founded in 1980. NCFA's membership includes 104 private, not-for-profit agencies, with services offered in every state, and several thousand individual supporters, donors and volunteers. NCFA agencies, about 70 percent of which are under faith-based auspices, work in the U.S. and abroad on humanitarian and direct services. U.S. adoptions, as reported by a sample of 75 percent of NCFA's agencies, show that at least 636 of 1,466 placements (over 43%) were children who meet the definition of "special needs." The majority of NCFA's agencies, like NCFA itself, receive no tax funds of any kind, relying instead on contributions, grants and fees-for-service for their income. Among NCFA's individual supporters are birth parents, adopted persons, adoptive parents, social workers, attorneys and a wide spectrum of interested citizens. NCFA's long-standing interest in foster care and adoption included a two-year foundation funded study which resulted in a monograph, *Foster Care: Too Much, Too Little, Too Early, Too Late*, by former staff member Carol Statuto Bevan, Ed.D. Dr. Bevan's study led NCFA's board of directors to endorse a number of recommendations for federal action. Several of those recommendations are included in S. 1195 and in H.R. 867.

Summary of S. 1195's Strengths

NCFA is pleased to endorse many aspects of the PASS Act designed to address needed reforms in today's foster care system. We note with approval that S. 1195: 1) reflects the consensus that foster care should be temporary; 2) focuses on safety as an essential requirement of the public foster care system; 3) incorporates many of the best features of the House passed bill, the Adoption Promotion Act; 4) removes geographic barriers both for adoption and foster care; 5) sets a 12 month timeframe for states to initiate termination of parental rights procedures; 6) calls for higher standards for taxpayer-funded services (we seek changes to strengthen and broaden this); 7) requires criminal and background checks (we believe relatives and kin should also be subject to these checks); 8) makes explicit that relative caretakers participating in case reviews and hearings would not be considered parties; 9) clarifies when "reasonable efforts" should be made; 10) specifically speaks about preservation of reasonable parenting, including discipline.

Background

Since the passage of the Adoption Assistance and Child Welfare Act of 1980, the ideology of "family preservation" has reigned supreme as an intervention to help at risk children. A professional culture that views "family preservation" as the only legitimate service for children in need was further strengthened by passage of the Family Preservation and Support Services Program (FPSSP) with grant monies for "family preservation." (NCFA opposed FPSSP's passage.) Once again, the ideology that "family

preservation" and "reunification" were the only legitimate ends of the public welfare system was reinforced in speech and in the funding streams from the federal government. While NCFA strongly supports preserving families, it questions "family preservation" programs which define family as biology regardless of the reality many children face. This philosophy does not recognize the reality that there are some families who will never, even with extensive support services, have either the capacity, resources or motivation to provide a safe, healthy environment for their children. Given this culture, it is not surprising that adoption has increasingly come to be viewed as a failure and that fewer and fewer children are benefiting from the permanent, loving, stability that adoption offers.

However, the last three Congresses have begun to take steps to correct the system's blind adherence to "family preservation." The 103rd Congress passed the Howard M. Metzenbaum Multi-Ethnic Placement Act (MEPA) meant to prevent race or ethnicity from being used as an excuse to delay or deny children permanent homes. The 104th Congress passed the adoption tax credit and strengthened MEPA to ensure that the states were not evading the clear intention of Congress. Now, the 105th Congress has undertaken reforms to promote adoption for the thousands of children trapped in foster care. These reforms have been intended to send the clear message that adoption is beneficial for children; that it is the best setting for children who can't safely be returned to their biological parents. These reforms also seek to fiscally support the option of adoption to ensure that federal funding does not provide a perverse incentive against adoption.

It is critical that that the 105th Congress continue this effort by passing reform legislation which clearly sends the message that adoption is no longer to be viewed as a failure to reunify dysfunctional families but as the strongest and most effective intervention available for protecting the safety of some children and for promoting the healthy development of children who are in need.

One of the great achievements of the 105th Congress is the recognition that if adoption is to be promoted it must be supported financially as well as rhetorically. This is necessary to change a culture dominated by the "family preservation" ideology; an ideology which has long been supported by federal rhetoric as well as dollars. NCFA fears that S. 1195, the PASS Act, is not sending this message as clearly as it intends to. For example, the PASS Act has twenty-one times more spending for "family preservation" than it does for adoption bonuses. This is the case even though the adoption bonuses from the House bill were scored as budget neutral because they would move children from public care into adoptive homes. The message of this provision in S. 1195 seems to be that the "family preservation" ideology is to remain dominant. Reauthorizing this provision without data or oversight hearings simply reinforces that impression.

Provisions NCFA Believes Need To Be Amended

There are two provisions of the PASS Act which NCFA believes to be so flawed that, if unchanged, they would force NCFA to oppose passage of the entire bill.

The first provision is Sec. 307, Reauthorization and Expansion of Family Preservation and Support Services. The Family Preservation and Support Services Program (FPSSP) is a capped entitlement under Title IV-B, Subpart 2. Currently, Congress has funded these programs through FY1998. Congress did not authorize these programs beyond 1998 because it wanted the opportunity to review their effectiveness once data was available for evaluation. This data will be available next year. Reauthorizing and expanding these programs before we know the extent to which they are helping or hurting children is unwarranted.

In fact, the preliminary research indicates that the assumption underlying most "family preservation" programs—if given government supported services, most, if not all, families whose children have been abused or neglected can be turned around well enough to parent their children in non-abusive ways—is flawed and, in many cases, is placing children at grave risk. The largest randomized experiment on "family preservation" programs involved the Families First program in Illinois and was conducted by the Chapin Hall Center at the University of Chicago (as reported by Bevan, 1996). The major finding of this study was that these "services do not appear to have a significant effect on the likelihood of further harm to children or placement in substitute care." The finding of the largest randomized experiment conducted on "family preservation" programs concluded that they do not work: "We found little effect of the Family First program on placement, subsequent maltreatment, and rate of case closing, and we have found that effects on family functioning are probably relatively limited."

Chapin Hall's findings are consistent with the findings of the U.S. Advisory Board on Child Abuse and Neglect: "The minimal research conducted in this area has not identified specific behaviors that can single out parents whose action or inaction might end a child's life."(Ibid.) Without the ability to identify such behaviors, "family preservation" services will continue to put children in harm's way.

Here's what "family preservation" means in the life of a real child. In the District of Columbia, a little boy named Billy was removed from his mother at the age of one and one-half suffering from third degree burns and a skull fracture. Shortly thereafter he was returned to his mother's care. One year later, at the age of two and one-half, Billy was removed again. This time Billy was suffering from scrotal swelling, a rectal fissure and bruises. Billy was placed in foster care for one year because it took that much medical care in order for him to recover physically from his injuries. At three and one-half years of age, Billy was returned home for the third time. He is a living victim. And, he is not alone. (Ibid.)

Until Congress holds hearings and reviews the data, there is no way to know how much the "family preservation" ideology, funded in the grants program, has contributed to a system which views adoption as a failure and "family preservation" and "reunification" as the only legitimate service for children. To spend over one and one-half billion dollars on a program which may be returning children to settings where they are being raped and murdered is unimaginable. The reforms contained in S. 1195 are undermined by the

premature reauthorization of Family Preservation and Support Services Program, Title IV-B, subpart 2.

The second provision which would result in NCFA opposing S. 1195 is Sec. 205, Facilitation of Voluntary Mutual Reunions Between Adopted Adults and Birth Parents and Siblings. This provision is similar in title, although less specific in its details, to a number of bills offered by Sen. Carl Levin in previous Congresses. Sec. 205 is so short on specifics that it is difficult to understand what sort of program will grow out of it and where the program may lead. NCFA has two major objections.

First, adoption records and adoption proceedings are part of family law and state court records. Family law is reserved to the states and the federal courts have spoken strongly on this matter. Plus, federal involvement in state adoption records matters has historically been very limited. The U.S. Supreme Court recently refused to hear an appeal challenging a state legislature's action regarding adoption records. At last count, NCFA's review of state laws and regulations show that 48 state legislatures had already addressed this issue and passed legislation to facilitate the exchange of identifying information between parties to an adoption. Sec. 205 could trump state law in this matter and force some jurisdictions to institute a system they have never endorsed regarding an issue of family law which is in their prerogative. NCFA believes that in order to verify a "match" has been made prior to facilitating a reunion, HHS would have to have access to state vital statistics or court records, a greatly expanded federal role in what has always been a state matter. Or, alternatively, HHS would have to create its own databank by gathering states' information. This information is sealed at the state level to protect the privacy of the individuals involved. It cannot be released without a court order, presumably even to the federal government.

Second, and most importantly, Sec. 205 could conceivably lead to the federal government undermining the confidentiality of women who made the difficult decision to plan adoption for their child as well as adopted persons and their families who were given assurances that the adoptive family would be treated like all other families without unwarranted government intrusion. Many people fear the unauthorized examination of registrations or adoption-related data under this provision in light of the well-publicized recent behavior of individuals at the Internal Revenue Service, Federal Bureau of Investigation and the Social Security Administration where individuals have improperly accessed and used confidential files.

Also, there is the question of HHS as the proper location for this activity. NCFA knows of no evidence that HHS seeks this assignment. HHS's other mandated responsibilities include data-gathering under AFCARS. But, HHS is yet to fully implement its Congressional mandate to gather baseline data on foster care and adoption; AFCARS is only partially functional after more than a decade.

As drafted, Sec. 205 requires that this new federal role in state adoption laws be carried out "at no net expense to the Federal Government (emphasis added)". First of all,

this seems unlikely. Secondly, while Sec. 205 clearly states the federal government shall incur no net expense, the provision seems to be an unfunded mandate on the states. It is the state employees who will have to search through vital statistics and court proceedings if the federal government is to have the information it would require to perform these new duties.

The fact that contact must be voluntary and mutually requested is good. The fact that the age of the adopted person is to be 21 is a substantial improvement over some earlier proposals. One of the practical problems is that "any birth parent" would be covered by Sec. 205. This could have the unintended result of a biological father releasing the name and personal history of a biological mother who did not give her consent.

The addition of siblings complicates the situation greatly, because siblings could also violate the confidentiality of biological parents who did not wish to have their identities disclosed. This is the most common loophole around consent at the state level.

Although Sec. 205 specifically says that there must be an agreement not to disclose this sensitive, private and confidential information, as a practical matter, this is unenforceable. Without "teeth," this prohibition is essentially meaningless. Further, even if there were "teeth" and an appropriate penalty, no penalty could restore the good name and privacy of a person. No amount of financial damages and no prison term (if one went to that extreme) would restore a damaged reputation or a person's privacy. Therefore, NCFA's suggestion would be that the sibling section be amended so that no sibling could register unless and until there was proof that the biological parents required to give their consent had done so or, in the instance of the biological parents both being deceased, proof of their deaths.

