Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

BARRIERS TO FREEING CHILDREN FOR ADOPTION

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EXECUTIVE SUMMARY

INTRODUCTION

PURPOSE AND BACKGROUND

This report is concerned with children in foster care who cannot return to their families. Its purpose is to identify problems in the process of terminating parental rights that delay or prevent children from leaving State-supervised foster care to enter permanent adoptive homes.

The Adoption Assistance and Child Welfare Act of 1980 (PL 96-272) introduced broad reforms in the Federal funding and regulation of State foster care services. The Act provides incentives for States to develop administrative structures and remedial services to 1) shorten the time children must spend in substitute care, and 2) return children expeditiously to their families. For those children who cannot return to their families, agencies are encouraged to investigate, in a timely manner, other options which offer the children a stable family relationship. Adoption is the preferred option for most children who cannot return home.

Implementing plans of adoption takes longer than implementing other types of placement for children. The gravity of the issues and the complexity of the legal processes explain some of the additional implementation time. Child welfare and legal professionals express concern, however, that the first part of the implementation process, freeing children from the legal ties to their parents through termination of parental rights, unnecessarily slows or disrupts adoption placements. Children often remain in foster care for extended periods after permanent placement plans have been established for them, undermining their opportunities for successful adoptive placement and placing them in a legal and psychological limbo in terms of family identification.

METHODOLOGY

For this inspection, we have collected three basic types of information: reviews of State laws relating to termination of parental rights, descriptions by key professionals of selected States' processes for freeing children for adoption and of delays or barriers in those processes, and reports of emerging practices that deal with some of the problems.

FINDINGS

States do not routinely track delays in freeing children for adoption, but there is evidence that children remain in foster care too long.

- In States where special studies have been conducted, children with adoption plans generally remain in foster care between 3.5 and 5.5 years.

States have made legislative progress.

- Most States have basic legislation in place to guide the termination of parental rights process.

Administrative barriers in the child welfare system cause the most excessive delays in freeing children for adoption.

- States are not timely or effective in meeting "reasonable efforts to reunite families" requirements which are prerequisites to permanent placement.

- Limited management commitment and lack of staff and services play a significant role in the failure to make "reasonable efforts."

- The consideration of long-term care options for children is delayed. These delays result in loss of valuable information for case records and poor planning for children.

Many barriers and delays arise from the legal and judicial systems.

- Case documentation is frequently inadequate.

- Implementation of adoption plans often stops with pre-petition reviews. Decision-making hinges on the potential for legal success rather than the social service goals for the case.

- The legal resources available for child welfare cases are inadequate.

- Scheduling and conducting court hearings delay implementation of adoption plans. Delays most frquently result from interruptions of proceedings for other civil matters, crowded court dockets, and inability to coordinate the schedules of a variety of hearing participants.

- Judicial biases or inaction often result in delays.

- The question of whether children are adoptable is asked several times during the process.

- The legal procedures in many States make contradictory demands on State adoption services.

Some States have developed new practices to expedite freeing children for adoption.

- States have developed specialized severance units, amended disjointed court processes, created expedited tracks for freeing certain children, and developed forums for pre-trial mediation and settlement of termination cases.

- In a few Department of Health and Human Services demonstration projects, some States have developed contractual models for agency representation in court cases, or have put into place multi-disciplinary problem solving forums and training sessions.

RECOMMENDATIONS

State Governments should:

- Mandate by statute well-defined, expedited tracks for freeing children who will clearly not return home in a reasonable period;

- Prescribe clear time and service requirements for "reasonable efforts" and provide sufficient State funding for compliance;

- Provide adequate resources to enable State courts to hear and rule on child dependency cases in a timely manner; and

- Offer increased training on permanency planning, in general, and on termination of parental rights, in particular, for child welfare staff, judges, public attorneys, and the staffs of contractual service providers.

The Administration for Children Youth and Families should:

- Serve as a clearinghouse for information concerning permanency planning training and effective practices for implementing permanent plans;

- Explore staff retention strategies. Disseminate the results of such exploration to the States and agencies, and provide training and technical assistance for implementing appropriate strategies to the States;

- Through the Department's discretionary funding authority, provide seed monies for implementation of treatment programs that deal with current family issues; and

- Move quickly to complete and implement the national child welfare data base.

NOTE: Implementation of these recommendations would result in cost increases to both Federal and State governments. However, these increases could be at least partially offset by savings in foster care maintenance costs and long-term administrative costs resulting from reductions in the time children spend in foster care. Please refer to Appendix A, "Federal Costs Offset."

DEPARTMENTAL COMMENTS

We received comments from the Office of Human Development Services (OHDS), the Assistant Secretary of Planning and Evaluation (ASPE), the Assistant Secretary for Management and Budget (ASMB), and two external agencies. Both OHDS and ASPE concurred with the recommendations and offered suggestions for providing clearer, more detailed language on certain findings or recommendations. ASMB, while generally supportive of the findings, believed greater emphasis should be placed on the costs associated with implementing the report's recommendations. On the basis of the reviewers' suggestions, we have made several modifications in the report to clarify some sections and to make important distinctions in others. Please refer to Appendix B, "OIG Response to Departmental Comments," and to Appendix C which contains the full text of all comments.

TABLE OF CONTENTS

INTRODUCTION

PURPOSE

This report is concerned with children in State-supervised foster care who cannot return to their families. Its purpose is to identify problems in the process of terminating parental rights that delay or prevent children from leaving foster care and entering permanent adoptive homes.

BACKGROUND

Permanency Planning and the Adoption Assistance and Child Welfare Act of 1980

Foster care is intended to be a temporary child welfare service providing assistance and residential care to children unable to live safely with their own parents. During the last two decades, these substitute care services have undergone substantial change. Many of these changes resulted from research in the preceding decades indicating that some children "drifted" in foster care for most or all of their formative years without efforts to place them in permanent homes.[1]

Permanency planning is one of these substantive changes. It is a social services approach that attempts to insure that children do not become stranded in the child welfare system. Child welfare staff work with families to identify the problems that have brought their children into care and to secure services for families ranging from counselling and social services to economic assistance to provision of specific commodities. Permanency planning emphasizes early consideration of the various options that children have for permanent placement, including planning for the possibility that some families will not be reunified. Finally, this approach requires routine administrative review procedures and judicial intervention to insure that plans and decisions for foster children are made in a timely and effective manner.

Public Law 96-272, The Adoption Assistance and Child Welfare Act of 1980, gave statutory recognition to permanency planning procedures. The Act amended Title IV of the Social Security Act, providing for the first time a formal Federal role in monitoring the delivery as well as the financing of foster care services. Even more critically, the legislation shifted the emphasis for Federal financial participation in State foster care programs toward prevention and family reunification services.

In order to receive their full share of Federal appropriations under the Act, States must set permanent placement goals for all children in care, provide the services to the child and family to help them meet those goals, and establish procedures to monitor the appropriateness of foster care services. States can receive no reimbursement for children in care unless these children enter and remain in care despite "reasonable efforts" by the child welfare agency to reunite the children and their families.

