Reasonable Efforts and the Adoption and Safe Families Act

A Judicial Perspective

Judge Leonard Edwards (ret.)

Introduction

This paper addresses federal child welfare law over the past 41 years, from the Adoption Assistance and Child Welfare Act of 1980 (AACWA) to the Adoption and Safe Families Act of 1997 (ASFA) to more current federal laws passed this century. The history of federal legislation reveals that the two legislative initiatives mentioned focused on "child saving" and not on support and preservation of families. ASFA, in particular, has harmed both children and families in several respects. The paper will note how recent federal legislation has attempted to modify the effects of ASFA but how more needs to be done.

The Adoption Assistance and Child Welfare Act

Congressional hearings in 1978–1980 revealed the child welfare system in the United States did not serve children or families well. Social service experts testified that no one knew how many children were being served by child welfare agencies, how many children were in out-of-home care, nor did anyone know where these children were or how long they had been there. Congress learned that many children removed from home drifted from foster home to foster home, never finding a permanent home, and that child welfare agencies failed to create case plans for foster children.[1] Congress responded with the adoption of AACWA, a revolutionary piece of legislation that selected the nation's juvenile courts as monitors of child welfare agency practices.[2]

In order for states to qualify for federal financial support, AACWA requires each state to submit a state plan outlining how it will support families throughout their contact with the child welfare agency. In return, the federal government will pay the state a portion of the costs of foster care placements.

The state plan is each state's promise to provide services to prevent the removal of a child from parental care and facilitate the return of a child to parental care if that child has been removed. A critical component of AACWA requires judges to oversee the actions of child welfare agencies and hold those agencies accountable for their actions when children come to their attention because of parental abuse or neglect. To ensure the state is fulfilling its promise, judges are required to make findings on the record throughout the legal proceedings whether the state provided those services (reasonable efforts were made) or did not provide those services (reasonable efforts were not made). The latter finding results in financial penalties for the state as federal funding will not be provided for portions or all of that case.

The Adoption and Safe Families Act

Criticisms of portions of AACWA led to the passage of the Adoption and Safe Families Act (ASFA) in 1997.[3] Critics pointed out that parents were given too much time to reunify

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[1] See Garrison, M., "Why Terminate Parental Rights?" 35 *Stanford Law Review*, 423, (1983). For additional information regarding the congressional findings, see Edwards, L., *Reasonable Efforts: A Judicial Perspective*, 2nd Edition, Section I, Legislative History.

[2] P.L. 96-272; 42 U.S.C. §670 *et.seq.*

[3] Pub. Law 105-89.

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with their children, that child safety should be the highest priority in child welfare, and some parents did not deserve to be offered services to reunify because of their egregious behavior.

Proponents lauded the enactment of ASFA. Senator John Chafee of Rhode Island said, "We will not continue the current system of always putting the needs and rights of the biological parents first.... It's time we recognize that some families simply cannot and should not be kept together," while President Bill Clinton who signed the legislation stated the bill, "Makes clear that children's health and safety are the paramount concerns."

Both AACWA and ASFA were child-saving efforts. That the word 'adoption' is prominent in the title of both measures makes it clear that saving children from a life of abuse, neglect, and poverty would result in the adoption by a wealthier, "safe" family.[4] The intent of each bill is even clearer when one follows the money authorized. With unlimited funding available through Title IV-E of the Social Security Act, these legislative initiatives allocated the money to foster care costs, not to family support or services to prevent removal. Only very limited monies were allocated to family preservation and those were allocated from Title IV-B provisions.