These comments point out some of the privacy concerns that states address on this issue. But, it must be reiterated that the major flaw that makes this proposal unworkable is that the federal government does not have access, or the right to access, the information necessary to perform the function of a national registry.

Provisions Which Are Critical to Amend or Delete

In addition to the two major issues discussed above, there are a number of issues NCFA considers to be critically in need of improvement. They are as follows.

Sec. 109 leaves out the language from HR 867 which requires that relatives be "fit and willing" if they are to qualify. This language should be incorporated into PASS to send the clear message that relatives must be held to the same standards as all other foster and adoptive families—trained, monitored and evaluated to provide services and care for children. It must be clear that these relatives are willing to accept these responsibilities and are not in any way being coerced into caring for children.

NCFA is very concerned that, under Sec. 306, open-ended entitlement funds from Title IV-E, which are meant to be used for the temporary care of children in need, would be misused. These funds could not only be used by drug treatment centers for addicted mothers but also by homeless shelters and battered women's shelters. In addition, those who are teen parents or suffering from post-partum depression would be able to share open-ended Title IV-E funds meant for the care of children in need. This is another example of the "family preservation" culture or mindset which has plagued foster care for years—to the detriment of children. Essentially, this provision creates a link between the abused and neglected child's foster care funds and the abusive or neglectful parent's treatment. While NCFA believes funds should be available for treatment, what happens is children are kept in limbo for years so that the parent's treatment funds continue. In many cases it is clear that parental rights should be terminated so children can move to stability, but no action is taken because the child is involved in a program requiring continued funding. Treatment plans for parents and children should be separate with due attention to where they overlap. Opening up the open-ended entitlement funds meant to protect children from harm and allowing those funds to be used to support the abusive parents could set a precedent which is used to divert more and more funds from caring for children in need to programs that focus on the parents' problems while leaving the child in the care of the addicted or abusive parent.

Another issue which critically needs to be addressed is the definition of "special needs" children. There are two reasons this needs to be addressed. First, if Congress de-links eligibility for adoption assistance payments and Medicaid coverage from the child's biological parents it will be based solely on the state's definition of special needs. The definition of "special needs" varies from state to state and would lead to the exact same types of children being treated differently based on their geographic location. In addition, since this is an open-ended entitlement, states might well expand their definition of special needs even more to enable more of the children in their care to receive these funds. One of the most important difficulties with the states' definition of special needs is that the majority of states define race or ethnicity as a special need. According to the Howard M. Metzenbaum Multi-Ethnic Placement Act and the Interethnic Adoption Provisions passed last Congress, no state can delay or deny the placement of a child on the basis of the race, ethnicity or national origin of the child, the adoptive parents or the foster parents. Given this law, how is it possible for the federal government to accept definitions of "special needs" based solely on the color of a child's skin? If states are prohibited from delaying or denying a child a permanent home because they are trying to race-match, how can race or ethnicity be a special need like mental or physical handicaps, age, or size of sibling group? Congress has prohibited racism from being used to keep children in the system and it should not allow the states to gather federal adoption assistance subsidies on the basis of a child's race either. To treat race or ethnic background as a handicap is a degrading insult to all persons. NCFA suggests omitting race or ethnicity as a definition of "special needs" states may use to qualify for federal adoption assistance payments.

Sec. 308 would provide $300 million for "innovation grants." If these funds were restricted solely to "reduce backlogs of children awaiting adoption," and if the specifics of

Sec. 308 reflected that goal appropriately, NCFA might well endorse this Section. But, Sec. 308 does not do this. Instead, it contains passages which could conflict with MEPA and it gives broad powers to the Secretary of HHS to use the funds for any other purpose she wishes. As a result, NCFA believes that Sec. 308 and the resulting $300 million authorization should be deleted from S. 1195. Specifically, Sec. 308 (in creating a new Sec. 478 (b) (4)) would allow projects to receive money which are engaged in "Implementing or expanding community-based permanency initiatives [where is the word "adoption"?], particularly in communities where families reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed." The data are clear that the majority of children in the public foster care system are children of color. This means that Sec. 478 (b) (4) would, in effect, be funding initiatives that have as their central goal "ethnic and racial" considerations. The Multiethnic Placement Act (MEPA), has once been passed and once been amended to clearly send a message that denying or delaying the placement of a child for purposes of ethnic or racial matching is illegal. The new Sec. 478 (b) (4) would appear to authorize federal "innovation grants" to thwart the central goal of MEPA. Therefore, (b) (4) should be deleted, even if Sec. 308 remains. An even wider loophole exists in the new Sec. 478 (b (9), in that it would provide that the $300 million could be used for "Any other goal that the Secretary specifies by regulation." This discretion is too broad. What federal official would not welcome a $300 million authorization for "any other goal" they choose to specify? Sec (b) (9) should also be deleted, even if Sec. 308 remains. Finally, NCFA is concerned about part (h), pertaining to regulations. If Sec. 308 remains, part (h) should be amended so that the word "final" is replaced with the word "draft." Congress and the public has a right to review the regulations governing the expenditure of those funds in draft form

Adoption "bonus" payments to states are in S. 1195 and H.R. 867, but NCFA is disappointed that the Senate has reduced the adoption bonus payments – from $6,000 for a child with special needs in the House bill to $4,000 in the Senate bill, and from $4,000 for a child who is a foster child in the House bill to $2,000 in the Senate bill. This calls into question the title given to S. 1195, since "Promotion of Adoption" is hardly signaled when the adoption bonus endorsed by President Clinton and the House is chopped in half for foster children and reduced by a third for children with special needs. We suggest that the House language be substituted in order to improve the financial incentives to promote adoption.

One of the major problems facing the child welfare field, and especially the public system, is that public funds are paying for substandard services and care for children. S. 1195, Sec. 108, drops the language from S. 511 that called for specific guidelines to ensure quality. Sec. 108 also should create a level playing field for all providers of service, and include public agencies. Sec. 108 (2) should be amended to read: "(2) by inserting "ensuring quality services that protect the safety and health of children in foster care placements with public, non-profit and for-profit agencies by requiring that states consider the use of appropriate national accreditation standards which are reasonably in accord with those of national standard setting and accrediting organizations, such as the Council on Accreditation of Services for Families and Children, Inc., to improve the quality of care,

the safety of children in care, and the accountability of providers for the use of public funds. A related concern about quality of care is raised by language in Sec. 206, which provides for a Sec. 479A. Annual Report. Part (b) (3) Measures should be amended by adding after "Secretary" the words "in consultation with child advocacy organizations, state child welfare agencies, and national standard setting and accrediting organizations, such as the Council on Accreditation of Services for Families and Children, Inc.,". Public funds should not be spent for substandard services or services with poor outcomes.

Both S. 1195 and H.R. 867 provide that HHS increase the number of authorized "child welfare demonstrations," broad waivers of certain provisions of Titles IV-B and IV-E, so that states can experiment. Already, 10 states have this authority. Extending the authority to 15 states, especially if the additional 5 states were among those with the highest numbers of children in care, could have the practical effect of waiving requirements for the majority of children in care. NCFA believes that there is no evidence that the existing waivers benefit children by reducing their stay in foster care or moving them more quickly to return home or to an adoptive home. In fact, since these waivers have just been approved we will not have data for some time. Lacking data that the waiver authority has benefits for children, we see no reason to expand the waiver authority.

Provisions Which Are Important to Amend or Delete

There are a number of provisions NCFA believes are important for the Senate to consider.

Both S. 1195 and H.R. 867 contain provisions that would authorize HHS to provide certain specialized types of technical assistance to promote adoption. The House provision, Sec. 12, would authorize $30 million over three years. The Senate provision, Sec. 203, included no authorization of appropriations. We suggest that Sec. 203 be amended to authorize $10 million for each of fiscal years 1998-2000, like H.R. 867.

Baseline data on adoption and foster care, mandated under the 1986 Consolidated Omnibus Budget Reconciliation Act (COBRA), was to have been fully operational by 1991. This system, AFCARS, still does not contain complete data from all the states six years later. We question the broad authority given to HHS to modify AFCARS, as provided for in Sec. 402 and therefore suggest that the second sentence of Sec. 402 be deleted.

The Federal agencies making up the Federal Child Death Review Team, provided for in Sec. 103 (b), should also include the Department of State, since it is estimated that some 13,000 children from other countries were adopted by U.S. citizens in the last fiscal year. Countries of origin for these children have an interest in the death of any child who formerly was a citizen or who may retain dual citizenship. We suggest adding under Sec. 103 (b) [new (d) (1) (A)] this new language: "(vi) Department of State, or the Central

Authority, if any, established under implementing language of the Hague Convention on Intercountry Adoption, if said Central Authority is not part of the Department of State."

The deaths of children who are U.S. citizens, wherever those deaths occur within the boundaries of the states and territories of the U.S., should be reviewed by the teams created in Sec. 103. There appears to be a difficulty in terms of children who die on Indian reservations or Native villages. State Child Death Review Teams do not have these children under their purview, although in terms of practicality, it would appear that these teams should include representatives of Indian tribal organizations or the Bureau of Indian Affairs. Instead, this oversight is left to the Federal Review Team. However, Sec. 103 (b) [new (d) (2) (A)] provides merely that the Federal Team shall "...coordinate with Indian tribal organizations in the review of child deaths on Indian reservations...." We query whether this language means that the Federal Review Team must obtain permission from tribal authorities to investigate child deaths on Indian reservations, including the possible death of a child at the hand of someone who is the chief tribal authority. We also query the omission of Native villages. A related concern pertains to (d) (2) (c), which omits Indian reservations and Native villages and suggest an amendment which would delete the word "and" after "States" and insert instead a comma, and would add after the word "localities" the words "and Indian reservations and Native villages."

Provisions Which Should Be Amended or Deleted

Some issues of concern to NCFA seem relatively simple for the Senate to address.

Sec. 303, on kinship care, raises questions. Rather than reflect the language of H.R. 867, which states that an advisory panel "shall" be appointed, two options are given. The first option, using an advisory board for the Child Abuse Prevention and Treatment Act (CAPTA), a board that was de-funded some years back, is not viable. But even if that CAPTA advisory board existed, it would seem somewhat inappropriate given the fact that many issues other than child abuse and neglect are raised by kinship care. We suggest that Sec. 303 (b) (1) be deleted and that (2) be renumbered as (1) and that the words "Subject to paragraph (1)" be deleted. We also suggest that the word "may" which appears after the word "Senate" be changed to "shall." We further suggest, since a primary purpose of these legislative initiatives is to promote adoption, that the words "persons adopted as children" be added after the words "former foster children."