The Administration for Children, Youth and Families (ACYF) has responsibility for regulating and monitoring State compliance with the requirements of PL 96-272. Regional staffs are charged with conducting regular case record and State reviews in order to insure State child welfare agencies make long-term plans for children in their care and review these plans on a regular basis.

Adoption as a Permanency Planning Option

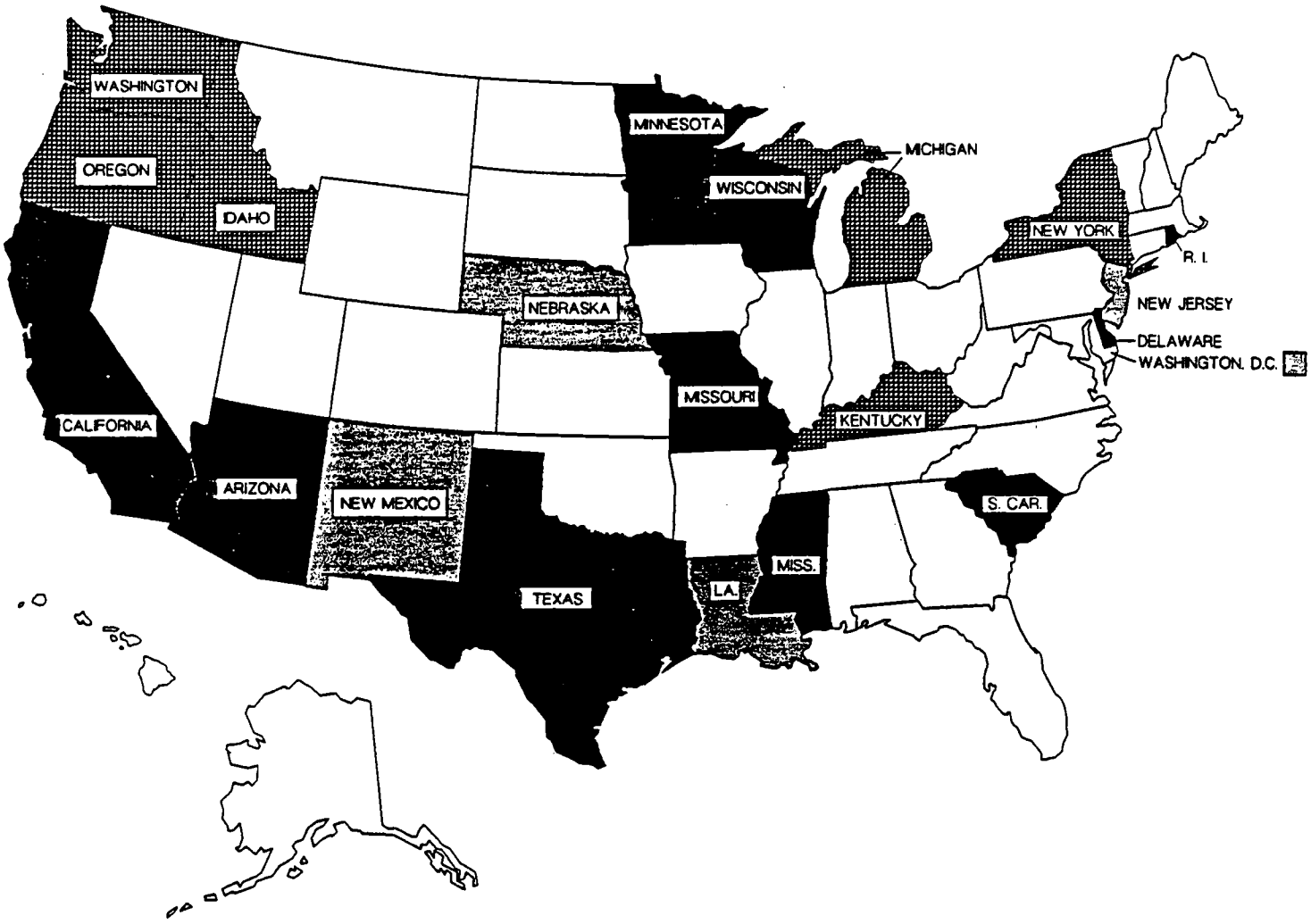
Federal legislation and policy clearly favor reunification of families as the preferred foster care outcome. States are required to make "reasonable efforts" (a term not defined in statute or regulation that relates to the sufficiency of the quality and level of remedial services provided to families) to maintain or reunify family units. A significant number of children, however, cannot return to biological parents because child welfare professionals judge that, even with the provision of social services or other assistance, their homes cannot be made safe within a reasonable amount of time. In such cases, other long-term options such as adoption, guardianship, or permanent foster care become children's permanent plans.

In fiscal year (FY) 1986, approximately 13% of the children in foster care were identified as having a permanency plan of adoption.[2] Adoption takes considerably longer to implement than other permanency arrangements.[3] Some delay is expected because of the additional activities required, and the larger number of individuals and organizations involved. Because of the social and legal status of families and the recognition of the importance of biological ties, all practitioners are reluctant to sever family ties hastily. Child welfare practitioners and advocates report, however, that freeing children for adoption is a significant barrier to the timely implementation of permanent plans for children. Anecdotal evidence indicates that the process takes longer than necessary, certainly longer than the best interests of the children dictate. Further, petitioning for such action is seen as having unpredictable outcomes.

If the purpose of permanency planning is to insure that children leave foster care as safely and rapidly as possible, both the planning and implementation of long-range plans for children must proceed efficiently and predictably. Given that children's ages are such a critical factor in adoptions, remaining in foster care well beyond the determination that adoption is the preferable option undermines children's chances for successful adoptions. Further, extended periods wherein parental rights are in dispute severely compromises the healthy development of these already fragile children.

FIGURE 1

State Sources of Information



States Surveyed for this Study:

Arizona	Mississippi	South Carolina
California	Missouri	Texas
Delaware	Rhode Island	Wisconsin
Minnesota		

States with Department of Health and Human Services Termination of Parental Rights Demonstration Projects:

Kentucky	New York	Washington
Michigan	Idaho	Oregon

States In Which Termination of Parental Rights Surveys/Studies Have Been Conducted:

Louisiana	New Jersey	Washington, D.C.
Nebraska	New Mexico	

METHODOLOGY

Because the National Child Welfare Data Base has not yet been implemented (as mandated by PL 96-272), the absence of any consistent, comprehensive, "hard" national data on child welfare services and processes compelled us to diversify our data collection activities. We relied substantially on the informed observations and judgments of professionals in the child welfare system and those who have regular and prolonged contact with the system, and on written data in the forms of demonstration reports and laws. Thus, we collected and analyzed data from three sources: 1) reviews of the basic features of the various State laws relating to termination of parental rights, 2) descriptions by key professionals in selected States of the processes for freeing children for adoption and of delays or barriers in those processes, and 3) reports of emerging or tested practices which address some of the barriers.