ASFA went even further to make it difficult for families to remain together. The key provisions included a mandate that the court terminate parental rights if the child had been in out-of-home care 15 of the previous 22 months[5] and that reunification services might not be offered to parents who had demonstrated by their conduct that there were unfit to parent.[6] ASFA also added a third reasonable efforts requirement—courts and child welfare agencies must also use reasonable efforts to ensure that children reach timely permanency.[7] However, ASFA did nothing to engage and include relatives and kin in the child welfare process.[8]

Both federal legislative initiatives assumed that court oversight of agency practices would serve children and families well. Court oversight included required judicial findings throughout the life of each case. For the agency to have the authority to remove a child from parental care, the law requires the court to make a finding that removal was necessary to protect the child from immediate, serious harm.[9] The court further had to make rulings regarding the child welfare agency's provision of services first to prevent removal of the child from parental care, second, to provide services to facilitate the return of the child to parental care, and third, to ensure the child reached a permanent home in a timely fashion. The legal term 'reasonable efforts' refers to the number of social work actions to accomplish these three goals. The court had an obligation to make a specific finding that the social worker either provided reasonable efforts or did not.

ASFA was intended to improve the safety of children, promote adoption and other permanent homes for children, and support families. Now, decades later, it has become clear the implementation of ASFA has harmed many children and families who are the subject of child welfare proceedings.[10]

Implementation Challenges

Congress must have assumed that the child welfare agencies were capable of providing services that would enable the parents to address the issues that brought their child to

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[4] This approach is reminiscent of the early efforts to remove Native American children from their homes and place them in "normal" homes so they could live a better life.

[5] Pub. Law 105-89, Section 103

[6] Pub. Law 105-89, Section 101(a)(D)(i-iii).

[7] See Edwards, *op. cit.*, footnote 1.

[8] "Intentions and Results: A Look Back at the Adoption and Safe Families Act," (https//www.urban.org/research/publication/intentions-and-results-look-back-adoption-and-safe-families-act/view/full_report). *Urban Institute.* Retrieved 2020-04-29.

[9] "...continuation in the home from which the child was removed would be contrary to the welfare of the child." 42 U.S.C. §472(2)(A)(ii); 45 CFR 1356.21(b)(1)(2006).

[10] See Guggenheim, M., "How Racial Politics Led Directly to the Enactment of the Adoption and Safe Families Act of 1997 - the Worst Law Affecting Families Ever Enacted by Congress," a paper delivered at a symposium organized by *The Columbia Journal of Race and Law*, June, 2021; and Roberts, D., *Shattered Bonds: The Color of Child Welfare*, Basic Books/Civitas, 2001.

the attention of the child welfare agency. What Congress did not know was how difficult this would be. Some communities had no services and the agency had to develop them. When parents asked for missing services, the court sometimes refused to require the agency to make those services available.[11] Even in those communities with services, there were details that made it difficult for parents to participate in them, such as transportation and conflicting work schedules. Delays in the provision of services frustrated many parents and reduced the reunification period for parents significantly.[12] A third difficulty was that the agency may have developed services, but those were not what the particular parents needed. As Judge Robert Lowenbach stated, "Let's give families what they need, not just what we've got.[13]

Reasonable Efforts and Reasonable Services

The Congressional mandate that the courts oversee the actions of social service agencies was based on their dissatisfaction with agency practices, particularly regarding the parents and children involved in child abuse and neglect proceedings. Congress believed that courts would hold agencies accountable for using the federal monies to provide services to these families. But this goal has been elusive.

There is no statutory definition of reasonable efforts. That term refers to the actions or lack of actions provided by the social worker assigned to work with a family. Another term frequently used is reasonable services. That term refers to the quality of services provided to parents and children. Additionally, there is the question of whether a particular service is available in the community. Several judges report they have made 'no reasonable efforts' findings when a service was not available even though it was[14] or should have been a part of the state plan.[15] Some judges have alerted the community leaders about the absence of a service the judge finds is necessary to reunite a family.[16] These few examples affirm that judges are the ultimate authority on what constitutes reasonable efforts, not the agency.

The actions by these judges are exceptions. Most judges accept what the social service agency tells them. If court oversight of agency practices in child welfare cases was one of the critical aspects of these legislative initiatives, it has not been successful. In many states, reasonable efforts are not addressed in child welfare proceedings. Thus, the adequacy of services and the work of the social worker are not monitored by the court. Instead, many judges simply check a box stating that reasonable efforts have been offered by the agency or simply adopt the pre-printed findings prepared by the child welfare agency.[17] In other states, the services are not readily available to parents, are ineffective, or the social worker does not provide sufficient support to the parents.