Both S. 1195 and H.R. 867 have provisions calling for the coordination of substance abuse and child protection services. S. 1195's Sec. 306 would require GAO to conduct a comprehensive study and report on a broad variety of federal and state programs to the Congress no later than 18 months after enactment. H.R. 867's Sec. 13 would require HHS to prepare a report, based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families, and submit it to the Committees on Ways and Means and Finance. We are concerned that the much broader study required by S. 1195 may not be able to be completed in 18 months and, if properly completed, it may be so detailed and lengthy that few will read it. These are two very different sorts of reports. We believe that the Senate should consider deleting Sec. 306 (a) and replacing it with language identical to Sec. 13 of H.R. 867.

STATEMENT OF THE

NATIONAL INDIAN CHILD WELFARE ASSOCIATION

SUBMITTED TO THE SENATE FINANCE COMMITTEE

REGARDING S. 1195

PROMOTION OF ADOPTION, SAFETY, AND SUPPORT
FOR ABUSED AND NEGLECTED CHILDREN (PASS) ACT

OCTOBER 8, 1997

Terry Cross
Executive Director

The National Indian Child Welfare Association submits this statement on, S. 1195, the Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act. Attached is a brief description of the work of our organization.

SUMMARY OF RECOMMENDATIONS

OUR PRIMARY RECOMMENDATION.

Indian Access to the IV-E Programs. Our primary recommendation is that S. 1195 be modified to include an additional amendment to Title IV-E of the Social Security Act, Foster Care and Adoption Assistance, to make otherwise-eligible Indian children placed by tribal courts eligible for the federal entitlement services of that Act and to allow tribal governments to administer these programs. It was an oversight when the statute was written in 1980 that tribal governments and children placed by tribal courts were ignored. The statute has left out a class of children -- Indian children living in tribal areas -- from eligibility for this open-ended federal entitlement program, and Congress must correct this situation.

We have provided Committee staff with a draft amendment which would accomplish this goal, and urge you to adopt it as part of S. 1195. The bulk of our testimony is on the issue of Title IV-E services for Indian children.

OTHER RECOMMENDATIONS.

- Initiation of Petitions to Terminate Parental Rights. Both S. 1195 and H.R. 867 have strict provisions regarding circumstances and time lines under which a state must initiate a petition (or join any existing petition) to terminate parental rights, and both bills provide exceptions to these requirements. Both bills would allow exceptions when, at the option of the state, the child is being cared for by a relative or where the state court or agency has documented a compelling reason for not requiring the filling of the termination of parental rights petition. The House bill -- but not the Senate bill -- would also allow an exception when the state has not provided the family with services deemed appropriate by the state even though it has been determined that reasonable efforts should be made to reunite the family. We believe that the House provision regarding delivery of services is reasonable and recommend that it be retained in the final bill. Indian people are often not served well by state agencies, and we are very sensitive to the possibility of initiation of proceedings to terminate parental rights even though supposedly required services have not been provided to the family.

We also recommend that the bill make provision for an exception to the requirement to initiate a petition for termination of parental rights when the parent(s) are making substantial progress. Examples would be that the parent is making good progress toward recovery from substance abuse or that the parent is at the point where she/he is able to have overnight visitation with the children. Under S. 1195 the petition to terminate parental rights could begin within 1 year of a child entering foster care. We recommend that the bill include as a mitigating circumstance the finding of substantial progress which, if continued, would likely result in family reunification.

- Kinship Care Advisory Panel with Tribal Representation. S. 1195 would utilize the Advisory Board on Child Abuse and Neglect (as authorized under CAPTA) to conduct a kinship care study. If this Board does not exist upon enactment of S. 1195,

the Secretary would establish a Kinship Care Advisory Panel. This panel, in both the House and Senate bills, would include tribal representation. We prefer the House provision which creates a Kinship Care Advisory Panel, as it would guarantee tribal representation -- something not available to tribes on the Advisory Board on Child Abuse and Neglect. Kinship care is widely used in Indian country. We believe the presence of tribal representatives on a Kinship Care Advisory Panel will bring important knowledge and perspectives to the work of the advisory panel, and urge its retention in a final adoption bill.

• Substance Abuse Treatment. We support the emphasis in S. 1195 on substance abuse treatment including foster care payments for children whose parent(s) is in a residential treatment center and a priority for treatment services for caretaker parents. While progress is being made in Indian country in reducing substance abuse (the alcoholism age-adjusted death rates for Natives have decreased from 59/100,000 in 1980 to 38.4/100,000 in 1992), the size of the problem is still staggering.[1]

• Family Reunification. We prefer the provision in the earlier Senate bill, S. 511, which would provide new funding for family reunification services. S. 1195 would not provide new family reunification funding and appears to put a one-year limit on use of Title IV-B, Subpart 2 funds for this purpose. Under current Title IV-B law, family preservation is defined to include family reunification services. We are very concerned that agencies would be prohibited from providing family reunification services with IV-B funds after one year even though there is substantial family progress (e.g., in recovery from substance abuse, in visitation rights).

We support S. 1195's reauthorization of the Title IV-B, Subpart 2 program.

• Training. We support the emphasis in S. 511 on training and want tribes to have equitable access to such training. We are disappointed that S. 1195 does not contain training provisions.

INDIAN CHILDREN IN TRIBAL AREAS ARE NOT WELL-SERVED BY TITLE IV-E

Our statement focuses on Indian children and their limited opportunities to benefit from the Title IV-E Foster Care and Adoption Assistance program (herein referred to as Title IV-E) and what we believe to be an effective solution to this inequity. Our testimony will show that otherwise-eligible Indian and Alaska Native children have not enjoyed the same guarantees for foster or adoptive care services that other children have in this country. Native children are the only class of children without entitlement to foster care and adoptive services in this country. In our view, this issue, as much as any other issue, has impacted the ability of Indian children to secure a sense of permanency after being removed from their homes.

The Title IV-E Foster Care and Adoption Assistance Programs -Services Not Guaranteed to Indian Children under Tribal Jurisdiction

As you know, the IV-E program was enacted in 1980 as a part of major legislative changes to the child welfare system in this country. Enactment of Title IV-E and changes to the Title IV-B Child Welfare Services program under the Social Security Act established new federal protections for children who were removed from their homes and resources to help them gain permanency in their lives. Title IV-E is a permanently authorized entitlement program that provides matching funds to support placements of AFDC-eligible children in foster care homes, private non-profit child care facilities, or public child care institutions. These foster care maintenance payments are intended to support the costs of food, shelter, clothing, daily supervision, school supplies, general incidentals, liability insurance for the child, and reasonable travel to the child's home for visits. Matching funds are also available for administrative activities that support the child's placement and training for professionals and parents involved in these placements. The foster care program had been mandatory for all states that participated in the former Aid to Families with Dependent Children (AFDC) program, and under the new welfare reform law it is mandatory for states that operate a Temporary Assistance for Needy Families (TANF) block grant.

Title IV-E also provides entitlement funds to support adoption assistance activities, and like the foster care program, is mandatory for all states that operated the former AFDC program or the new TANF block grant. Activities which qualify for matching funds include: maintenance payments for eligible children who are adopted, administrative payments for expenses associated with placing children in adoption, and training of professional staff and parents involved in adoption. To be eligible for these matching funds states must develop agreements with parents who adopt eligible children with special needs. Special needs children must be AFDC- or SSI-eligible. However, states may also claim non-reoccurring adoption expenses for children with special needs who are not AFDC- or SSI-eligible. While Title IV-E broadly defines special needs children as those who have characteristics that make them difficult to place, Title IV-E gives states discretion as to the specific categories of special needs children that they will recognize (e.g. older children, minority children, and children with physical, emotional, or behavioral problems).

Another area of support under Title IV-E is the Independent Living Program. Title IV-E was amended in 1986 to include a program that would assist youth who would eventually be emancipated from the foster care system. The funding under this program was intended to support services for AFDC-eligible youth who were age 16 or over make a successful transition from the foster care system to independent living when they become ineligible for foster care maintenance payments at age 18. The program was expanded in 1988 to include all youth in foster care, regardless of AFDC-eligibility. Two years later amendments to Title IV-E gave states the option of providing services to youth up to the age of 21. Some examples of services provided under this program include: basic skills training, educational services (e.g. GED preparation), and employment preparedness.

We have given the above overview of the services provided under the Title IV-E entitlement program to emphasize that these are services not guaranteed to otherwise eligible Indian children in tribal areas.

Indian Children and Title IV-E

While Congress intended for the Title IV-E program to serve all eligible children in the United States, Indian children who are under the jurisdiction of their tribal court do not have an entitlement to this important program afforded other children. The statute provides services only for income-eligible children placed by states and public agencies with whom states have agreements.

We believe it is a drafting oversight that the Foster Care and Adoption Assistance Act of 1980 made no provision for funding for children placed by tribal courts nor for tribal governments to administer Title IV-E funds and seek reimbursement for foster care and adoption services provided Indian children under their jurisdiction. We see nothing in the legislative history to suggest otherwise, and conversations with the office of Representative George Miller, the primary author of the 1980 Act, suggests it was not intentional. During last year's consideration of welfare reform legislation a number of Members including Representative Don Young, Senator John McCain, and Representatives Bill Richardson and George Miller wrote this Subcommittee asking that the bill be amended to provide direct funding to tribes under the Title IV-E statute. Mr. Richardson introduced legislation, H.R. 261, on January 7, 1997 to provide direct funding to tribes under Title IV-E. Unfortunately, the Title IV-E statute is not the only social services related program which has given little thought to services for people living on Indian reservations.[2] We urge Congress to always keep in mind that tribal governments are not subsets of state governments. They are legally distinct and separate from state governments. Federal statutes authorizing services need to make specific provision for tribal delivery systems.

Title IV-E Tribal-State Agreements/Office of Inspector General Report. Only 50 of the 550 federally recognized tribes have been able to enter into agreements with states to provide access to at least some IV-E funds.[3] These agreements primarily provide foster care maintenance moneys only -- not administrative, training, and data system funding. In only 15 of the 50 agreements do states provide tribes with IV-E administration funds and to our knowledge only 2 of the agreements provide any IV-E training funds to tribes. None of the agreements provide funding for information systems development for tribes which are available to states under Title IV-E. Even when agreements are reached, tribes and states realize that a more efficient system would be to fund tribes directly.