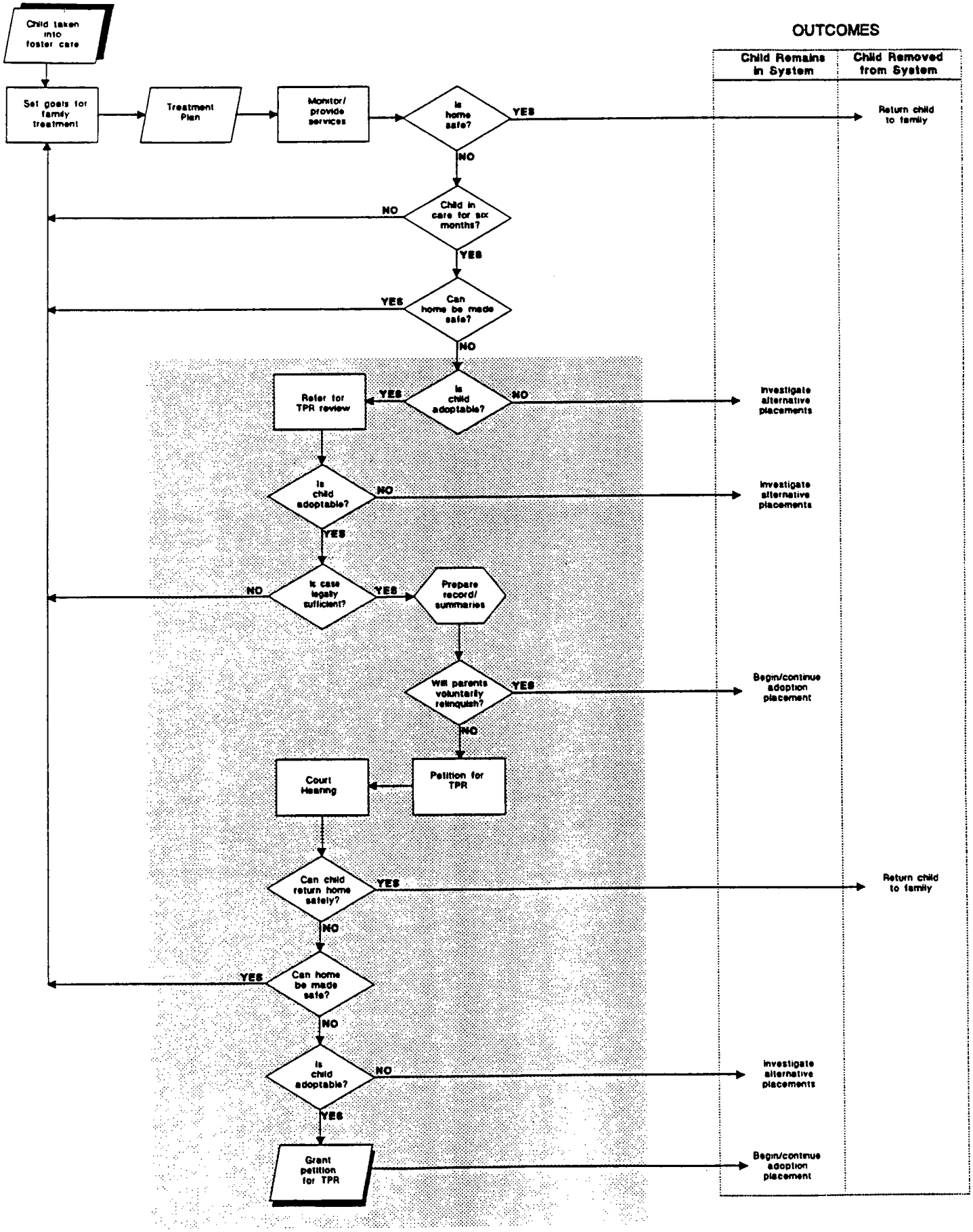
We reviewed parental custody statutes in all fifty states. The National Conference of State Legislatures provided copies of its 1989 State Legislative Report, *Termination of Parental Rights*, and copies of legislative updates since the publication of that report. We used this material to determine State legislative status.

We analyzed process, problem, and effective practice information from a total of twenty States and the District of Columbia (See Figure 1.). In ten States, we conducted telephone interviews and focus groups with seventy-six key child welfare and legal professionals to determine their perceptions concerning specific State processes and problems. In order to gain a broad spectrum of opinion, we interviewed child welfare administrators, attorneys representing the child welfare agencies, child advocates, judges[4] , professionals involved in foster care review[5] , attorneys representing parents, and casework supervisors.

In the remaining ten States and the District of Columbia where research or demonstration projects are ongoing or have been completed, we examined written documents. These provided more detailed descriptions of processes and emerging effective practices.

FIGURE 2

Basic Termination of Parental Rights Process



FINDINGS

OVERVIEW OF THE PROCESS FOR FREEING CHILDREN FOR ADOPTION

The termination of parental rights process is guided by State law and State agency policies. Thus, wide variations exist in the models and methods employed in the various child welfare and judicial systems to free children in foster care for adoption. The State survey undertaken for this report shows, however, several elements in the service and adjudicatory processes are common to most jurisdictions. These common elements are shown in Figure 2.

