

Policy Analysis Paper: The Adoption and Safe Families Act (ASFA)

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Abstract

The Adoption and Safe Families Act (ASFA) is aimed at fulfilling the needs of safety, stability, and permanency of children either languishing in the foster care system or living in unsafe environments. The author reviews the social issue that gave rise to the institution of ASFA. The primary provisions of ASFA are outlined with an examination of the current policy's benefits, beneficiaries, delivery, and funding. The strengths and weaknesses of ASFA are analyzed, and the current policy's adequacy, equality, and equity are assessed. Finally, two alternative policy recommendations that address the shortcomings of ASFA are discussed to promote child welfare in the United States.

Keywords: ASFA, foster care, child welfare, adoption

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Introduction to Social Issue

The progress of child welfare development has been relatively slow in the United States. The U.S. foster care system “is comprised of children who have been neglected, abused, abandoned, orphaned, or otherwise led into the system because of behavioral issues” (Moye & Rinker, 2002). Statistics show children stay in the foster care system for a long time. In 1996, children spent three years in foster care; and among these 500,000 children, less than 10% were adopted (Phillips & Mann, 2013). Since the enactment of the Adoption and Safe Families Act (ASFA), adoptions have increased by 42%, from 37,088 in 1998 to 52,893 in 2022 (Wulczyn et al., 2006).

The statistics are quite alarming. The operation of the foster care system costs the government more than \$7 billion a year; and an extended stay in the foster care system has both short-term and long-term consequences for children. The lives and prospects of the “aging out” children are worrisome. When they were in the foster care system, 47% had been involved in counseling or medication for mental illnesses. Without being adopted, 27% of males and 10% of females were incarcerated, 50% were unemployed, 37% did not graduate from high school, and 47% relied on public services for survival (Moye & Rinker, 2002). After the Adoption Assistance and Child Welfare Act of 1980, there was growing awareness of foster care drift in the United States, which is defined as “children languishing in care and bouncing from home to home with no sense of permanence or security while waiting for their parents to safely reclaim them,” and maltreatment experienced by children when they returned home and lived with their biological parents (Whitt-Woosley & Sprang, 2014).

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Current Policy Provisions

To address the problem of prolonged stays and maltreatment, ASFA was signed into law by President Bill Clinton in 1997 after being smoothly approved by Congress. There are three major components of ASFA. The first component of ASFA is reasonable efforts and safety requirements for foster care and adoption placements. To begin with, ASFA has shifted the focus of child welfare and adoption from family reunification to paramount concern for children's safety, health, and permanency needs. To address these permanency needs, ASFA issues a 12-month deadline for working out a permanency plan for children in foster care. Moreover, ASFA keeps the reasonable efforts requirement of states to reunify families but exempts their responsibilities for the perseverance of families under several conditions in the protection of children. In other words, states need to make reasonable efforts to prevent children to be removed from their families and create opportunities for them to return home unless courts have determined misconducts of their parents. States must also file a petition to terminate parental rights of children. Finally, states are required to run criminal record checks of potential foster parents and document their efforts to ensure children's safety and health. The second component of ASFA is the incentive for providing permanent families for children. States are rewarded \$4,000 for regular foster care adoptions and \$6,000 for special needs foster care adoptions for every case exceeding the base number from the federal government. The incentive payments go directly to the states instead of the adopting parents, which encourages states to concentrate on adoptions instead of reunification. The third component of ASFA is additional improvements and reforms, including three provisions. First, ASFA advocates for health insurance for children with special needs, which might address the higher cost of care for children with unique needs and increase adoption rates of these children. Second, ASFA demands states provide quality

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foster care services but fails to offer a clear definition of quality services. Finally, ASFA necessitates states maintain data under the Adoption and Foster Care Analysis and Reporting System to document adoption steps and must report to the Secretary of the U.S. Department of Health and Human Services for the purpose of improving performance (Moye & Rinker, 2002).

In general, ASFA has good intentions to promote child welfare and adoption. The law is funded by the federal government and delivered by the states and agencies. Ideally, children in the foster care system would benefit from the expedited adoption process, and states that make reasonable efforts for adoptions should receive incentive adoption payments.

Strengths of ASFA

The institution of ASFA has successfully increased the number of foster care adoptions by 40% within five years. However, the number of adoptions can be an illusionary predictor of performance because it is likely to increase or decline simply due to the number of children in the foster care system in a particular year. An alternative method is the discrete-time hazard model. Based on the analysis of 390,348 children who entered foster care between 1990 and 2002, the models indicated the adoption rates would increase until the sixth or seventh year of admission and then decline. Specifically, the likelihood of adoption was about 1.2% in the first year, which reflected reunification as the priority of the Adoption Assistance and Child Welfare Act of 1980 (AACWA). As children stayed longer in the system, the likelihood of adoption increased, peaked at 23%, declined thereafter, and reached 10% in the 13th year. In other words, the increased likelihood of adoption correlated with the legislation of ASFA. However, there were considerable variations between states as they had different histories of adoption and varied “reasonable efforts” under ASFA (Wulczyn et al., 2006).