A picture of the situation for tribal access to Title IV-E and other federal social service and child welfare funds was provided in a report by the HHS Office of Inspector General (OIG), "*Opportunities for Administration for Children and Families to Improve Child Welfare Services and Protections for Native American Children*", August 1994. The report documented that tribes receive little benefit or funding from federal Social Security Act programs, specifically Title IV-E Foster Care and Adoption Assistance, the Title XX Social Services Block Grant, and the Title IV-B Child Welfare Services and Family Preservation and Support Services moneys.[4] While tribes receive a small amount of direct funding under both of the IV-B programs (about $7.4 million combined in FY1997), there is no direct funding available to tribes under the much larger Title IV-E and Title XX programs.[5]

In order for tribes to receive funding under these programs they have had to rely on states to share a portion of their allocation. This option has been available in only a handful of states and in amounts that are extremely small. Not surprisingly,

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the above-mentioned Office of Inspector General study -- in listing options for improving service to tribes -- *stated that the surest way to guarantee that Indian people receive benefits from these Social Security Act programs is to amend the authorizing statutes to provide direct allocations to tribes.*

With regard to funding passed through from the state to tribes, the OIG report states:

> In 15 of the 24 States with the largest Native American populations, eligible Tribes received neither Title IV-E nor Title XX funds from 1989 to 1993. In 1993 alone, these 15 states received $1.7 billion in Title IV-E funds and $1.3 billion in Title XX funds.
>
> Nine of the 24 States reported that some Tribes in their States received Title IV-E and/or Title XX funds in 1993.
>
> Eight States reported that 46 Tribes received $1.9 million -- .2 percent--of the States' $82 million Title IV-E funds, while 4 States reported that 32 Tribes received $2.8 million -- .3 percent -- of the States' $98 million Title XX funds.

The OIG report discusses the barriers to tribal-state agreements regarding Title IV-E (and Title XX):

• *No explicit authority.* The Congress provided no authority for ACF to award Title IV-E and Title XX funds directly to Tribes; and the law neither requires nor encourages States to share funds with Tribes;

• *State Responsibility for Tribal Compliance with Requirements of P.L. 96-272 for Title IV-E funds is Problematic for States.* Some states are reluctant to enter into Title IV-E agreements with tribes because, under the law, the state would be held accountable for tribal compliance with Title IV-E. States could, if tribal records were out of compliance, lose their Title IV-E and Section 427 incentive funds. We know that this is an issue with a number of states, including Alaska, Arizona, and New Mexico.

• *Disputes between Tribes and States about Issues Unrelated to Child Welfare.* Both state and tribal officials reported that points of contention between state and tribal governments unrelated to child welfare have made agreements impossible to reach. Issues concerning land rights and jurisdiction have thwarted these agreements. At least one state made receipt of foster care money contingent upon the tribe adopting the complete set of state child welfare policies and procedures.

• *Matching Share Issue.* Most tribes will have difficulty providing a non-federal match for Title IV-E funds, and most states do not want to provide it. In some cases where there are tribal-state IV-E agreements, the state has provided the match for foster care maintenance funds.

• *Tribal Lands which Extend into Multiple States.* In cases where tribal lands extend across state borders (e.g., Navajo is in Arizona, New Mexico and Utah) the prospects of concluding multiple IV-E agreements have proved infeasible. Eight federally recognized tribes have lands that extend into multiple states.

The OIG report also notes that state officials with whom they talked favored direct IV-E funding to tribes:

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With respect to IV-E funding, most State officials with whom we talked favored ACF (Administration on Children and Families) dealing directly with Tribes. This direct approach for Title IV-E would eliminate the need for Tribal-State agreements, and because Title IV-E is an uncapped Federal entitlement, would not affect the moneys available to the States. (p. 13).

Tribal Efforts to Provide Foster Care/Adoption Services for Their Children Absent Title IV-E Agreements

While tribes cannot receive Title IV-E funds directly from the Department of Health and Human Services, and have had little success in obtaining IV-E funds through their states, a limited number have been able to put together some stop gap measures to partially fund these services. These attempts to provide foster care and adoption services are not a substitute -- or should not be -- for the reliable funding for services provided to states and children outside of Indian country under the Title IV-E statute. Indeed, because of the limited nature of these alternate resources, tribes may have no choice but to place IV-E eligible children in unsubsidized homes.

Child Welfare Assistance Funds Provided by the Bureau of Indian Affairs (BIA). The BIA has provided a limited amount of discretionary funds -- about $21 million annually -- to a relatively small number of tribes for use as a "resource of last resort". The program provides only foster care maintenance payments and institutionalized care but has no administration, training or information systems funds connected to them. These funds are also in competition with other programs under the BIA Tribal Priority Allocation category. This means that if there is an urgent need to increase funding for other programs such as road repairs, employment and training services, or emergency burial assistance services, Child Welfare Assistance funds may be subject to reduction. The BIA has no funds specified for use in promoting permanency planning as are available in the Title IV-E Adoption Assistance program.

The BIA funds clearly fall short of need. The total number of substitute care placements subsidized under this program for FY 1996 was 3,400 with approximately 60% to 70% of those children estimated to be Title IV-E eligible.[6] Distribution patterns of these funds reveals that approximately 90% of the funds go to Navajo Nation and tribes in just six other states (Arizona, New Mexico, Utah, Nevada, North Dakota and South Dakota).[7] Tribes in California which number 100 (and who do not have IV-E agreements with their state) have not been able to access these limited BIA funds.

Even though the Navajo Nation receives a major portion of the BIA Child Welfare Assistance funds, they still report placing 301 children last year children a year in unsubsidized homes.[8] This illustrates the inadequacy of the BIA funds.

Unsubsidized Homes. Not wanting to leave children in harmful situations, tribes have had to resort to alternative vehicles for protecting children who must be removed from their homes. A common method is the placement of Indian children in unsubsidized homes. This often requires the good will of a family in the community who will commit their personal resources, time and home to a foster care, legal guardianship, or pre-adoptive placement for a needy child. Even though the commitment is made with love, the vast majority of these families find this event to be stressful and sometimes unworkable after a period of time, especially when considering the numbers of Indian families on tribal lands who live in or close to poverty.[9]

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Most tribes will still license the unsubsidized family foster home and provide assistance on foster parenting, even though it often involves shifting scarce child protection funds from one account to another in order to meet emergency and other pressing needs. However, additional services that support the child and foster family which are reimbursable under Title IV-E state programs are not always available, causing additional stress on the foster or pre-adoptive family and putting the placement at risk for disruption.

The lack of Title IV-E funding is also felt at the front end of developing permanency for Indian children. Tribal child welfare programs which are responsible for recruiting potential foster care and adoptive families have difficulties recruiting and maintaining families because they cannot guarantee basic maintenance payments and few support services for the placement. While strong community values and individual generosity often prevail in helping provide temporary homes for needy Indian children, the numbers of homes actually needed often does not meet the need because of limitations on support that can be offered to these families.

Elements of a Tribal Title IV-E Amendment

We recommend an amendment to Title IV-E of the Social Security Act which contains the following elements:

- extend the Title IV-E entitlement to tribal placements in foster and adoptive homes which meet eligibility requirements

- authorize tribal governments to receive direct funding from HHS for administration of the IV-E program

- recognize tribal standards for foster home licensing.

- allow the Secretary flexibility to modify the requirements of the IV-E law for tribes if those requirements are not in the best interests of Indian children

- allow the Secretary to modify IV-E matching requirements in recognition that tribes, unlike states, have not previously received funding to build the type of service delivery systems available to the states, and permit other federal and state funds to be used for any required tribal match

- continue to allow tribal-state IV-E agreements

- develop HHS regulations in partnership with tribes and others with expertise in the child welfare field.

Tribal Administration of Foster Care/Adoption Assistance Program Would be Consistent with Welfare Reform Law and Proposed Adoption Legislation

Our recommendation that the Foster Care and Adoption Assistance Act be amended to provide direct funding to eligible children on Indian reservations and to tribal governments for the administration of the program serves the purposes of the newly enacted welfare reform law and Congressional and Administration interest in adoption legislation.

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a state cannot receive Temporary Assistance for Needy Families (TANF) funding unless it operates a foster care/adoption assistance and child support enforcement programs under Titles IV-E and D of the Social Security Act. Congress explicitly recognized the interrelationship between the effort to end dependence on public assistance with the need for a strong child support enforcement program and an effective system for helping our most vulnerable children -- those living in poverty who require temporary or permanent placements outside their homes. Sadly, the federal entitlement statutes concerning foster care and adoption and child support enforcement have been of very little benefit to Indian children living on reservations.

While tribes are eligible to apply to administer TANF under the new welfare reform law, it does not require them to operate foster care/adoption assistance and child support enforcement programs. It would have been disingenuous to have made these requirements, since tribal governments -- unlike state governments -- have never received annual federal funding from the IV-D and IV-E programs. The welfare reform law includes a new provision which we hope will assist tribes in establishing Title IV-D programs, but we know that development of child support enforcement programs will take time.

Providing direct Title IV-E services to children in Indian country also serves the interest as we understand it of Congress and the Clinton Administration in promoting quicker permanent placement of children. While a few tribes have access to IV-E foster care maintenance payments, even fewer have access to funding to any IV-E infrastructure (training, information systems, recruitment of families) needed to operate the complete range of services for intervention and making permanent placements of children. The HHS Adoption 2002 report states that slightly over half of the children in foster care awaiting adoption who are designated as having "special needs" are minority children. These children are considered harder to adopt. If tribal communities were provided their rightful institutional role under the Title IV-E law, they could be of tremendous assistance in placing Indian and Alaska Native children.

Tribal governments and tribal communities are in the best position to place their children in permanent homes, but they have been thwarted by a federal statute which ignores them. When Indian children have been under the care of tribal programs, as compared to public, private or Bureau of Indian Affairs programs, these children have a shorter length of time in substitute care and are more likely to secure family-based permanency.[10] This last consideration may be the most important in terms of why we should keep Indian children under the care of their tribal communities.

We should now use the opportunity of what apparently will be federal adoption legislation to provide Title IV-E services for Indian children and tribal governments comparable to that provided to other eligible children and to state governments.

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[1] The alcoholism mortality rates of Native people is 6.3 times the U.S. White rate and 5.6 times the U.S. national rate. Fetal Alcohol Syndrome (FAS) for Native people in Alaska is five times the national rate; for Indian people in the Aberdeen (Great Plains) area, it is 4 1/2 times the national average; Indian Health Service residential alcohol treatment centers report incidences of child sexual abuse for females that range from 70-90 percent and for males of up to 50 percent. Source: Department of Health and Human Services FY 1998 budget justification for the Indian Health Service.

[2] In 1981, when several federal block grants were created from existing federal programs, little attention was given to funding for tribes in those block grants. President Reagan, recognizing the

disservice done to tribes under the 1981 block grants, proposed in his January 24, 1983 Indian Policy statement, that the laws be amended to provide for direct funding for tribes under federal block grants.

Subsequently, a February 1984 study commissioned by the Department of Health and Human Services, *"Block Grants and the State-Tribal Relationship"*, documented the inequitable treatment given to tribes in the development of several federal block grants created in 1981. The report stated:

> Congress failed to perceive two things: first, in many cases direct funding to tribes would be nominal, and second that states would be placed in the awkward position of being expected to respond to tribal needs through tribal governments, which do not comprise part of the usual state constituency and states cannot require or enforce accountability. (p. 38)

In addition, the report stated:

> While it seems clear that Indians as state citizens are constitutionally entitled to a fair share of state services, this general principle does not address the issue of the delivery system; that is, the degree to which services on the reservation should be delivered by tribal rather than state and municipal governments. This vacuum in federal law and policy is the source of unnecessary complications in the state-tribal relationship when, as here, federal legislation adjusts the delivery system for federally funded services without clearly addressing its impact on the delivery system relationships at the reservation level. (p. 38)

One of the 1981 block grants, the Title XX Social Services Block Grant, provided no funding for tribes, and some other block grants were available to tribes only if a tribe had received funding the previous year from one of the categorical programs included in the block grant. This excluded most tribes.