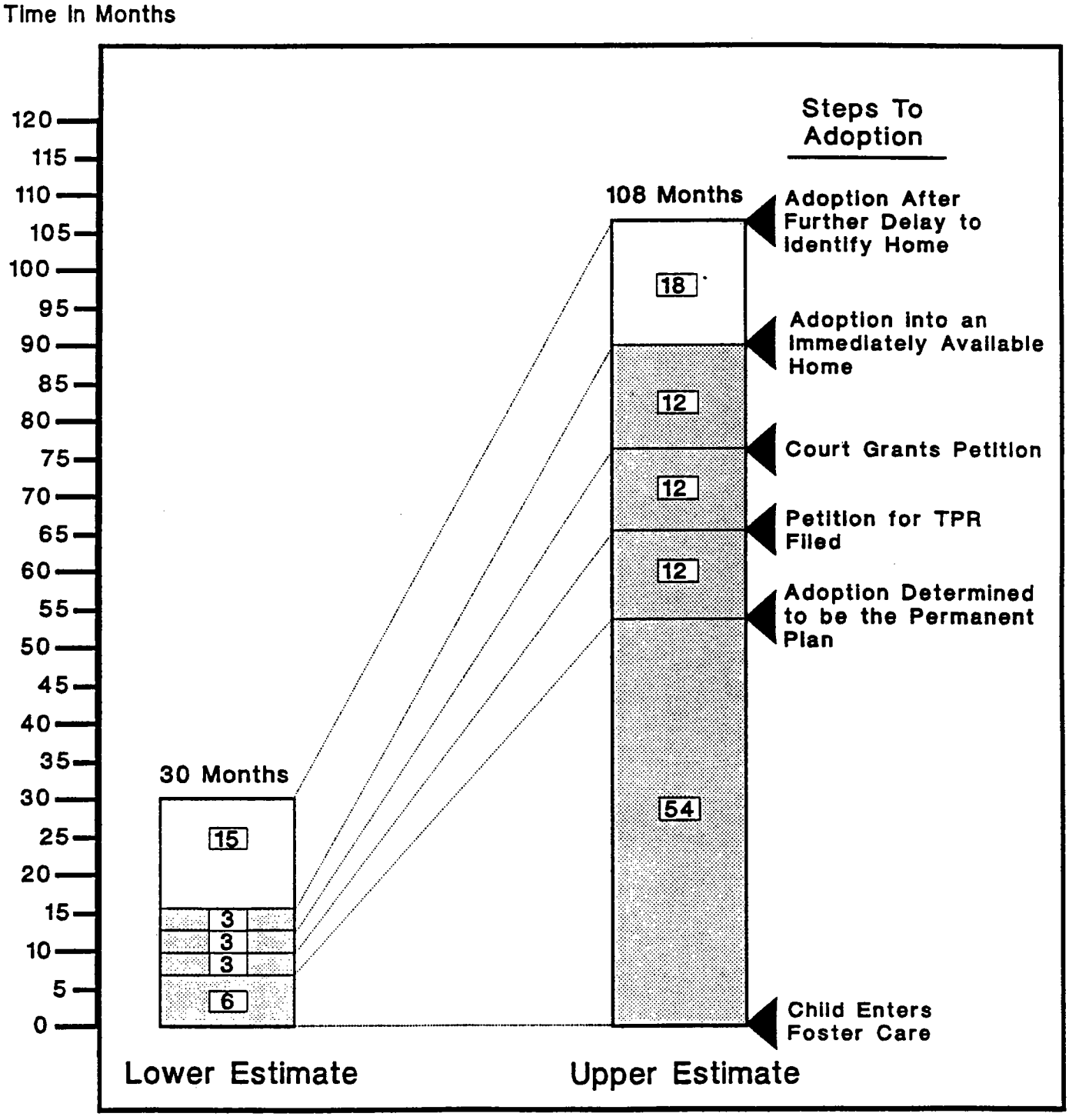
Conceptually, we can divide the process of moving children from foster care to permanent adoptive homes into three sequential stages. First, having been removed from their families as a result of abuse, neglect, abandonment[6] or some other reason, children spend some time in the care of child welfare agencies. During the time in foster care, the agencies develop permanent plans for the children. For children whose permanent plans are adoption, implementation of these plans begins with the second stage— legal actions by the State to terminate parental rights or to secure voluntary relinquishment of those rights from the parents. Once the rights and responsibilities between parents and their children are severed, the children enter the final stage of the process, legal adoption by another family.

The focus of this report is the second stage, *termination of parental rights* (TPR), the shaded section of Figure 2. This legal process cannot be considered in isolation, however. As the diagram illustrates, the three stages of the process are interdependent. The success and timeliness of actions to free children for adoption are directly related to 1) the sufficiency and validity of the groundwork laid during the preceding time in foster care, and 2) the reliability of the system in delivering adoption placement services once parental rights are severed.

Petitioners to terminate parental rights must prove to the court 1) the child was removed for good cause, 2) legally sufficient reunification efforts were unsuccessful and the child cannot return home safely, and 3) ending legal ties between the child and family will lead to a better, more stable home for the child. During the court proceedings, the States must present clear and convincing evidence on each of these three criteria. In regard to the first two criteria, the child welfare agency must build the body of evidence concerning parental inability or inadequacy while simultaneously providing assistance to reunite families. The evidence for the third criterion rests largely upon the reputations of public and private adoption placement agencies for finding suitable homes for children freed for adoption.

FIGURE 3

Time Spent in Foster Care by Children with Adoption Plans



STATES DO NOT ROUTINELY TRACK DELAYS IN FREEING CHILDREN FOR ADOPTION, BUT THERE IS EVIDENCE CHILDREN REMAIN IN FOSTER CARE TOO LONG

The interrelationship of the three stages for moving children from foster care to permanent adoptive homes is also important when we consider delays in completing them. The time spent by the child welfare and judicial systems to complete required activities expand the total time children and their families remain under the uncertainties of foster care. Comparable, complete data on time-in-care for children who do not return home, and information concerning the time involved in the termination of parental rights process are not generally available. However, based upon studies conducted in 11 States included in this analysis, we have some general indications of the timeframes from entering foster care to final implementation of permanent plans of adoption. Figure 3 presents information collected from these States.[7]

As early as six months after children enter foster care, child welfare agencies in most States may begin considering alternatives to family reunification. In actual practice, children are in care for periods ranging from 6 to 54 months (4.5 years) before agencies or courts specify adoption as their permanent plans. In most of the States providing detailed information, children spend an average of 30 to 42 months (2.5 to 3.5 years) in foster care before the determination is made that adoption is the best option for them.

In general, the process of moving from identification of adoption as children's long-term goal to filing petitions with the courts to terminate parental rights takes between 3 and 6 months. Some studies report, however, that backlogs in State or District attorneys' offices result in delays in filing of 9 to 12 months. In some States, case reviews have uncovered cases in which children had an official plan of adoption for more than three years, but no petitions had been filed.

Once petitions have been filed, case studies indicate that it can take from 3 to 12 months for the courts to hear evidence on those petitions. The average of the State average times to complete the court process from the filing of the petition until the court renders its findings is about 7.5 months. If families appeal lower court decisions, final dispositions of the appeals can take anywhere from 2 months to 24 months. (The time ranges for this activity are not included in the graph).

Once the courts alter their legal status, children then must wait for the completion of the adoption process. In many cases, children are already conditionally placed in potential adoptive settings before the court renders its decision. These children can be formally adopted only after official waiting periods of anywhere from 3 to 12 months. (See "Adoption into an Immediately Available Home" in Figure 3). This delay serves two purposes: 1) it protects the final adoption from the threat of appeals, and 2) it allows adoption staff to observe and evaluate the placement.

TABLE 1

Major Components Of State Termination Of Parental Rights Statutes

STATES	SPECIFIC GROUNDS[1]	PROCEDURAL EQUIREMENTS[2]	EVIDENCE REQUIRED[3]
Alabama	x	x	x
Alaska		x	x
Arizona	x	x	x
Arkansas	x	x	x
California	x		x
Colorado	x	x	x
Connecticut	x	x	x
Delaware	x	x	
Florida	x	x	x
Georgia	x	x	x
Hawaii	x	x	x
Idaho	x	x	x
Illinois	x		x
Indiana	x		
Iowa	x	x	x
Kansas	x	x	x
Kentucky	x	x	x
Louisiana	x	x	x
Maine	x	x	x
Maryland	x	x	x
Massachusetts		x	x
Michigan	x	x	x
Minnesota	x	x	x
Mississippi	x	x	x
Missouri	x	x	x
Montana	x	x	
Nebraska	x	x	x
Nevada	x	x	x
New Hampshire	x		x
New Jersey	x	x	
New Mexico	x	x	x
New York	x	x	x
North Carolina	x	x	x
North Dakota	x	x	x
Ohio	x	x	x
Oklahoma	x	x	
Oregon	x	x	x
Pennsylvania	x	x	
Puerto Rico	x	x	x
Rhode Island	x	x	x
South Carolina	x		
South Dakota	x		
Tennessee	x	x	x
Texas	x		
Utah			
Vermont			
Virginia	x	x	x
Washington	x	x	x
West Virginia	x	x	x
Wisconsin	x	x	x
Wyoming	x	x	x

[1] Statutes specify particular parental conduct or conditions that warrant termination of parental rights.