Moreover, many social workers do not give sufficient support to parents who are

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[11] For example, see In re *Shirley B.*, (2010) 993 A. 2d 875, 191 Md. App. 678, where the appellate court stated: "That the Department's efforts to connect Ms. B. with services for parenting and basic living skills were unsuccessful, because the services were not available, does not mean that the Department's actions did not satisfy the "reasonable efforts" requirement."

[12] For example, see *T.J. v Superior Court* (2018) 21 Cal.App.5th 1229; *In re Alvin R.*, (2003) 108 Cal. App.5th 962

[13] For example, in the case of *Patricia W. v Superior Court* (2016) 244 Cal. App. 4th 397 the appellate court held that the services offered to the mother did not address the problem (mother's compliance in taking medication for her mental illness) that brought the child to the attention of the child welfare agency. The appellate court held that the agency did not provide reasonable services and returned the case to the trial court for further proceedings. In the case of *In re K.C.* (2012) 212 Cal. App. 4th 323 the court reversed the trial court's order terminating reunification services finding that the department knew that the father needed a psychotropic medication evaluation, but did little to secure that evaluation.

[14] Edwards, L. "Overcoming Barriers to Making Meaningful Reasonable Efforts Findings," American Bar Association, January 30, 2019; See page 4 where Judge Douglas McNish found a service in the State Plan that the agency did not have, but that a parent needed to complete rehabilitation. The judge was able to require the state to develop that service.

[15] See Edwards, L., *op.cit.*, footnote 1, Appendix D

[16] Id.

[17] Thus, the judge's oversight becomes "merely a hollow formula designed to achieve the result the agency seeks." *In re Ashly F.*, 225 Cal. App. 4th 803 (2014).

involved in child welfare proceedings. As several appellate courts have written,

> *"Family reunification services are not 'reasonable' if they consist of nothing more than handing the client a list of services and then putting the entire responsibility on the client to find and complete the services."*

Yet, that is the practice in many jurisdictions around the country.[18]

Family Time

Another service involves ensuring the relationship between parents and their children who have been removed from their care is maintained. This is referred to as family time or visitation. Removing a child from parental care is a traumatic event for the child and parents. Moving a child into a new home is also traumatic, particularly if that home is with strangers. Once removed, parents want to see their child. In fact, the most litigated issue in juvenile courts has to do with the number of times parents and their children see each other and whether that time is supervised or not. Around the country, family time generally starts several days, if not weeks after the removal; it is supervised, possibly in the agency offices, and occurs once or twice a week. Because of short staffing, social workers do not have the time to provide transportation and supervision to increase family time. Child development experts conclude that the quantity and quality of visitation nationwide are inadequate.[19] In addition, parents are challenged by transportation issues and work schedule conflicts that make those visits particularly difficult.

The 15-Month Limitation on Reunification Services

Providing services has been a challenge from the outset of the implementation of the federal laws. Two principal reasons for the failure of the federal laws to support children and families are the lack of timely and effective services throughout the country and the short

[18] For an example of this conduct by a social worker, see *Robin V. v Superior Court,* (1995) 33 Cal. App. 4th1158.

[19] Edwards, L., op. cit., footnote 1, Section VII. B. 3.

time (15 months) the law grants the parents before the court terminates parental rights. Even if timely and effective services were in place, there simply is not enough time to recover from many of the problems parents face. As one long-time juvenile court judge wrote,

> *"Chronicity of Social Problems are incongruent to the ASFA Policy - Poverty, homelessness, domestic violence, mental health disorders, trauma and substance abuse disorders cannot be successfully addressed in 15 months. These are chronic social, emotional, disorders that require long-term interventions for parents to live their best selves under imperfect circumstances. The ASFA requires parents to improve quickly and then the court will return your children. There is little allowance or consideration of the complexity of the human being nor of the society that they live in. This is the human condition and the ASFA is inconsistent with this reality."*[20]

That same judge reflects on one of the great tragedies in child welfare practice - the child who has been freed for adoption and then returned to the child welfare system by the adopting parents.