[3] Fiscal year 1997 data on state-tribe Title IV-E agreements compiled by the Children's Bureau under the Department of Health and Human Services, February 24, 1997.

[4] Since this OIG report, HHS has amended its regulations regarding tribal access to the IV-B programs, and the result has been an increase in tribal IV-B funds.

[5] In a very small number of situations, Indian children have received IV-E payments without a tribal-state agreement where a tribe has declined to exercise its jurisdiction and the child has been placed through the state system.

[6] Data for FY 1996 provided by the Bureau of Indian Affairs, Division of Social Services in Washington, D.C., February, 1997.

[7] Ibid.

[8] Interview with Ms. Delores Greyeyes, Director of the Navajo Nation Indian Child Welfare Program, February, 1997.

[9] Indian poverty in reservation areas is 3.9 times the U.S. average (50.7% vs. 13.1%) (1990 Census). The poverty rate for Indian children in reservation areas is 60.3%, or three times the national average (1990 Census).

[10] *Indian Child Welfare: A Status Report, Final Report of the Survey of Indian Child Welfare and Implementation of the Indian Child Welfare Act, and Section 428 of the Adoption Assistance and Child Welfare Act of 1980*, prepared by CSR, Inc. in Washington, D.C. and Three Feathers Associates in Norman, Oklahoma, April 18, 1999.

ATTACHMENT

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The National Indian Child Welfare Association (NICWA) provides a broad range of service to tribes, Indian organizations, states and federal agencies, and private social service agencies throughout the United States. These services are not direct client services such as counseling or case management, but instead help strengthen the programs that directly serve Indian children and families. NICWA services include: 1) professional training for tribal and urban Indian social service professionals; 2) consultation on social service program development; 3) facilitating child abuse prevention efforts in tribal communities; 4) analysis and dissemination of policy information that impacts Indian children and families; and 5) helping state, federal and private agencies improve the effectiveness of their services to Indian people. NICWA maintains a strong network in Indian country by working closely with the Affiliated Tribes of Northwest Indians and the National Congress of American Indians, as well as having members on the Indian Child Welfare Committees of both organizations.

VOICE FOR ADOPTION

Speaking Out For Our Nation's Forgotten Children

TESTIMONY SUBMITTED TO THE

COMMITTEE ON FINANCE

U.S. SENATE

concerning

S.1195, PROMOTION OF ADOPTION, SAFETY AND SUPPORT OF ABUSED AND NEGLECTED CHILDREN ACT (PASS)

October 8, 1997

Voice for Adoption (VFA) is pleased to have the opportunity to submit testimony for the hearing record on S.1195, the Promotion of Adoption, Safety and Support or Abused and Neglected Children (PASS) Act, to the Committee on Finance. VFA is a coalition of more than thirty-five major national and state special needs adoption organizations and includes professionals, parents, and advocates committed to securing adoptive families for waiting children. Our aim is to ensure permanent, nurturing families for our nation's most vulnerable children and to strengthen support for families who adopt.

We are encouraged that S.1195 is consistent with our own goals to ensure permanent placements for vulnerable children. Toward that end, we wish to express our appreciation to the sponsors of the legislation for their support of the bill. Two issues addressed by S.1195 are of primary importance in our collective effort to improve national policies on adoption: the extension – the delinking – of federal Title IV-E adoption assistance and Medicaid to all children with special needs, not only to those who enter care from AFDC-eligible families; and the prohibition against the creation of geographic barriers to the adoption of children across state and county lines.

"Delinking" Eligibility for Adoption Assistance

Voice for Adoption supports legislation, as provided in S.1195, to make all special needs children eligible for federal adoption assistance, by delinking eligibility for adoption assistance from AFDC/poverty status.

This important procedural change in current federal law is required or many children without permanent homes will never be placed in adoptive homes. Of the tens of thousands of children in this country waiting in foster care for families who will adopt them, it is estimated that 80 percent are children with special needs that make them harder to place – disabled children, older children, minority children, or sibling groups.

Recent data show that the proportion of legally free children who have special needs is increasing. One factor is the growing number of children orphaned by AIDS.

Equity for Children

All special needs children should be given the same opportunity to receive a permanent, nurturing family. It is inequitable to treat differently children who both have special needs but whose original family's economic status is different. By delinking adoption assistance and basing eligibility solely on a child's special needs status, all children with special needs will be available for adoption on an equal footing.

It is unreasonable to establish a child's eligibility for adoption assistance based upon the economic status of that child's parents at the time the child entered care, especially since parental rights have been terminated and the child is free for adoption. To establish a child's eligibility for adoption assistance on whether the child came into care at a point when its family was receiving or was eligible for AFDC is to be tied to an accident of circumstances which should be moot.

Delinking will make all special needs children eligible for Medicaid, which is important in some states where health care coverage is not extended to children adopted with state assistance. In addition, children who are covered by Medicaid now can lose that coverage if their adoptive family moves to another state. Because of this situation, caseworkers report that prospective adoptive families will only take IV-E eligible children in order to protect themselves from costly medical expenses.

In cases of children who are not now eligible for IV-E adoption assistance, state subsidies may not always be available. In some states, a child must first go through a waiting period to be eligible for a state subsidy. Because some children are placed soon, without a waiting period, because of dual-tracking/concurrent planning, these children are not obliged to wait and therefore cannot be made state-eligible.

Cost Savings

Administrative costs will be saved by delinking adoption assistance eligibility since agencies will no longer be required to conduct time-consuming, lengthy investigations to establish eligibility based on financial situation. Under current law, case workers expend unnecessary hours, going through procedural hoops, to determine IV-E eligibility for children waiting to be adopted. Caseworkers report that without IV-E adoption assistance and Medicaid eligibility, families are reluctant to take the risk of adopting children who will likely need costly medical care and other services. Therefore, children who are ineligible are less likely to be placed in permanent homes.

Placing a foster child in adoption saves the government an average of $40,000 per child. By making all special needs children eligible for adoption assistance, children will spend less time waiting for adoptive families. A limited pool of adoptive parents is available for children with special needs, parents for whom adoption assistance can make a difference to help with the special services and supports these adopted children may require. Even with a full subsidy, adoption is cost effective. Still, adoption, even with a full subsidy, is cost effective. A 1993 study showed that families who adopted 40,700 children with federal assistance between 1983 and 1987 saved the federal government $1.6 billion in long-range costs.

Stories of real children and families: Delinking

Shelley

Shelley was born in 1985 in Texas. She is the fourth of six children born to a family with a history of both drug and alcohol abuse. The family eventually moved to Ohio. While investigating a neglect claim involving an older sister, case workers learned that Shelley was being sexually abused by her father. She also had cigarette burns inflicted by her mother. Shelley was placed in a foster home for a year but was then returned to her parents when she was four, remaining with them for six months. The family was

heavily involved with drugs during this time. The sexual abuse resumed and Shelley was raped by her father and by other men connected to the family. Shelley then went into another foster home. All this took place during the first five years of Shelley's life.

Shelley spent the next four years in three foster homes. Ultimately she was adopted. At the time of this adoption, Shelley was eligible for federal adoption assistance. After Shelley exhibited many problems – divisive and manipulative behavior, distrust and inability to form real attachments – the family decided they could not satisfactorily care for Shelley, and the adoption was terminated. Shelley was placed in another foster home and began treatment for her attachment disorder.

When she was ten, Shelley's therapist located a single parent who was interested in adopting Shelley. This new prospective adoptive mother was also a therapist and had a great deal of knowledge about treating adopted children with attachment disorders. Shelley has been in this foster home for a year and the match has proven beneficial to both parties. Shelley is slowly learning to trust, is making friends and her school work is improving. Shelley wants to be adopted into a permanent family.

Because of the financial circumstances of the previous adoptive family, Shelley is no longer eligible for federal foster care or adoption assistance, nor is she eligible to SSI because of recent interpretations of the eligibility criteria. If adopted, she would no longer be eligible for Medicaid. Shelley may never become a member of a permanent adoptive family because she is no longer eligible for federal adoption assistance.

The Baldwins

Three brothers, ages 4, 6 and 8 were removed from their birth home because of abuse and neglect, visible from bruises and burns. After three years in foster care in two foster homes, the brothers were sent to the Baldwins, a new foster home, and told that the Baldwins were going to adopt all of them and become a family.

The children have obviously suffered and exhibit emotional scars. Both of the older brothers demand lots of adult attention and exhibit high levels of insecurity. There are many other known problems that will require treatment. The oldest brother has broken teeth that will require orthodontic work. The middle child was in a special education program in kindergarten because no one could understand his speech. He was later diagnosed with Attention Deficit Disorder (ADD). The youngest boy presents the greatest unknowns. He did not speak until age four, was also diagnosed with ADD and is currently repeating the first grade.

Originally, the Baldwins wanted to adopt one or two children, but were glad to welcome three sons with the promise of financial assistance. The Baldwins are both teachers with moderate fixed incomes. After being placed in the Baldwin's home for

an entire year, it was revealed that the boys are not eligible for Title IV-E federal adoption assistance because the monthly income of their birth mother (for who all legal ties with the boys have been legally severed) made $79.89 too much the month the boys were removed from the home the final time. The most the county could offer in state adoption assistance was $50 to $60 per month for all three boys.

Without federal subsidies, this adoption may not happen. If the Baldwins adopted these boys without federal assistance, the Baldwins would have to spend $20,000 or more a year for health benefits and other costs.

Three Siblings

The children are currently ages 12, 13 and 15 and have been with the Hayes family for the past two years as foster children. They came into the foster care system in 1986 because of neglect. They have been returned home, replaced in foster care, placed with a guardian, adopted, experienced the death of their adoptive mother and replaced into a foster home. They have moved at least 4 times in the last 10 years.

The Hayes would very much like to adopt the children. The children are not eligible for federal foster care or adoption assistance because the income of their last adoptive home was too high to qualify. However, while receiving state-supported foster care, the children have also been receiving health care benefits under Medicaid. If adopted, they would not be eligible for federal adoption subsidy and could lose their Medicaid benefits. Michigan does not extend Medicaid coverage to children who receive state-only adoption assistance. Mr. Hayes is self-employed and therefore family insurance coverage is paid completely by him. To add another three persons to the coverage is prohibitively costly.

Ineligibility for federal adoption assistance and Medicaid often prevents a foster home from turning into a permanent adoptive home for children.