[2] Statutes contain at least basic hearing and notice requirements.

[3] Statutes require clear and convincing evidence to grant a petition for termination of parental rights.

Children for whom a home is not already identified must be matched with adults wanting to adopt. Estimates concerning the time necessary to find an adoptive home for children not adopted by relatives or foster parents averaged 12 to 18 months. Children then must also wait for completion of an official waiting period, usually 6 to 12 months, before the adoption is final. Thus, the homefinding process adds average estimated times of 15 to 18 months to the total process.

Finally, adoptive parents must petition the court to adopt the children in their care. Once these petitions are granted and proper notification is provided to State vital records offices, the children officially belong to families again. On average, children who are adopted leave the foster care system between 42 and 66 months (3.5 and 5.5 years) after they enter.

STATES HAVE MADE LEGISLATIVE PROGRESS

In developing one of the initial demonstrations of permanency planning techniques, planners in the State of Oregon in 1977 identified several barriers to establishing permanent homes for children. Project staff noted that an essential element in a systemic approach to permanent planning was a sound State statute to support casework and judicial decision-making.[8] Few States had more than basic enabling legislation in place prior to the passage of PL 96-272 in 1980.

Since the passage of PL 96-272, the States have made significant progress in this area. (See Table 1). The majority of the States have statutes in place that directly require State agencies to make "reasonable efforts" to maintain children in their own homes or, when removal is necessary, to reunite families. All but 3 States have statutes describing specific grounds for terminating parental rights, and 34 States regard time in foster care in excess of 1 or 2 years as grounds for dissolving legal bonds. Forty-four states spell out at least some basic procedural requirements including notice requirements, right to counsel, and hearing requirements.

BUT BARRIERS STILL REMAIN TO FREEING CHILDREN FOR ADOPTION

Despite the legislative foundation provided by PL 96-272 and the new State statutes enacted after its passage, barriers to the timely, predictable resolution of parental rights still exist. Generally, States are able to free children for adoption when they petition the courts. The major concerns are the time it takes to complete the petition process, and whether States are failing to file petitions for some children for whom adoption is appropriate.

For this report, we have divided barriers that delay or otherwise impede freeing children for adoption into two groups: those primarily associated with administration in the agencies delivering foster care services, and those associated with the legal and judicial systems involved in adjudication of termination petitions.

ADMINISTRATIVE BARRIERS IN THE CHILD WELFARE DELIVERY SYSTEM CAUSE THE MOST EXCESSIVE DELAYS IN FREEING CHILDREN FOR ADOPTION

States Are Not Timely or Effective in Meeting "Reasonable Efforts to Reunite Families" Requirements Which Are Prerequisites to Permanent Placement

Under PL 96-272, a state cannot obtain Federal foster care funds for a child unless prior to or immediately following removal of the child from his/her home the courts rule that reasonable efforts to maintain the child in the family were made. Continued Federal funding for foster care maintenance is contingent upon a State making reasonable efforts to reunite families. The specific definitions of "reasonable efforts to maintain" and "reasonable efforts to reunite" are left to the States.

PL 96-272 does not address requirements for termination of parental rights. However, States through legislation, and State Court systems through official procedures and practice, use the "reasonable efforts" language of the child welfare legislation in termination of parental rights proceedings. In most States, the standard for insuring protection of parents' due process rights in termination of parental rights proceedings is whether the State has made "reasonable efforts to reunite" the child with his/her family. State courts will not terminate the rights of parents unless the State agency can prove that the State has made adequate attempts to assist parents in resuming care for their children.

Over 75% of the respondents in the State survey indicate that the inability of the child welfare agencies to meet the "reasonable efforts" standard to the satisfaction of State courts in a timely manner is *the primary barrier* to implementing permanent plans of adoption.

Survey respondents cite a need for more specific parameters for the "reasonable efforts" standard. Few States have in statute a specific definition of what constitutes "reasonable efforts to reunite." Without such a definition, State agencies and courts are left without guidance concerning the legally adequate level of help which they must provide to families in order to guarantee that parental rights to due process have been met.

Respondents also contend that State child welfare agencies frequently remove children from their parents and then cannot or do not provide adequate, appropriate social services and support to remedy the conditions in these homes that brought the children into care. The social services and assistance made available, generally, are not seen as well-focused on the problems of families and children. Treatment plans are crisis-oriented, and seem to be based upon only those treatment methods which are most available and most familiar to agency personnel. Agency policies do not insure that families can continue contact during the foster care placement to give parents and children a reasonable chance at reunification. Further, respondents report that State agencies rarely provide assistance to families to help them make use of available resources (e.g., transportation, supportive counseling, or advocacy) or to continue visitation.

These service delivery shortcomings put some children in a double bind. In situations where the States make little or no effort to rehabilitate families, children's chances to return to their parents are sharply reduced. By the same token, these children cannot be freed for adoption by other

parents because, by not making sufficient efforts to rehabilitate families, the State agencies are unable to meet court requirements meant to insure that terminating parental rights is equitable to the parents.

These problems with meeting the "reasonable efforts" standard delay implementation of adoption plans for many children and prevent it for others. Agencies do not pursue and courts do not grant petitions to terminate parental rights until State agencies develop evidence that they have exhausted all conceivable possibilities for keeping families together. This can take an enormous amount of time if the service effort is minimal at the start.

Consideration of Long-Term Placement Options for Children Is Delayed

Given that proving "reasonable efforts" is a time-consuming process in the best of circumstances, respondents note that planning and laying the groundwork for potential legal action should begin very soon after children are removed from their homes. Instead, key decisions are often made and acted upon only after children have been in care for considerable periods. The determination that a child may not return home is generally not made until after the first 6-month review. Often, this option is not considered until after time-limits on "reasonable efforts" to reunite have expired. Evaluation of the adequacy of the evidence in cases usually does not begin until this decision is made. Respondents note that this delay in long-range case planning sometimes results in lost opportunities to lay the groundwork for future legal actions.

Another serious problem is agencies' failure to immediately collect and maintain information about the location of relatives and missing parents who are not actively involved in family treatment. Agencies frequently do not undertake searches for missing parents, whose participation in termination proceedings is legally necessary, until such proceedings are imminent. Also, staff do not routinely try early in the foster care process to locate relatives who might adopt children. By initiating such actions after children have been in care for considerable periods, agencies create a double delay: first, the petition and hearing processes must wait until these activities are completed before proceeding; and secondly, these searches are likely to take considerably longer when they begin with dated information.