Legal Orphans - The rush to terminate parental rights of "adoptable" children prior to that child being bonded and/or settling in with a 'forever family' leads to children being "given back" to the system - this is our biggest shame. A child with no one, with no legal right to inherit, no one to write to or call when they join the armed forces, or graduate from high school, no one to send the body back to when they are killed serving our country."[21]

In discussions with attorneys and Guardian Ad Litems representing children, this case is their worst nightmare.

The Importance of Appellate Court Decisions

One reason trial judges have not been more active in following the reasonable efforts law is the lack of appellate decisions discussing the importance of the issue of reasonable efforts. Appellate court decisions regarding reasonable efforts send a message to trial courts that the issue of reasonable efforts is important and should be addressed in trial court proceedings. Recent appellate decisions in Massachusetts and the District of Columbia demonstrate the impact an appellate decision can have on trial court proceedings message.[22] In each of these jurisdictions the appellate decision was the first in that jurisdiction that addressed reasonable efforts and sent a message to trial courts and attorneys that reasonable efforts is an important issue to be tried. Trial court practice was changed in both jurisdictions.[23]

Unfortunately, there are still states with very few or no appellate decisions regarding reasonable efforts. These states include Florida, Idaho, Illinois, Mississippi, Nevada, South Carolina, Virginia, West Virginia, and Wisconsin. Some other states have only one such appellate decision; this is unfortunate. When an appellate court addresses the issue of reasonable efforts, trial judges and attorneys take notice. The decision sends a message that this is an important issue, one they should address in trial court proceedings. As Justice Ingrid Gustafson of the Montana Supreme Court wrote about the case she authored focused on reasonable efforts: (In re R.J.F., 443 P. 3d 387 (2019)).

> *"This decision certainly brought the issue to the forefront of judges' minds - many have related to me they are considerably more focused on this issue than they have been in the past. I believe this decision has also impacted the agency's handling of cases with more emphasis on considering the specific needs of the parent and family rather than merely requiring the same laundry list of tasks for every parent."*[24]

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[20] Judge Katherine Lucero, Presiding Judge of the Santa Clara County Juvenile Court

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[22] *See Care and Protection of Walt*, (2017) 478 Mass. 212 and the comments in Appendix A (Massachusetts) and In re TA.L., (2016) 149 A. 3d 1060 and the comments in Appendix A (District of Columbia) both found in Reasonable Efforts: A Judicial Perspective 2nd edition, 2021, NCJFCJ.

[23] *Id.*

[24] Email to the author. A copy is available from the author. Also see Justice Gustafson's complete remarks in Edwards, L., *op.cit.*, Appendix A, Montana.

Judicial Attention to Reasonable Efforts

A principal purpose of the early federal laws was for judges to use the reasonable efforts findings to hold child welfare agencies accountable for their actions. However, experience has shown that many judges are reluctant to make 'no reasonable efforts' findings. Some judges say: (1) Social workers are the experts—I respect their expertise; (2) I do not want to take money away from an already financially-strapped agency; (3) I don't know enough to make a judgment about reasonable efforts; and (4) There is no definition of reasonable efforts. Some attorneys report that they raise the issue but that the judge is not interested in discussing it.[25] These are surprising positions for judges to take since they are ignoring the law, and most judges have no difficulty holding the executive branch accountable in criminal law proceedings by suppressing the admission of evidence and confessions when law enforcement has violated personal rights.

ASFA mandates when a child has been placed in out-of-home care for 15 out of the previous 22 months; the court shall either return the child to the parents or set a termination of parental rights hearing. This is regardless of the reason the children were placed in foster care and even when the parents never abused or harmed them. Clearly, ASFA did not prioritize maintaining the family unit. The 15-month limitation is a harsh rule, one that puts juvenile court judges in a difficult position. They may not believe that returning home is possible yet, but the alternative is to terminate parental rights. Most judges follow the law and terminate parental rights. However, often there is no permanent placement available for the youth. Many children are neither adopted nor placed in a permanent placement. As a result, thousands of children have become legal orphans, their parents have lost their parental rights to their child, and the child will age out of the foster care system in stranger care.[26]