Tommy

The birth mother of Tommy, born in 1992, is in the Navy, working and not eligible for AFDC. As a single parent receiving no child support, she struggled to care for her son who was diagnosed with autism and pervasive developmental delays. Tommy requires speech therapy, physical therapy and occupational therapy. She struggled to find appropriate child care. Finally, she made an adoption plan and relinquished him to Catholic Charities in November of 1996.

The search to find appropriate parents for Tommy was nationwide and took several months beginning in April 1996. A family was found in Michigan. They came to San Diego to meet the birth mother and Tommy in November, 1996, and took Tommy back to Michigan. He has been in foster care with the Michigan family since that time. In

May, 1997 the family was ready to move towards finalizing the adoption. Catholic Charities applied for the federal adoption assistance program before moving toward finalizing the adoption. Unfortunately, Tommy is not linked to federal eligibility criteria.

In order for the federal adoption subsidy to be approved, Tommy must have medical coverage. He currently has Medicaid in Michigan and Medi-Cal in California, but this coverage is linked to his foster care status and he will lose the coverage if his adoption is finalized. Catholic Charities thus applied for SSI. The adoption is now on hold because the county will not approve adoption assistance without medical coverage and the SSI process can take up to 6 months or longer.

Meanwhile, the birth mother has been served with notice to appear in court to pay child support for all the money paid by the county for Tommy's foster care. The court documents report that unless the adoption is finalized she is responsible and the adoption cannot be finalized until Tommy has medical coverage. Delinking adoption assistance would have allowed Tommy to become eligible for adoption assistance without the attendant administrative delays and financial blockades.

Geographic Barriers to Adoption

An important issue addressed by S.1195 is the elimination of barriers to the placement of children in interstate and inter-county adoptions. Our objective is to place waiting children with appropriate families. The removal of the geographic barriers to adoption means that a state, or a county, cannot discriminate against a placement simply because it would occur in another jurisdiction.

From the county level to the state level, and regionally, there is a resistance to place children outside of one's immediate jurisdiction. States and counties hang on to families in their jurisdictions, in case a child comes into care needing a home, while children are waiting in other jurisdictions for families to be found. Voice for Adoption supports provisions in S.1195 which prohibit a state from refusing to place a child because of a geographic barrier imposed by the agency.

Adoption specialists report that agencies placing children for adoption often fear out-of-state adoptions because of a lack of trust that children will be properly cared for in another state, or county. County and state agencies sometimes force prospective adoptive families to agree not to look outside the jurisdiction for one year after a home study has been completed, in order to save themselves and if the family does look elsewhere they are penalized by having to pay the costs of the home study. A new initiative in Ohio, called ADOPT OHIO, attempts to eliminate geographic barriers to adoption between counties in the state. ADOPT OHIO requires uniform home studies throughout the state which raises the comfort level of caseworkers in placing children across county lines.

Adoption exchanges, which register children who are waiting to be adopted, report that many states refuse to register children for homes might be found. The success of these adoption exchanges suggests that greater usage would result in more successful placements of children if agencies were willing to place children across state lines. Statistics from The Adoption Exchange in Denver, Colorado show the preponderance of individuals from various states who use adoption registries. Of those responding to the information available from The Adoption Exchange, 63% are people who do not live in the same state as the child. Of those individuals, 64% have completed home studies and are ready for placement, yet only a small percentage of those 64% ready families actually get to adopt.

The Ocean State Adoption Resource Exchange (OSARE) in Pawtucket, Rhode Island notes that a small state must enter into interstate placements, but that there is a reluctance to make interstate adoptions, regardless of the fact that children can be placed in either Connecticut or Massachusetts and still maintain whatever relationships in Rhode Island might be necessary for the child's well being. Only 3 Rhode Island children were placed out of state in 1996. Last year, 90 waiting RI children were registered with OSARE. The state child welfare agency registered only 55 families as potential homes for these children. OSARE registered an additional 110 out-of-state families who were waiting to adopt. Despite this 2 to 1 ratio of out-of-state to in-state families, only 35 in-state adoptions and only 3 out-of-state adoptions occurred. According to OSARE, while 55 Rhode Island children remained in foster care, the state said "no" to 107 out-of-state families.

Stories of real children and families: Geographic Barriers

Allison, Beth, Jimmy and Jarod

Allison, Beth, Jimmy and Jarod, siblings aged six, eight, ten and eleven, were freed for adoption in October 1996. Because the siblings had a close relationship with each other, their caseworker hoped to find a family that could adopt all four children. An adoption agency was able to send the caseworker home studies of four out-of-state families who were interested in adopting all four children. However, the state child welfare agency pressured the worker to select in-state families for the children. Over a period of six months, no appropriate in-state families could be located to adopt all four children. Thus, the sibling group was split. Jimmy and Jarod were placed with one family and another family has been identified for Allison and Beth. Had the state not pressured the worker to locate only in-state families, the children could have remained together.

David

David, a nine year old boy with significant emotional special needs, was registered with an adoption agency in Rhode Island in December 1995. After an extensive search for

a family, an appropriate out-of-state family was identified in September 1996. Therefore, David's worker requested permission in October from the state child welfare administration to make an out-of-state placement. Permission was denied in November due to cost to the agency for placement and post-placement services.

The worker proceeded to document all that she had done to recruit in-state families, in an effort to prove that there were no appropriate resources in Rhode Island. In December, the worker finally received permission to proceed with placement of David out of state. When she contacted the out-of-state agency, she learned that the family had been placed with another child and therefore was no longer available. An additional four months passed before another, less ideal family was found for David.

Two-year old Twins

A potentially adoptive, bi-racial family from Indiana is encountering unnecessary and burdensome delays in attempts to adopt two-year old, bi-racial, AIDS-exposed twins from Ohio. The twins, whose birth mother is a prostitute, were crack and alcohol addicted at birth. The prospective parents made two six-hour trips to Ohio (one over a three day weekend) and clearly bonded with the twins. Many in-state adoptions move to finalization after a single visit, a supervisor from the county agency in Ohio has questioned the commitment of this Indiana family, and is forcing them to return for yet another visit. This supervisor has acknowledged that she has no other family identified and that the Indiana family is a proper family but insists that the family return to Ohio and told the family that placement will take longer. These children were matched back in April 1997. Normal placement time is 1 to 1.5 months in Ohio and this process has been going on for 6 months.

Michael and Antoine

Michael and Antoine, African-American brothers aged four and six, were freed for adoption in March 1996. Their worker could not find a family in-state to meet the needs of the boys and therefore expanded her search geographically. In February 1997, she found a match for the boys out-of-state. She requested permission from the state child welfare agency to proceed with the placement and because of paperwork and administrative delays, permission was not given until July 1997. As of September 1997, the caseworker still did not receive approval from the family's state. After seven months of waiting, the family withdrew their application in late September for unknown reasons. The search for a family for the boys has begun again. They have now been waiting nineteen months for an adoptive family.

Funding for Services

Voice for Adoption supports provisions in S.1195 which would direct reinvestment of the state subsidy savings to child welfare services. The per child adoption bonus proposed

in the legislation will also increase the availability of funding for services, including post-adoption services. Changing time-tables is important, but without service money, the impact of procedural reform is slight. While we regret the elimination of provisions in the earlier Senate bill, S.511, which would have allowed Title IV-E foster care funds to be used for up to one year to pay for services, we believe that the provision for funding of child welfare services in S.1195 is essential.

Post-adoption services are essential for many families adopting special needs children. Families who adopt children who have been neglected, physically, emotionally, and sexually abused continue to need support following adoption. These are children who come with problems, the consequences of which do not go away with adoption.

Adoptive parents need a range of services. These may include respite from parenting very challenging children, and continued educational workshops as different issues surface in the years following adoption, as well as specialized medical and mental health services for their children. All need to be obtainable. The availability of post-adoptive services can mean the difference between a child remaining with an adoptive family or going back into another, more costly foster care placement.

Without support for services, our policies will focus myopically on timetables and procedures and continue to hamper the development of the services communities need to protect children and support families. We stand ready to work with Congress on overcoming barriers to ensure that children receive the families they need.

For further information, please contact:

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TESTIMONY BEFORE THE
UNITED STATES SENATE
COMMITTEE ON FINANCE
WEDNESDAY, OCTOBER 8, 1997

I am Valora Washington, program director for the Families for Kids Initiative of the W.K. Kellogg Foundation of Battle Creek, Michigan. I appreciate this opportunity to share the experiences of our community partners working to place children in permanent homes in 11 states.

The W.K. Kellogg Foundation was established in 1930 "to help people help themselves through the practical application of knowledge and resources to improve their quality of life and that of future generations." Its programming activities center around the common visions of a world in which each person has a sense of worth; accepts responsibility for self, family, community, and societal well-being; and has the capacity to be productive, and to help create nurturing families, responsive institutions, and healthy communities.

FAMILIES FOR KIDS IN BRIEF

Families for Kids (FFK), initiated by the Kellogg Foundation in 1991, has as its goal to achieve permanency for children who are waiting in foster *care and who will not be returning home.* Recognizing that the problems facing these children are deep and systemic, in 1993 the Foundation made a number of grants to locations throughout the United States to engage in a visioning process which would involve the broad community in addressing the barriers to finding families for children. In 19 FFK sites, more than 14,000 people were convened to discuss the problems and design solutions to them. Of these 19 sites, 11 were selected in 1995 to implement their plans for increasing the opportunities of children in the child welfare system to find permanent families. Grants averaging $3 million dollars over three years were awarded to: Pima County, Arizona; Mississippi; Massachusetts; Kent County, Michigan; Montana; Kansas; New York City, New York; North Carolina; Washington; North East Region of Ohio; and South Carolina.

In addition to the site/geographic grants, a number of other awards were awarded to catalyze key systemic reforms. These include grants to: improve state courts; inform policy; strengthen the voices of communities of color; encourage employer-paid adoption benefits; and strengthen the voices of families and communities.

The overarching objective of Families for Kids is to ensure timely permanency for children in the child welfare system. Of special interest are those children who will not return to their biological families and are waiting for permanency. In general this is defined as children who have been removed from their families due to abuse or neglect and who have been residing in substitute care for more than one year. There are children who are difficult to place, who have typically lingered in the system for many years. Some never find homes and examples "age out" when they turn 18.

To this end, the initiative addresses legislative, judicial, administrative, and practice changes, which emphasize providing permanency to children in a more accountable manner. This entails earlier goal setting, speedier processes, more efficient services, increased support of families, and more culturally sensitive programs. In addition, sites are paying attention to using data for improved planning, management and accountability.

FFK is guided by a simple but powerful *vision of change*: "A permanent family for every waiting child." To achieve this vision, the Foundation and its many community partners are aggressively pursuing *two goals.* (1) We are working to reduce the large backlog of waiting children that has developed because more kids are entering the system without a corresponding increase in the number of children placed in permanent homes; (2) At the same time we are working to ensure systemic changes so that children entering these systems in the future can count on five *outcomes*:

- Only one year of waiting before permanent placement.
- Only one, stable foster care home.
- Only one, family-friendly assessment process to determine need.
- Only one caseworker or casework team.
- Comprehensive support for their caregivers.