Because the agencies do not consider long-term plans other than reunification until some time after children enter foster care, staff often do not confront parents with other possible outcomes such as termination of parental rights and adoption until implementation of adoption plans begins. Many respondents state that parental rehabilitation attempts begin only when child welfare agencies make these possibili- ties clear to parents. Once parents show any effort to improve the family situation, few agencies or courts are willing to continue severance attempts until the success of these new efforts can be evaluated, halting the implementation of adoption plans.

Limited Management Commitment and Lack of Staff and Services Play a Significant Role in the Failure to Make "Reasonable Efforts"

While policy and practice problems within the administration of the child welfare system have a major effect on whether agencies meet the "reasonable efforts" standard, management commitment and resources play an equally significant role.

Respondents note that lack of management direction in State child welfare agencies results in significant delays in implementing permanent plans. Many respondents, both within and outside of State agencies, report that line staff frequently receive no guidance from administrators concerning timely resolution of foster care cases. While agencies' policies contain demands for permanency planning, the specifics of these demands (e.g., rigorous treatment planning, timely decision-making, and routine monitoring) are frequently not supported or enforced in practice.

Agency administrators have not shown great commitment to collecting and maintaining information concerning implementation of permanent plans. Few States were able to provide even basic data about termination of parental rights outcomes, and the limited data on processing time that do exist usually are available only through the court system or through special case review studies.

The lack of experienced, stable staff in State agencies who can handle the volume of foster care cases further restricts States' ability to meet "reasonable efforts to reunite" tests. In order to provide effective foster care and family services, the Child Welfare League of America's (CWLA) *Standards for Foster Family Service* specifies that caseworkers should be responsible for no more than 30 children.[9] By contrast, 60% of the supervisors in this study note the average caseloads of staff in their units exceed this recommended level. Agency and non-agency respondents from urban areas report, and documents from various States confirm, that foster care staff frequently carry caseloads more than double the CWLA standard.[10]

Related to the issue of high caseloads is high social service staff turnover rates. Respondents report rates of 25-35% *per annum* in many jurisdictions. The high turnover leads to frequent transfers of cases or long periods of service dormancy because cases are unassigned during lengthy transitions. During these transitions, treatment and permanency goals become unclear and valuable information is lost. The staff in place frequently lack experience working with children and families. A 1989 survey of national child welfare staff confirms that over 50% of caseworkers have no previous experience working with children and families or in human service agencies.[11] This reduces staff capacity to appropriately plan and manage services. It also creates tremendous training needs for agencies.

Respondents also state the shortage of certain services reduces agency ability to respond adequately to family problems. In particular they point out that the lack of adequate housing brings children into care. For parents who need them, agencies usually do not have sufficient substance abuse treatment resources, nor are they likely to offer services especially focused on the substance abusing parent or the chronically negligent parent. Finally, there is a general problem in securing transportation, affecting access to other services for parents living in rural areas and urban centers without extensive public transportation systems.

MANY BARRIERS AND DELAYS ARISE FROM THE LEGAL AND JUDICIAL SYSTEMS

Case Documentation Is Frequently Inadequate

Even when "reasonable efforts" are made by agencies to assist families in reunification, case records often do not contain legally acceptable documentation of these efforts. Respondents point to three specific causes of this problem: 1) case recording and collection of documentation are time-consuming tasks that are not seen as contributing to family progress, particularly when, as noted above, caseload size strains staff ability to carry-out assigned responsibilities; 2) frequent case transfers result in lost information or transitional periods in which no recording is done; and, 3) caseworkers do not have training or routine advice in legal procedures and do not maintain case records in a form that meets judicial standards for evidence.

Some States have attempted to insure that records are useable in court by instituting severance units which have specially trained staff to prepare records for termination proceedings. However, these units do not generally become involved in record preparation until children's cases are well on the way to court. If the State does not have severance units, children's cases frequently stall due to inadequate documentation, unnecessarily delaying the implementation of adoption plans. With or without such specialized staffs, children often spend needless time in foster care while agencies prepare and re-prepare the documentation necessary for legal action.

Implementation of Adoption Plans Often Stops with Pre-Petition Reviews

Following the model in public prosecution of criminal cases, public prosecutors in termination of parental rights cases reserve, or are given by default, the right to decide which cases will be filed in court and to set the legal goals for the cases. In nine of the ten surveyed States, the ultimate decisions about whether or not to undertake legal actions are made by public attorneys or by committees on which these attorneys are the primary decision-makers. The key consideration often becomes narrowly focused on whether the agency or public attorneys believe the available evidence is sufficient to guarantee the success of the States' petitions, rather than on the social service goals for cases.

Over one-third of the respondents, including some of the agency attorneys, report that decision-making criteria tend to be very restrictive. In some localities, respondents report that from one-third to one-half of all cases referred for legal action are returned to child welfare staff as not appropriate for filing. The attorneys do not seem to be opposed to terminating parental rights. Rather, the issue appears to center on reluctance to pursue cases with uncertain outcomes. In this climate, one negative ruling concerning specific procedural issues in one case, or an adverse appellate decision, has an enormous impact on all subsequent case reviews.

While only a few of the States collect and organize statistics on termination outcomes, those that do present a picture of frequent, almost routine, success of State petitions. The highest rate of denial of petitions in any State is 20%. Five of the six States with such information show less than a 3% denial rate. Although attorneys for parents have become more aggressive in appealing termination decisions, these increased appeals apparently do not result in a significant number of

overturned decisions. Exact statistics are not available, but respondents say only a few States have had more than one or two reversals of lower court decisions within the last five years.

The Legal Resources Available for Child Welfare Cases Are Inadequate

The legal staffs assigned to child welfare cases suffer from the same problems of high turnover, inexperience and lack of training, and unmanageable caseloads as child welfare staffs. Attorneys responsible for child welfare cases are often the least senior members of public legal staffs. They are frequently responsible for a host of other administrative and family law issues, as well as parental rights questions. Respondents state this lack of experienced staff affects the process in several ways: 1) it causes backlogs in filing petitions because there are not sufficient attorneys to review cases and prepare necessary legal documents; 2) it means that legal staff often do not have the time or ability to assist child welfare staff, particularly in the early phases of case planning, in preparing the proper groundwork for future legal action; and, 3) it results in poorly prepared or argued court cases.

Scheduling and Conducting Court Hearings Delay Implementation of Adoption Plans

While in some States child custody proceedings are given priority for docketing and scheduling, over half of the respondents report that scheduling hearings is a serious delay. Respondents identify several reasons for these delays:

- In non-urban areas of most States, child custody cases are heard by courts of general jurisdiction sitting in juvenile session. These cases, therefore, compete with all other matters before the court for docketing and may be interrupted at any time for other civil matters.