This was an unanticipated result of ASFA—the large number of youths who age out of the foster care system each year without a permanent home.[27] The average number of youths aging out from foster care and congregate care each year is over 20,000.[28] Studies reveal that from 11 percent to 36 percent of these youths will become homeless during the transition to adulthood.[29] Within four years of aging out, 50 percent have no earnings, and those who do make an average annual income of $7,500.[30]

The principal reasons why so many cases resulted in a termination of parental rights have been the shortness of time reunification services were offered to parents and the inadequacy of the services provided by the state. A few states have worked around this problem by extending the time for reunification services beyond 15 months when the court finds that reasonable efforts have not been provided by the agency.[31] These courts reason that parents should not lose their parental rights when the welfare agency has not offered them reasonable efforts or services. Very few states have appellate caselaw or statutes that permit this extension of reunification services.

Recent Developments

It seems the federal government has recognized some of its errors in enacting ASFA. The Fostering Connections Act of 2008 acknowledged that relative placement is preferable to foster care and congregate care.[32]

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[25] Edwards, L., *op.cit.*, see comments of attorneys in Appendix A.

[26] A permanent placement is with family, an adoptive home, a guardianship, or with a relative. It is neither foster care nor congregate care.

[27] Gossett, D., "The Client," *The University of Memphis Law Review*, 48: 2018-12-09.

[28] U.S. Department of HHS, ACF, Administration on Children, Youth, and Families, Children's Bureau, the AFCARS Report #26, September 2018.

[29] Dworsky, A., Nappiltano, L., & Courtney, M., "Homelessness During the Transition from Foster Care to Adulthood," *Am. J. Public Health*, 2013 103 (Suppl 2) S318-S323.

[30] "6 Quick Statistics on the Current State of Foster Care," *iFoster*, November 9, 2020.

[31] See In re James G., 178 Md. App. 543, 943 A.2d 53 (2008); T.J. v Superior Court, (2018) 21 Cal.App.5th 1229 - The agency failed to provide reasonable services designed to address special needs of an intellectually disabled mother. The remedy was to award services up to 24 months from the date of removal. *See also Serena M. v. Superior Court*, (2020) 52 Cal. App. 5th 659.

[32] The Fostering Connections to Success and Increasing Adoptions Act, Public Law 110-351.

As a result, states are slowly increasing the number of children placed with relatives.[33] The Preventing Sex Trafficking and Strengthening Families Act of 2014[34] emphasized courts addressing permanency in both child welfare and juvenile justice cases, while the Family First Prevention Act of 2018[35] permits Title IV-E funding to be available to prevent removal and to create evidence-based services.

Family Finding and Relative Preference

The legislative shift away from the harshness of ASFA emphasizes permanency for children as a goal and the importance of family. Studies now demonstrate that children do better when placed with families and people they know. That conclusion has led to efforts by social service agencies to find and engage family members and kin as a preference for placement.

Family Finding was highlighted in the Fostering Connections Act as a best practice.[36] The Family Finding model, developed by a social worker and family advocate Kevin A. Campbell, offers methods and strategies to locate and engage relatives of children who have been removed from parental care. The goal of Family Finding is to connect each child with a family so that every child may benefit from the lifelong connections that only a family provides. As Kevin Campbell has written:

1) Every child has a family, and they can be found if we try

2) Loneliness can be devastating, even dangerous, and is experienced by most children in out-of-home care

3) A meaningful connection to family helps a child develop a sense of belonging

4) The single factor most closely associated with positive outcomes for children is meaningful, lifelong connections to family.