The reference to "only one" in these outcomes – or desires results – of system reform is important. It is designed to change the lives of kids by hastening their passage into permanence and improving the odds that their families stay together. It also offers reformers a way to measure progress. The more these aims become part of the business practices of child-serving agencies and courtrooms, the more Families for Kids will succeed.

We also are operating according to these basic *values*:

- Put children's needs and interests first.
- Do what we know works; solutions are available now.
- Engage families and communities in decision making.
- Value and practice diversity.
- Forge partnerships between public, private, and community organizations.
- Reform comprehensively, attacking many problems at once.

In this testimony today, I will present an overview of FFK and share lessons learned in three areas: how we can best promote adoption, accelerate permanent placements, and increase accountability.

To make progress in these three areas and to assure child safety, we believe that the FFK vision of change, goals, values and outcomes must interact synergistically to achieve lasting system reform. Consequently, evidence of activity to support one area (i.e. promoting adoption) necessarily relates to the other areas (i.e. child safety) as well.

PROMOTING ADOPTION

But enough about goals and objectives. Let's focus a minute on the impact the system is having on kids lives, and let's look at some programs that are affecting positive changes. The case for the promotion of adoption is so compelling that we often wonder why our action lags so far behind the need. The story of Lovely and Sasha illustrates this tragedy: These pretty sisters waited three-and-a-half years to be adopted. In the summer of 1994 when Lovely was five and Sasha was 2 – half their lives ago – they were removed from their biological family because of neglect. What followed was a series of foster homes that left them with little more than wistful dreams of what might be.

Unfortunately, Lovely and Sasha's story is not an exception. Between 1982 and 1992, the number of children living in foster care nearly doubled. Between 1988 and 1993, the growth was particularly dramatic. Today, nearly half a million kids are in the care of the child welfare system. Most are living in foster homes. At least 100,000 of these kids -- a primary focus of FFK concern -- cannot return to their biological families, but have no home to call their own.

And children are not only entering the child welfare system in greater numbers, they are staying longer. Those lucky enough to be adopted are likely to first spend 3.5 to 5.5 years in a limbo of temporary placements – just as Lovely and Sasha did. Many others, even less fortunate, will stay in foster care their entire childhoods and exit the system at age 18 without ever having experienced a nurturing, permanent home.

While the situation for all waiting children is tragic, it is appalling for children of color: they make up more than half of all waiting children nationally – nearly twice their

representation in the general child population. The urgent need of waiting children of all colors across the nation is what prompted FFK to action.

Why would two attractive, healthy children like Lovely and Sasha have to spend three-and-a-half precious, formative years drifting? There are many answers to this question. Born African-American, Lovely and Sasha were removed after infancy from a five-member sibling group. In a culture where the demand is for white infants without siblings, Lovely and Sasha became "special needs" children, simply because there was less demand for them (the "special needs" designation also includes kids with physical, mental, or emotional handicaps). In fact, two of the girls' younger siblings were adopted earlier, and an older brother is still waiting for a family. And, still there are other barriers:

- Legal delays and the slow process of the termination of parental rights.
- The child welfare system is fragmented and uncoordinated.
- Children are "lost" in the system because it lacks accurate child tracking data and automation.
- Timely, consistent decision making is often not supported.
- Child welfare workers are often overworked and undertrained.
- High staff turnover causes lack of continuity in casework.
- Placement options for waiting children may be limited.
- Families and communities have little power in the system.
- The future of fragile biological families may be hard to predict.
- Cultural sensitivity to families and children is often lacking.

FFK, in several sites, uses a variety of incentive strategies to promote adoptions. For example, Massachusetts implemented performance-based contracting for adoption services in 1995. This contracting system and payment methodology is based on the completion of specific adoption milestones. The payment methodology provides incentives for timely placement with adoptive families. Additionally, three particularly promising strategies are:

- Use of vouchers to make services more flexible and available.
- Expanded use of employer-paid adoption benefits.
- Development of family advocacy groups to sustain reform.

VOUCHERS

Imagine this: You are a child who was placed in foster care in Massachusetts, your foster family moves to Texas, and decides -- thank goodness! -- they want to adopt you. But the papers have to be signed in Massachusetts, and your soon-to-be parents can't afford the trip. Will you ever be adopted? Or you are a child whose foster mother wants to adopt you but doesn't have enough money to finalize her divorce from the man she's been separated from for more than 10 years. The issue has to be settled before a judge signs your papers. Or you are a child of pre-school age whose foster-parent, a single mother, does not earn enough at her job to afford quality day care – but if she collected welfare to stay home and take care of you, she would be prevented from adopting you. Children in such situations are "in a total Catch-22."

The Massachusetts Voucher Program helps children and families over those last barriers by paying for the legal costs, the day care, the plane ticket to Massachusetts so the child's adopting parents can sign the legal papers, and a host of other creative solutions to removing barriers to permanence.

Any child who has a goal of adoption or guardianship is eligible for the Voucher Program. In the program's first 18 months, of 208 requests filed, 202, or 97 percent were fulfilled. There is little or no red tape and fulfillment of requests can be expedited, sometimes with same-day service if the need is particularly urgent. With an estimated yearly allocation at $100,000, in its first year, the program helped children from four pilot site areas. Last year, it expanded to all of Massachusetts.

EMPLOYER BENEFITS

Paid time off and reimbursement for adoption-related costs are two key benefits that not only give financial help, but also show employer support for all parents, not just birth parents. The National Adoption Center (NAC) is working with the W.K. Kellogg Foundation to increase national availability of adoption benefits. Adoption costs average $12,000 for private adoptions; public and special-needs adoptions cost little or nothing. Less than half a percent of any employee population ever uses the option, making for a low-cost fringe benefit. NAC statistics show average fee reimbursement ranges from $2,000 to $6,000, with an increasing number of companies offering up to $10,000. Legislation effective as of January 1, 1997, exempts these employer-supported payments from federal income tax.

While most biological parents can depend on a variety of tangible child-care benefits offered by their employers, most prospective or actual adoptive parents cannot. Through our Adoption and the Workplace project, 30 employers have made new or enhanced adoption benefits available to 500,000 employees.

FAMILY ADVOCACY GROUPS

To promote adoption and to give families and children a stronger voice in matters affecting their lives, all Families for Kids communities are developing family advocacy groups. Two such groups – the Mississippi FFK's Sun Team and Ohio FFK's Advocates for Children Today (ACT) – have already helped to speed foster-kids' placement in permanent families. The groups not only inform legal and court reform, but they also advocate for children's needs by offering parents emotional support and helping them learn advocacy skills.

Practical assistance is available to kinship groups, foster parents or prospective parents. For example, ACT helps families in dealings with the state and agencies (foster parents often must wait months to receive financial help due them from the state).
ACT also helps parents help themselves by boosting their confidence in knowing and asking for their rights.

Other FFK sites recognize the need to help children not only achieve but also sustain their permanent placement families, to help both adoption and reunified biological families stay together. For example, funded in part by South Carolina for Kids, Children Unlimited maintains a large information-and-referral data bank to link families with doctors, therapists, child care, literature, even camps that will take children with physical or mental disabilities. Other services include family therapy and support groups, respite care, and 18 weekend retreats each year during which families work on anger management, trust, socialization, and communication skills.

ACCELERATING PERMANENT PLACEMENTS

In FFK, an unwavering commitment to permanence within one year drives reform. To ensure only one year to permanency, FFK teams have created sophisticated marketing strategies to recruit adoptive families; made significant advances in court and legal reform; and supported concurrent planning, among other reforms.

MARKETING AND RECRUITMENT

Many FFK sites have put together highly successful, child-specific marketing campaigns that can dramatically increase the number of families interested in adopting specified children. The photographs, voices and stories of specific waiting children are key to all the campaign materials. A few examples:

- Marketing research that the state of Kansas, a partner of Kansas FFK, had commissioned identified nine target groups that actually had adopted in the past and were therefore most likely to adopt in the future. Each group has been described in detail according to key indicators like ethnicity, employment, geographical area, habits, and media preferences. Armed with this information, FFK tailors messages to reach these different groups in the places they frequent and through the media products they prefer to consume.
- Mississippi Families for Kids developed the "Fortune 500 Churches," a network of African-American and white churches that "adopt" social workers and assist them with family recruitment.
- South Carolina Families for Kids has created the African-American Adoption Center which provides personalized, streamlined services to people interested in adopting African-American children. Affiliated with One Church, One Child of South Carolina, and the Reid House of Christian Service, the Center recruits, assesses, approves, and refers adoptive families to the State Department of Social Services and, as appropriate, other licensed child-placing agencies.

SPEEDING COURT ACTION

A child's life in foster care begins and ends in a courtroom. Often this is the scenario: First, a judge decides whether to remove the child from the biological family; later, a different judge determines whether the child should return home or stay in state care; months later, another judge is likely to review the progress of the child's permanency plan; one or more extensions may be granted before the review is held; in a year or two or four or five, another judge may order the termination of parental rights; and later if things go well, a judge will "finalize" an adoption. Judges accustomed to rotating assignments or circuit riding find this perfectly normal. But for children waiting in a series of foster homes, it can be an emotional nightmare.

To get the change process moving in South Carolina, the state's Families for Kids leadership team established a committee which brought together the best thinking from social service, judicial, and legal systems. The directive created a major shift in perspective for committee members and led to a set of recommendations that now forms the core of South Carolina's new Child Protection Reform Act of 1996. The Act focuses attention on children's need for stability and permanency, encouraging the reunification of biological families if possible, but providing for speedy placement of children into new, permanent homes, if not. Specifically, the law requires judges to explain family rights and responsibilities as well as possible legal consequences immediately; it requires agencies to develop more detailed treatment plans and allows judges to impose penalties against agencies not carrying out treatment plans; makes it easier to place kids with relatives during court processing and allows for child visitation by family members. It streamlines hearing time frames; requires the completion of permanency plans within a year and requires judges to decide about permanency within a year. Additionally, it expands grounds for the termination of parental rights, empowers judges to terminate parental rights sooner, and disallows "eleventh hour" appeals by parents.

In other examples, FFK sites have:

- streamlined court processes by reducing time frames for abuse and neglect hearings and related investigations (WA, SC, OH); improved compliance with the 12-month standard of judicial reviews – or even exceed these requirements (SC, AZ); changed the legal requirements for termination of parental rights (MT, NYC); reduced the number of changes in court venues (MS, MA); made courts more uniform in operations (WA, MA, MS); and embraced the "one case/one judge" principle by lengthening judicial assignments, improving court calendaring, and exploring the development of family courts (WA, MA, AZ, OH, and NC).
- Actively engaged in establishing far-reaching changes in practice, including revising administrative codes in accord with the Indian Child Welfare Act of 1978, State

Tribal Agreements, and judicial rulings; and implementing standardized risk assessment systems (WA, SC, NYC and MA).