- Court dockets of most State courts are crowded, straining court personnel and resources. Having cases heard becomes a particular problem when dealing with circuit courts where the problems with crowded dockets are compounded by the limited availability of judges. Since the passage of PL 96-272, even specialized juvenile courts with permanently assigned judges have had to take on additional responsibilities for involvement in the child welfare system. However, respondents note that most court systems have not received adequate funding to meet these responsibilities.

- The number of professional schedules that must be coordinated for hearings makes efficient scheduling extremely difficult. For even the most basic hearing, a judge must schedule hearings to insure the presence of one or two biological parents, three or more attorneys, a social worker, and one or more volunteer child advocates. If professional witnesses are required or foster parents and their representatives wish to play a role, the number of parties can grow to a dozen people.

Continuances (interruptions and rescheduling of hearings) can further delay proceedings. Most child custody proceedings, once on the court docket, will be heard and decided in one day. However, since few States have court procedures requiring unified hearings (i.e., continuous

Continuances (interruptions and rescheduling of hearings) can further delay proceedings. Most child custody proceedings, once on the court docket, will be heard and decided in one day. However, since few States have court procedures requiring unified hearings (i.e., continuous hearing of the evidence without interruption by other cases), respondents report cases not heard in one session often extend over days, even months. Again, overcrowding in the courts and scheduling difficulties are the prime culprits. Since all parties are reported to make aggressive use of continuances as a legal strategy, such delays can become a major issue.

Judicial Biases or Inaction Often Result in Delays

Respondents report that some judges in every State refuse to hear or grant termination of parental rights petitions. Despite almost a decade of efforts by groups such as the National Council of Juvenile and Family Court Judges, respondents in each State could name at least one judge who believes children's best interests are always served by remaining legally tied to their parents.

Of equal concern is the inability or unwillingness of the courts to define and apply limits on "reasonable efforts to reunite." A common judicial practice in many States is to "suspend judgment" on some cases. In this practice, judges do not grant or deny petitions, but instead order child welfare agencies to continue providing certain services for a specific period (usually 6 months). At the end of this period a new hearing is scheduled at which the judge will determine if families have made sufficient progress to demonstrate they can be rehabilitated. Respondents also report judges issue orders requiring agencies to make additional efforts to assist families, or continue cases indefinitely while parents are given additional opportunities to improve their functioning.

Another common practice is for agencies and their attorneys to time the filing of petitions so that certain judges do not hear cases. This minimizes the impact of judges whom agencies perceive to be biased or unwilling to issue final dispositions on cases, but it also increases the time required to implement adoption plans as cases wait to come before specific judges.

The Question of Whether Children Are Adoptable Is Asked Several Times During the Process

Judges and other professionals are hesitant to terminate parental rights unless they are assured that the children so freed will be adopted. Respondents report that the determination of adoptability is made several times in the process by different types of professionals with different perspectives on what constitutes "adoptability." Many respondents note that the individuals making these determinations, often judges without experience in juvenile matters, frequently have more limited views of which children can be adopted than experience indicates is true.

The Legal Procedures in Many States Make Contradictory Demands on State Adoption Services

The termination of parental rights process itself imposes certain constraints on securing adoption placements for children. Judges frequently will not terminate parental rights until a specific

adoptive home is identified for a child. At the same time, agencies are prohibited from the most aggressive home-finding methods (e.g., media advertising or placing the child's picture or name in recruitment materials) until children are legally free for adoption.

A few States avoid this conflict by separating the decision that parental rights should be restricted from the disposition of the petition to terminate parental rights. Agencies have some period after the initial finding that parents cannot regain custody to aggressively seek homes for children. If a home is found, the termination petition is granted; if no potential adoptive parents can be found, the petition is denied but the rights to make major decisions on behalf of the child are granted to the State agency or to another adult.

SOME STATES HAVE DEVELOPED NEW PRACTICES TO EXPEDITE FREEING CHILDREN FOR ADOPTION

In efforts to deal with the issues noted above, several States have developed initiatives to improve the timeliness and effectiveness of their termination of parental rights process. Some have worked well; others are still in their demonstration and testing phases.

Creation of Specialized Severance Units

In Arizona and Oregon child welfare agencies have established severance units to prepare cases for legal action. These units are composed of staffs with particular expertise and experience in the court process. The purpose of the units is to insure adherence to legally sufficient procedures and documentation before the State files petitions.

Amendment of Disjointed Court Processes

The State of California has recently passed legislation to amend its juvenile court processes so that parental rights questions are automatically considered as part of the judicial oversight in foster care cases. Once the court reviews children's cases and either concurs with agency recommendations that adoption is the appropriate permanent plan, or makes such dispositions on its own, new action is not required of the agency to begin termination proceedings. Termination of parental rights hearings are a continuation of the total court jurisdiction over foster care cases. Grounds for removal, records of periodic reviews, and service histories stay before the court so that past decisions are not re-litigated at each step and decision-making is consistent throughout.

Creation of an Expedited Track for Freeing Certain Children

Seventeen States have created expedited tracks for freeing children from families where the provision of reunification services is clearly inappropriate, such as when a parent has been criminally convicted of the death of another child. In seven States, the fact that a child is under one year old may be used as grounds for easing the requirements for "reasonable efforts."

Pre-trial Mediation and Settlement

Minnesota has statutory clauses which permit pre-trial mediation and settlement of termination disputes. In States where "open adoption" is allowed or other alternative permanent arrangements are available, this offers a method of removing some adversarial elements from the permanent planning process. Mediation offers the opportunity for negotiating adoption placement details and increases the likelihood of voluntary relinquishment of parental rights.

Private Contractual Model of Legal Representation

As part of the Department of Health and Human Services demonstration effort in effective practices for freeing children for adoption, the University of Michigan Law School Child Advocacy Law Clinic has established a project to provide trained, independent counsel to county social service agencies in pursuing termination of parental rights cases. Such legal counsel has two unique features: first, attorneys follow a private model of legal representation, wherein the role of the attorney is to advise his/her client on legal goals and strategy but leaving ultimate authority for determining legal goals to the client agency; and second, these attorneys are available to agencies throughout child dependency cases to advise staff on proper procedures and records.

Multi-disciplinary Problem Solving and Training

Three other demonstration project areas are using multi-disciplinary problem-solving models to secure cooperation among social service, legal, and judicial staffs to move children's cases through the judicial system more quickly and smoothly. The provision of joint training to judges, lawyers, and social workers concerning the needs of children and families, as well as in the methods of permanency planning and implementation, is a key component in such projects.

RECOMMENDATIONS

State Governments should:

- Mandate by statute well-defined, expedited tracks for freeing children who will clearly not return home in a reasonable period.

For some children, reunification with parents is clearly not possible, i.e., when parents have clearly abandoned the child or when the only known parent has been convicted of killing or seriously injuring a child's sibling. State termination statutes should specifically identify such situations, and allow termination of parental rights without requiring a period of service provision. As noted previously, seventeen States have such legislation. We recommend that other States adopt similar legislation.

- Prescribe clear time and service requirements for "reasonable efforts" and provide adequate State funding for compliance.