There are additional reasons why relative care is a preferred placement. Data now demonstrates that placement in foster care and congregate care have lifetime negative effects on children. Over their lifetime, these children will have poorer health and mental health outcomes and will die sooner than children at home or with relatives.[37]

One study followed over 160,000 children who were placed in non-parental care for a period during their childhood. The researchers followed their lives for 30 years. One of their conclusions was that children who were placed in out-of-home care reported worse health than children who grew up in a family environment. The authors conclude that:

> *"... when non-parental care is required, priority be given to non-residential care, especially the child's extended relatives and friends."*[38]

Other studies confirm the poor health outcomes for these children placed in stranger care. These children have been found to have higher levels of emotional, psychological, and behavioral problems, such as poor well-being, conduct disorder, attention disorder, aggressiveness, depression, and psychopathology.[39]

Two studies concluded that children in care are, on average, more likely to die earlier than average in their adult lives. One study followed over 353,000 children who were once in care 42 years later. They concluded that these adults, on average, had a higher risk of mortality long

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[33] See Edwards, L., "Relative Placement: The Best Answer for Our Foster Care System," *Juvenile and Family Court Journal*, Vol 69 No 3, 2018 National Council of Juvenile and Family Court Judges.
[34] Preventing Sex Trafficking and Strengthening Families Act of 2014; P.L. 113-183.
[35] Family First Prevention Services Act, HR 1892 (2018), passes as part of the Bipartisan Budget Act or 2018.
[36] Public Law No: 110-351, §102(a)(2).
[37] Murray, E., Lacey, R., Maughan, B., & Sacker, A., "Association of childhood out-of-home care status with all-cause mortality up to 43-years later: Office of National Statistics Longitudinal Study," BMC Public Health, (2020) 20-735.
[38] *Id.* at p
[39] McCann JB, J., Wilson, A, Dunn, G., "Prevalence of psychiatric disorders in young people in the care system," BMJ, 1996; 313:1529-30; McMillen JC., Zima, TB, Scott, D.L., et/al. "Prevalence of psychiatric disorders among older youths in the foster care system. *J. Am. Acad.. Sci. Child Adolescent Psychiatry*, 2005; 44:88-95.

after they had left care, mainly from unnatural causes.[40]

The second study followed over 15,000 children for 60 years, nine percent of whom had been placed in out-of-home care during their childhood. This study found that children in out-of-home care constitute a high-risk group for subsequent mortality. The study also found an elevated risk of mortality was particularly pronounced among those who were placed as adolescents and/or because of their own behaviors. Children exposed to out-of-home care showed increased mortality rates compared to children who grew up in similar conditions but did not experience placement.[41]

There is another important reason why relative care should be a preferred placement. As noted above, one problem that has plagued child welfare systems across the country is the limited amount of visitation or family time once a child is removed from parental care.[42] If children are placed with relatives, family time can be significantly increased and in a more relaxed atmosphere. For example, in Allegheny County, the director of placement services stated:

> *"Because we place so many children with relatives, we are able to provide more visitation between parents and their children."*[43]

As Regional Administrator, Jennifer Lopez of the Santa Fe Springs Office in Los Angeles stated:

> *"Because we place so many children with relatives, we are able to be much more flexible with visitation. The parents are able to see their children much more than if the children were placed in foster care. Also, it is much less traumatic for the children and a lot of the fathers who are non-offending have the opportunity to be in their children's lives."*[44]

Using the reasonable efforts mandate, child welfare systems should be required to use the most effective means of locating and engaging relatives early in a child welfare case. Engaging families and permitting them to make decisions about their children has been the practice of indigenous peoples for centuries. These peoples convene the larger family or tribe and determine what the plan should be for the child. The Fostering Connection Act identified Family Group Conferencing as a best practice.[45] Unfortunately, Family Group Conferencing has not flourished in the United States, although some states have legislation mandating family team meetings and similar procedures to engage the family.[46] To the extent that social service agencies conduct these family meetings, their impact is reduced as it is the family time without strangers that is the most effective procedure.

The studies of children placed outside of family care send a clear message. The child welfare system should take aggressive steps to increase relative placements when children must be removed from parental care. The benefits are significant. Families belong together, even when they are not perfect; it seems that generational healing has become a luxury left to those who have been left alone by social workers who want to "fix" them in the name of child safety. Families who are allowed to work through alcoholism, family violence, and mental illness using community and faith-based support, get to demonstrate to their children that families can heal. That is how cycles of violence, poverty, and addiction

