

# Adoption and Safe Families Act of 1997

Public Law 105-89

## Learning Objectives

After studying the information in this training module, you should be able to

- Identify four key purposes of the Adoption and Safe Families Act of 1997.
- Specify the time frames within which permanency hearings, judicial reviews, and proceedings to terminate parental rights must be held.
- List the situations in which reasonable efforts to reunify children with their families are not required.
- Name an incentive that ASFA provides to states to encourage compliance.

## Introduction

The federal Adoption and Safe Families Act (ASFA) was signed into law by President Bill Clinton on November 19, 1997. It was adopted because of nationwide dissatisfaction with the performance of state child welfare systems, because caseloads of children in foster care and costs for foster care placements were increasing, and because children were lingering in foster care for extended periods while waiting for permanent placement. Before ASFA, child protective services agencies had sometimes waited 18 months or longer after a child came into custody before beginning the process to terminate parental rights.

Before ASFA was enacted, federal laws gave family reunification and parental rights more weight than a child's best interests or welfare. ASFA is designed to balance the need for family preservation and reunification with the health and safety of children. Much of the actual wording of ASFA involves revisions to specific sections of Title IV of the Social Security Act. In order for states to receive Title IV-E federal funding for children in state custody, they must be able to show that they are complying with the provisions of ASFA.

Key principles that ASFA addresses:

- Safety of children is the overriding concern that must guide all child welfare services.
- Foster care must be considered a temporary setting; it is not a place for children to grow up in.
- Permanency planning efforts must begin as soon as a child enters foster care and should be expedited by providing quality treatment and services to families.

- State child welfare systems must focus on results, accountability, and innovative approaches to achieving safety, permanency, and well-being.

ASFA is therefore designed (1) to promote child safety, (2) to decrease the time it takes for a child to achieve permanency, (3) to increase the number of adoptions and other permanency options, and (4) to increase states' ability to meet these goals and ensure their accountability for meeting them.

## **ASFA Promotes the Safety of Children**

The Adoption Assistance and Child Welfare Act of 1980 mandated states to (a) make *reasonable efforts* to prevent or eliminate the need for a child's removal from his or her home before the child is placed in foster care, and (b) make it possible for the child to return home from foster care. Because the "reasonable effort" requirement was often misinterpreted or misapplied by agencies, ASFA mandates that the health and safety of children must now be the top concern in every decision made.

- The paramount concern governing an agency's actions must be the health and welfare of the child. Case plans and judicial reviews must specifically address child safety.
- Reasonable efforts must be made to preserve and reunify families by preventing or eliminating the need to remove a child from his or her home, or by making it possible for a child to return home safely. A state agency (such as CYFD) must be able to document that it has made reasonable efforts to prevent the child's removal from his or her home.
- Although reasonable efforts must be made to preserve or reunify families, states may define circumstances in which reasonable efforts are not required. Such circumstances include:
  - Abandonment, torture, chronic abuse, or sexual abuse of a child;
  - Conviction of a parent of murder or manslaughter or having aided, attempted, or conspired to kill his or her child;
  - Conviction of a parent of felony assault resulting in serious bodily injury to one of his or her children;
  - Involuntary termination of the parent's rights to a sibling.
- To ensure child safety, foster and adoptive parents must undergo criminal record background checks in order to be paid with federal funds. No applicant can be approved who has committed specific crimes against children or other violent crimes. No one can be licensed as a foster parent who has been convicted of a violent felony or who has been convicted of a drug-related felony (including alcohol) within the last five years.

## **ASFA Establishes Strict Timelines**

- Case Plans. A case plan must be developed within 60 days of the child's removal from the home. The plan must include a discussion of how it is designed to achieve a safe placement for the child. The plan must be developed jointly with the child's parent(s) or guardian.
- Judicial Reviews. No less frequently than every six months after a child enters care, the court or administrative agency (**including a citizen review board in New Mexico**) must review the child's case. The review should determine:
  - The safety of the child
  - Compliance with the treatment plan
  - Progress made in eliminating the causes for placement
  - Appropriateness of the placement
  - Projected date for the child's return home or alternative permanency plan
- Permanency Hearings. A permanency hearing must be held within 12 months of a child's "entering custody." The 12-month period does *not* begin on the date the child was actually removed from the home. Rather, it begins on the earliest of the following two dates: a judicial finding of abuse and neglect *or* 60 days after the child's removal from the home.