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In addition to the growth in number and likelihood of foster care adoptions, ASFA represents the government's recognition of children as people having legal rights independently and a shift from fulfilling the benefits of parents to fulfilling the needs of children (Lercara, 2016). Regarding the adoption disruption, which refers to "the termination of an adoptive placement prior to legal finalization of the adoption," the study by Smith et al. showed the adoption disruption rate declined by 11% in the post-ASFA period, which suggested children benefited from the 12-month permanency limit of ASFA (2006). Besides, ASFA rewards states \$2,000 more for adoptions of children with special needs than children without special needs, which motivates states to promote more challenging adoptions of special needs children. Regarding child safety, ASFA obliges criminal record checks for adopting parents, which protects children from harm.

In summary, ASFA has done an adequate job in reducing the time children spend in the foster care system and increasing the number and the likelihood of adoption with a decreased rate of adoption disruption. Thus, ASFA is adequate because it has achieved its goal of accelerating adoption and achieving children's permanency. In addition, ASFA recognizes children as independent citizens with rights to social welfare benefits, which was a turning point of child welfare in the United States. Furthermore, ASFA promotes adoption success of kids of all ages with differentiated incentive adoption payments and physical and mental well-being of children by demanding criminal record checks. It seems that ASFA has reached its target population and fulfilled their safety, health, and permanency needs.

Weaknesses of ASFA

When considering equality, ASFA benefits children disproportionately. Though on the surface, ASFA provides the same services and advances child welfare of all, it ignores the

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varying services delivered in the real world. For one, ASFA leaves the definition of reasonable efforts to the states (Lercara, 2016). Therefore, different states have different interpretations of reasonable efforts, which makes the implementation of ASFA inconsistent and obscure. For example, in Indiana, reasonable efforts are defined as actions taken to preserve families, which provides unclear guidance to states. For another, administration and child welfare workers have an impact on the rate of adoption disruption. More experienced workers and administrations in certain states and areas resulted in less risk of disruption (Smith et al., 2006). Consequently, ASFA fails to provide the same services to all children in need.

Regarding equity, ASFA is unable to benefit all children according to their specific needs. On the one hand, Infants were 38% more likely to be adopted compared to their older counterparts. Black children and children from primarily urban areas who had been placed in kinship care, had a higher chance of adoption (Wulczyn et al., 2006). Demographic characteristics not only impacted the likelihood of adoption but also the likelihood of adoption disruption, which refers to “the termination of an adoptive placement prior to legal finalization of the adoption”. While White children were less likely to be adopted, they had a decreased chance of adoption disruption. Older age was linked to climbed rate of adoption disruption. For example, adoption disruption increased for children older than six, and children over 13 years had an additional 4.5% rate of disruption. Children with disabilities had a 41% higher rate of adoption disruption in comparison with other kids. Pre-adoption history of children also affected the rate of adoption disruption. For instance, children who entered foster care because of lack of supervision or environmental neglect were 21% and 27% more likely to experience disruption respectively (Smith et al., 2006). To summarize, children from different backgrounds have an

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unequal chance to be adopted and suffer from adoption disruption, and ASFA overlooked such different needs of children.

Policy Recommendations

Lercara (2016) proposed a “best efforts” requirement to replace reasonable efforts of family perseverance and reunification, which refocuses on children’s best interest instead of the states. The “best efforts” standard is clearly defined within the amended statute and can remove inconsistency and ambiguity of reasonable efforts. To ensure success, current incentive adoption payments should be withheld if states do not comply with the provision. The determination of whether states have met the “best efforts” requirement would be in the hand of the judges who have the best knowledge of the cases. The “best efforts” standard would be able to eliminate conflicting permanency goals because it requires states to prove they have done everything to ensure the best interest of children. With this amendment, ASFA would be more adequate in accomplishing its goals and helping all children obtain permanency. In addition, ASFA would be more equal because there is a clear requirement for all states to follow. Finally, ASFA would better realize equity because best efforts demand states to do all they can to help all children regardless of their backgrounds and needs.

Whitt-Woosley and Sprang (2014) put forward another set of policies to complement ASFA. Employment of the “veil of ignorance,” which refers to “a degree of blindness to one’s position in society and individual characteristics,” would potentially create a just social policy to serve the children’s best interest. Whitt-Woosley & Sprang advocated for a prevention model instead of an intervention model to achieve the goals of ASFA. They proposed to invest in the social capital of at-risk families with the aim of empowerment and capacity building. The authors called for expanding access to health care, which would help the families in jeopardy.

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Additionally, they insisted on increasing the availability of specialized services for the target population. In so doing, adequacy is improved by better meeting the needs of children and reaching its target population from the prevention perspective. With this approach, equality and equity are enhanced because the “veil of ignorance” ensures to provide just services to all children, and the prevention approach offers specialized services to meet different needs of children.

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