CONCURRENT PLANNING

Another tool to accelerate permanent placements is concurrent planning. Barbara Fenster's family came into contact with concurrent planning one day, when Adam – her birth child – was young. While they were standing in the popcorn line in a movie theater,, a boy about Adam's age approached Barbara and posed one of the most amazing questions ever asked of her. "He asked me to be his foster mother," says Fenster, the communications director for Washington Families for Kids. "He said his foster family was moving away, and he had no place to go except a group home. He thought Adam looked happy and I looked like a nice mom, so he wanted to be part of our family. Incredulous, Barbara's family became foster-adoptive parents because they wanted to remedy this situation.

"Foster-adoption" also is called "concurrent planning" because two things are being planned at once for the child: a return to the biological family, if possible, and a new permanent home, if such efforts fail. Adoption is never guaranteed for foster-adopt parents; for this reason, agencies that recruit foster parents for concurrent-planning situations look for people willing to commit to the child's best interests and endure the possibility that future interests might not hold adoption.

In Seattle, about 85 percent of foster-adoptive parents become adoptive parents, with no limbo of uncertainty for the child. The other 15 percent of children peacefully and permanently reunite with their birth families. This situation avoids conventional ways of handling foster care, in which kids can be shuffled for years from placement to placement without parental rights ever being terminated. Concurrent planning takes the child off the emotional roller coaster and puts that anxiety on the adults around the child.

INCREASING ACCOUNTABILITY

Leadership teams from FFK communities have also taken the difficult and important step of identifying thousands of children who were "lost" for years within foster care backlogs. Following "Backlog blitzes," staff become more accountable for "results" through innovations such as "casework team planning" and "family conferencing."

THE "BACKLOG BLITZ"

Question: How do you reduce the backlog of kids who have been waiting "too long," if you don't know how long "too long" is, and if you don't know how long individual kids have been in foster care? Answer: You don't.

FFK communities faced this hard truth as they prepared to address the initiative's backlog reduction goal. Discovering what they didn't know actually represented progress. Next steps were harder. After experimenting with several backlog definitions, sites generally agreed that "more than one year" is "too long."

Identifying the children who met this criterion was a more daunting task. In 1995, some sites were "still counting on their fingers," or they were depending on technology dating from the 1960s. In one site, for example, the state court system then believed, for example, that it had only 750 pending child welfare cases; in fact, there were 1,770! Thus the "Blitz" had to begin with the basic exercise of counting children, of coming to know statistically as well as more personally the names, faces, histories, needs, current status, and time spent-in-care of thousands of individual children. Lesson: Reformers need hard data and information technology as much as they need warm hearts.

Since 1995, all FFK communities have improved significantly the data capacities of their systems in two ways: by accessing information from the existing state child welfare information systems and by generating additional information. Although the work is far

from complete, the expanded base of relevant child and service information, and the more sophisticated use of data by sites, are extremely important developments likely to be long-lasting outcomes of FFK. It is important to note that sites are not only using data to describe children and system processes; they also are using data to drive change, as the following examples show:

- In Pima County, Arizona, data developed by the FFK Initiative are used by the cross-functional assessment teams in case planning and by supervisors in monitoring case movement and providing supervisory consultation.
- In South Carolina, an adoption tracking system has been used to produce studies of county foster care activity, time in care, stability of care, and sibling placement. Interestingly, these "new" data are now used by the state in its official evaluations of county directors. This reflects a level of performance accountability that historically has not been present in the child welfare field.
- In Washington, there has been an emphasis on using data in setting regional performance expectations and in aiding management and practice decisions.
- In Ohio, systematic analysis of state data was instrumental in helping the state discover the sometimes appropriate use in some counties of classifying children early on for long-term foster care. The state is re-evaluating the use of this status.

CASE TEAMWORK OVERCOMES SYSTEM FRAGMENTATION

Like other FFK sites, Pima County Families for Kids began by counting the kids they wanted to focus their efforts on: those who had been legally freed for adoption or had been in foster care two years or longer and had adoption as a goal. The next step was to build teams that could overcome the fragmentation in the system itself. Drawing from the skills and resources of disciplines outside, as well as within, the child welfare system is often necessary to get kids into permanent homes. Pima County Families for Kids decided to pull together a mix of professionals: supervisors from the child welfare system, members of private agencies who have access to a wide-range of community resources, and parent aides and agency specialists. The teams are also diverse in terms of ethnicity and gender.

The teams work in a collaborative rather than supervisory relationship with the caseworkers, who like kids and families, have too often been frustrated by a child welfare system that can grind to a halt in the face of complex problems. When the teams meet, caseworkers report on the specifics of each case and then consult with the team about barriers getting in the way of permanency. Specific commitments and time frames for each child are agreed upon. This structure and accountability is an important part of the program's success.

To illustrate how concurrent planning can work: In one case a legal entanglement was getting in the way of finalizing a sibling group's adoption. A family in another state was interested in giving the kids a home, but that state's child welfare system had no time to certify the family. The assessment team brainstormed and found a way to provide funds to hire a private agency to certify the family. An obstacle was overcome, and the kids moved a step closer to having a permanent home.

STRENGTHENING FAMILIES AT THE COMMUNITY LEVEL

Most sites are implementing service models that strengthen families or institutionalize the single, coordinated assessment outcome. While the models differ from site to site, they share these common characteristics: they give families and children a real voice in decisions affecting their lives; they greatly widen the circle of community and system players who are working to achieve permanency for children; and they transfer some of the power courts now have to families. In Kansas, for example, the family conferencing model places children under guardianship of the public child welfare system with relatives who then can become eligible to receive public assistance for the child.

Similarly, in Kent County, Michigan, which includes Grand Rapids, the Family and Community Compact program is aimed at diverting children from entering the traditional child welfare system. "If it wasn't for the Compact, I'd still be out there drinking and drugging," says Vanessa Davis. Davis, addicted for 10 years to alcohol and crack cocaine, was the first of some 100 parents to be referred to the Family and Community Compact program since it began in 1996.

The Compact was developed to address the disproportionately high number of children of color within the county's child welfare system. Before the Families for Kids initiative and its Compact process, 60 percent of children admitted to the county's welfare system were children of color, mostly African-American. Today that percentage has been cut by nearly half.

Instead of court action and foster care when children are removed from their families for abuse or neglect, the Compact offers biological parents the opportunity to participate in "family group conferences" with extended family members, friends, neighbors and community members. The group is empowered to determine who will care for a child while parents undergo treatment or if a child needs guardianship or adoption. When the family plan is completed, identified caregivers are assessed for competency. If certified, they immediately arrange to become the child's legal guardians (if a plan cannot be established, the case is referred to family court). Plan implementation is monitored, supporting both the biological parent undergoing treatment and the new caregiver with services of all kinds and lots of moral support.

Davis' story is fairly typical. Her brother, worried about her daughters' well-being, called Child Protection Services. Terrified that she might lose her children, Davis entered detox immediately and then chose to participate in the Compact process. During a family group conference, she agreed to let her mother care for her daughters while she entered a treatment program.

After more than a year, Davis remains clean and sober. She lives with her daughters in a neat duplex with furniture and appliances supplied through vouchers (described earlier). Elated as she is by the transformation in her life, Davis' view of her situation also is realistic and reflective: "It's no peaches and cream."

A major benefit of the Compact is that it empowers families to make decisions. The system is saying to them, "We value what you have to say; you know your own family better than we do." The Compact process will be implemented statewide beginning in October, as part of a newly developed state Kinship Care policy.

CONCLUSION

Achieving the FFK vision will take many years because child welfare systems are complex and barriers that need changing are difficult to address. Many more people must be educated and engaged in the reform process, if it is to be fundamental and lasting. Yet, after only two years of work, FFK communities across the country already have demonstrated that system change is possible. FFK projects collectively have already implemented new models of service that are both institutionalizing our five outcomes and beginning to reduce the backlogs of waiting children.

- Only one year of waiting before permanent placement.
- Only one, stable foster care home.
- Only one, family-friendly assessment process to determine need.
- Only one caseworker or casework team.
- Comprehensive support for their caregivers.

Cluster evaluators found that the number of adoptions across all sites totaled 7,124 in 1996, a 28 percent increase since 1994. I should point out, though, that three sites actually

experienced declines in the percent change in annual adoptions because FFK contributed to a more accurate "count," so knowledge of the backlog increased." Clearly these early trends in backlog reduction will need careful monitoring. For now, they are understood as the baseline against which future accomplishments can be measured.

No one project has all the answers, but together they have the potential to point the way to a system that can work for children. Compared to their predecessors, all these FFK experiments are more:

- clearly designed with the principle of timely permanence as an organizing concept;
- culturally relevant to consumers;
- supportive of the participation of families and relatives in system decision making;
- flexible in the range of services available to consumers;
- open to ideas and expertise from a variety of sources both inside and outside service organizations; and
- informed in their decision making processes.

A FINAL NOTE

FFK supports efforts to promote adoption, ensure safety for abused and neglected children, accelerate permanent placements, and increase accountability and reform. We support these efforts through direct adoption system reform which includes efforts to strengthen families. We must emphasize, however, that to accomplish these goals, special attention must be paid to children of color and their communities.

Based on 1994 data from 21 states, the U.S. foster care population is

- 47 percent African-American (compared to 15 percent of the U.S. population under age 18)
- 32 percent white (compared to 67 percent)
- 14 percent Hispanic (compared to 14 percent)

Overall statistics on children in foster care mask the more dramatic differences among racial groups. The number of white children entering foster care in a given year is greater than the number of African-American children. Yet, African-American children make up a disproportionate and increasing share of those who remain. They range in age from birth to 18 years old. Many are sibling groups; some have serious physical and mental disabilities; and others are regular, healthy kids without families. Many are free and waiting for a permanent home. Of the children who leave the system, 50 percent are white, 29 percent are African-American and 14 percent are Hispanic. But of those who are shuffled from family to family for years without a permanent home, 32 percent are white, 14 percent are Hispanic and fully 47 percent are African-American. In large urban areas like New York and Chicago, children of color are 75 to 85 percent of those in foster care. But these numbers are only part of the story.

We need accurate data by race that include longitudinal tracking of children and their length of stay in the system; concurrent planning; foster/adopt recruitment programs that focus on finding families for children in the communities; wrap-around services for families with special needs; and better and more culturally sensitive application procedures including quick home studies for parents interested in fostering or adopting children.

We need funding for community-based, private adoption programs, specializing in adoptions within communities of color, and we need community-based organizations to provide the strong leadership in crafting solutions to the issue of too many of our children who are without permanent families. It will take a long-term strategy to accomplish some of these reforms. But the communities of color MUST be a part of this process.

Thank you for this opportunity to share information about Families For Kids.