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[40] Berlin, M., Vinnerljung, B., Hjern, A., "School performance in primary school and psychosocial problems in young adulthood among care leavers from long term foster care," Child Youth Serv. Rev. 2011: 33: 2489-97; Leslie,, I.K., Landsverk J., Ezzer-Lofstrom, R. Tschann, J.M., Slymen, D.J., Garland, A.F., "Children in foster care: Factors influencing out-patient mental health service use," *Child Abuse Negl.* 2000; 24: 465-76

[41] Gao, M., Brannstrom, L., Almquist, Y., "Exposure to out-of-home care in childhood and adult all-cause mortality: a cohort study, *International Journal of Epidemiology*,2016, 1-8; McCann, J.B., Wilson, S., Dunn, G. "Prevalence of psychiatric disorders in young people in the care system," *BMJ*, 1996; 313:1 529-530.

[42] See material referenced in footnote 19.

[43] Email from Dr. Sharon McDaniel. A copy is available from the author.

[44] Email from Jennifer Lopez. A copy is available from the author. The Los Angeles experience with family finding has resulted in from 17% to 20% of placements with non-custodial parents, usually with fathers.

[45] Public Law No. 110-351, §102(a)(3).

[46] See California Welfare and Institutions Code Section 16501(a)(4)

are broken. A family that is forever broken apart by the government only teaches one thing to a child—if you are experiencing the human condition, you may lose everything that you love.

Conclusion

ASFA has been a failure. It has unnecessarily broken up families and left many children in stranger care with a negative lifetime of consequences. What can be done to address the negative consequences of ASFA? First, the law must be modified so there is no mandate to terminate parental rights after 15 months of placement, particularly if reasonable efforts have not been provided to the parents.[47] Second, the aggravated circumstances portion of ASFA should be narrowed, and states should not be permitted to expand the circumstances that permit the bypass of efforts to provide reunification services.[48] Third, child welfare agencies must increase the number of children placed with relatives or kin. Model counties in several states have demonstrated that this can be done. Studies conclusively show that placing them with strangers may result in a lifetime of harm.[49] Fourth, the law should be modified to allow federal reimbursement only when removal is necessary to protect children from imminent risk of serious harm. This change would not include children experiencing poverty and would encourage child welfare agencies to take intensive steps and provide increased resources to maintain the family unit. Fifth, the law should make it possible for the parents to petition the court to have their parental rights reinstated, should the new placement not work out or if the youth remains in foster care without a permanent plan.[50] Sixth, the law should make it possible for the parents to have continued contact with their child even after parental rights have been terminated.[51] This is particularly important when the child remains in foster care without a permanent plan in place. Seventh, the law should permit post-adoptive sibling contact where the juvenile court judge finds that contact would be in the best interests of both the siblings.[52] Finally, the Children's Bureau and judicial training should make it clear that judges are the final decision-makers on what reasonable efforts are in their community and that judges should take their role seriously.

A common theme through most of these recommendations is the important connection between children, their parents, and their relatives. Our laws and policies should prioritize the maintenance and strengthening of these connections. In this regard, ASFA should be repealed or substantially modified.

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[47] That is what the appellate court did in the following cases. See In re Dino E., (1992) 6 Cal. App. 4th 1768; *in re , In re D.N.*, (2020) 56 Cal. App. 5th 74.

[48] For example, California added three sections to its list of factors identified in the ASFA that would permit the court to bypass family reunification services. Welfare and Institutions Code §§ 361.5 (b) (10), (11) & (13). These sections, and particularly 361.5 (b)(11) are the most frequently used when the county attempts to deny reunification services to a parent.

[49] Edwards, L., "The Urgency of Placing Children with Relatives," *The Guardian*, a publication of the National Association of Counsel for Children (NACC), vol 42, No. 4 Winter 2020.

[50] California Welfare and Institutions Code section 366.26(i)(3), West, 2021.

[51] This recommendation comes from several family time experts all noted in the publication referenced in footnote 15. See also *In re David D.*, (1994) 28 Cal. App. 4th 941.

[52] See California Welfare and Institutions Code §366.29 and Trividi, S., "Adoption and Safe Families Act is the 'Crime Bill' of Child Welfare," *The Imprint*, 1/28/2021.

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