If reasonable efforts to unite a child with his or her caregiver are not required, the permanency hearing must be held within 30 days of a child's entering custody and the agency must immediately begin efforts to place the child in a permanent home.

ASFA recognizes five types of acceptable permanency plans:

1. Return to caregiver
2. Adoption
3. Legal guardianship
4. Planned permanent living arrangement
5. Placement with a fit and willing relative

States may work to reunify the child with his or her family and at the same time work an alternative permanency plan as a tool to accelerate permanency ("concurrent planning").

- Time-limited Family Reunification Services. If services to reunify families are to be federally funded under Title IV-B of the Social Security Act, such services are to extend no longer than 15 months after placement of the child in foster care. These services include counseling, substance abuse treatment services, domestic violence services, temporary child care, and related services, and transportation for such services.

- Proceedings to Terminate Parental Rights. Termination of parental rights (TPR) proceedings must be begun for children who have been in foster care for 15 of the past 22 months, except under certain conditions:
  - TRP does not have to proceed if a child is being cared for by a relative.
  - TPR does not have to proceed if a compelling reason can be shown why termination of parental rights would not be in the best interest of the child.
  - TPR does not have to proceed if the state has not provided necessary or timely services to the child's family that would make it possible for the child to return home safely.
  - The “clock stops” for the mandatory TRP petition filing deadline while the child is on a trial home visit or if the child becomes a runaway.

TRP petitions may be filed earlier whenever it is in the child’s best interest to do so.

In calculating whether 15 months have passed since the child entered foster care, states must refer to the earlier of the following two dates: the date of the first judicial finding (adjudication) that the child has been abused and neglected OR the date at which 60 days have passed since the child was removed from the home.

### **ASFA Promotes Adoption Efforts**

- A search for an adoptive family must be begun as soon as the petition to terminate parental rights is filed. Case plans must document the steps an agency is taking to secure a permanent home.
- ASFA encourages states to increase the number of foster children being adopted by providing an incentive payment of \$4,000 per child for each foster child adopted *after* a predetermined number of foster children have been adopted. The payment is increased to \$6,000 per child for each child with special needs who is eligible for the federally supported adoption assistance program.
- ASFA requires health insurance coverage for special needs children who cannot be adopted without such coverage.
- ASFA removes geographic barriers to adoption. A state is not allowed to deny or delay the adoption of a child when an approved family is available outside the state's own jurisdiction.

### **ASFA Focuses on Results and Accountability**

- ASFA requires the U.S. Department of Health and Human Services to provide technical assistance to states, communities, and courts.

- ASFA requires the U.S. Department of Health and Human Services to report to Congress on the annual performance of each state in terms of kinship care, substance abuse, and child protection issues, and to develop performance-based financial incentives for states.
- ASFA requires states to implement standards for providing quality services that protect the health and safety of children in foster care.
- ASFA requires states to provide notice and the opportunity to be heard in all reviews and hearings to the following: foster parents, preadoptive parents, and relatives caring for children. These individuals do not, however, need to be made parties to the proceedings.
- State compliance with ASFA is necessary in order for a state to be eligible for funding to public child welfare agencies.

## Implications for CRB Members

The Adoption and Safe Families Act of 1997 has had a significant effect on CRB's case reviews of individual children because (1) it has changed the time frames within which CYFD must make decisions about custody, reunification services, permanency, and TPR; and (2) it has shifted the focus of CYFD's actions to child safety, well-being, and permanency rather than simply family reunification and preservation. When you ask questions during the review about the child's safety and well-being, and about steps being taken to achieve permanency for the child, you are therefore exploring CYFD's compliance with the provisions of ASFA. Understanding ASFA requirements will help you understand why CYFD is or is not taking certain actions, whether its actions are timely, and whether CYFD is in compliance with the law.

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Sources: L. Adler, 2001. "The Meaning of Permanence: A Critical Analysis of the Adoption and Safe Families Act of 1997," *Harvard Journal on Legislation* 38, no. 1; William L. Grimes, Staff Attorney, National Center for Youth Law, in *National CASA Volunteer Training Curriculum Volunteer Manual*, National CASA, 2001; December 1997 handout from the National Conference of State Legislatures; January 1998 handout from the U.S. Dept. of Health & Human Services Children's Bureau; July 1998 handout from the American Bar Association; Center on Children and the Law, American Bar Association, [www.abanet.org/child/](http://www.abanet.org/child/).

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