Implementing permanent plans for children requires that, throughout children's time in care, agencies be legally accountable for making and carrying out decisions in a timely manner. State laws should include time-frames and level of effort requirements for State agencies. Related policy must prescribe clear case assessment, case plan, and level of service requirements. These provisions will aid agencies and courts to make consistent decisions about whether the State has made appropriate and sufficient efforts to reunify families before determining that children will not be able to return home.

Once such legislation is put into place, States should then tie funding for social services in the State to the level of assistance required to meet the "reasonable efforts" test for all families with children in care. Unless "reasonable efforts" requirements are tied to actual service availability, the State will consign even larger numbers of children to indefinite periods of foster care.

- Provide adequate resources to enable State courts to hear and rule on child dependency cases in a timely manner.

Since the passage of PL 96-272, State courts have faced increasing pressure from child welfare caseloads. However, few States have appropriated additional resources to meet these new demands. More judges are necessary to rigorously monitor permanent planning efforts and to hear child dependency cases. Further, the courts should be given significantly higher support funds to purchase the additional professional expertise they need to decide what actions are truly in the best interests of the children.

- Offer increased training on permanency planning, in general, and on termination of parental rights, in particular, for child welfare staff, judges, public attorneys, and the staffs of contractual service providers.

Personnel at all levels should receive more specific and accessible training on permanency planning issues. Such training should be interdisciplinary when possible. It should focus on both the reasons and methods for permanency planning and provide information on principles as well as specific skills. Current training models should be evaluated, and successful programs replicated.

The Administration for Children Youth and Families (ACYF) should :

- Serve as an information clearinghouse on permanency planning training and effective practices for implementing permanent plans.

Throughout the inspection process we were repeatedly asked by respondents for information concerning problems and practices in other States. While many organizations have developed training, there are gaps in covered topics, such as permanency planning for special populations of children and families, and permanency planning roles of specific professional groups. The lack of a central clearinghouse for permanency planning training and practice results in failure to identify training needs, and lack of full dissemination of effective practice models. ACYF, with its responsibility for overseeing PL 96-272 implementation, should serve as such a clearinghouse for information and training on permanency planning.

- Explore staff retention strategies. Disseminate the results of such exploration to the States and agencies, and provide training and technical assistance for implementing appropriate strategies to the States.

The inability of child welfare agencies to hire and retain experienced staff is a major impediment to quality child welfare services. ACYF should encourage and sponsor efforts to identify personnel and support methods to attract capable social work and legal practitioners to child welfare services, and to retain these individuals once they are found. ACYF should actively disseminate staff retention information and encourage States to implement retention programs by providing training and technical assistance to State agencies.

- Through the Department's discretionary funding authority, provide seed monies for implementation of treatment programs that deal with current family issues.

Respondents continually point to increasing levels of drug dependency, chronic neglect, and homelessness as the roots of many of the problems that result in children entering foster care. Practitioners note that efforts to reunify families frequently fail because the underlying addictions or psychological problems have not been adequately treated, and because assistance to remedy other family problems is not appropriately designed to help the substance abusing, neglectful, or homeless parent. Some adjustments in practice methods and services are needed. ACYF is in a unique position to encourage these new treatment models.

Move quickly to complete and implement the national child welfare data base.

The Adoption Assistance and Child Welfare Act of 1980 (PL 96-272) called for implementation of a National Child Welfare Data Base. Ten years later the collection system for comprehensive information is still not in place.

The lack of consistent national data on child welfare services and processes impedes any effort to identify common problems in assisting families and children who require foster care services. Planners and administrators do not have sufficient information to measure the effect of policies and programs on families and systems.

NOTE: Implementation of these recommendations would result in cost increases to both Federal and State governments. However, these increases could be at least partially offset by savings in foster care maintenance costs and long-term administrative costs resulting from reductions in the time children spend in foster care. Please refer to Appendix A, "Federal Costs Offset."

DEPARTMENTAL COMMENTS

We received comments from the Office of Human Development Services (OHDS), the Assistant Secretary of Planning and Evaluation (ASPE), the Assistant Secretary for Management and Budget (ASMB), and two external agencies. Both OHDS and ASPE concurred with the recommendations and offered suggestions for providing clearer, more detailed language on certain findings or recommendations. ASMB, while generally supportive of the findings, believed greater emphasis should be placed on the costs associated with implementing the report's recommendations. On the basis of the reviewers' suggestions, we have made several modifications in the report to clarify some sections and to make important distinctions in others. Please refer to Appendix B, "OIG Response to Departmental Comments," and to Appendix C which contains the full text of all comments.

ENDNOTES

1. See, for examples, Maas, Henry S., "Children in Long-Term Foster Care," *Child Welfare* 48 (June, 1969): pp. 321-333; Fanshel, David and Shinn, Eugene B., *Children in Foster Care: A Longitudinal Investigation*, New York: Columbia University Press, 1978.

2. Tatara, Toshio, *Characteristics of Children in Substitute and Adoptive Care: A Statistical Summary of the VCIS National Child Welfare Data Base*, Washington, DC: American Public Welfare Association, 1990, p. 77.

3. Olsen, Lawrence, "Predicting the Permanence Status of Children in Foster Care," *Social Work Research and Abstracts* 18 (Spring, 1982), pp. 9-20.

4. We were unable to interview a representative of the judiciary in Arizona.

5. A representative of the Foster Care Review Board in States with such an organization was interviewed.

6. Approximately 70 percent of foster children are removed from their families due to abuse, neglect or abandonment. See Tatara, *op. cit.*, p. 46.

7. The figures graphed in Figure 3 are the highest and lowest of the individual State average times provided in the State studies of termination of parental rights processes. The adoption placement figures are estimates provided by State administrators. The cumulative figures are the totals of the lower and upper averages, and not necessarily the cumulative average time for the process in any one State.

   In the discussion which follows, we also have included for some activities and for the complete process smaller ranges which include completion times for more than half of the States providing the information.

8. Regional Resource Center for Human Services, *Permanent Planning for Children in Foster Care. A Handbook for Social Workers*, Washington, DC: DHEW, 1977, p. 6.

9. Child Welfare League of America, *Standards for Foster Family Service*, Washington, DC: Child Welfare League of America, 1975, p. 91.

10. See, for examples, Nebraska State Foster Care Review Board, *Looking Out for the Children: Sixth Annual Report*, Lincoln, NE: December, 1988; Association for Children of New Jersey, *Splintered Lives*, Newark, NJ: June, 1988; Senate (CA) Health and Human Services Committee and Senate Select Committee on Children and Youth, *Hearing on Impact of Substance-Exposed Infants on Child Welfare Services*, Sacramento, CA: California Legislature, October 20, 1989.

11. Lieberman, A., Russell, M., and Hornby, H. *National Survey of Child Welfare Workers, 1988*, Portland, ME: University of Southern Maine, 1988, as referenced in Ooms, Theodora, *The Crisis in Foster Care: New Directions for the 1990's*, Background Briefing Report and Meeting Highlights, American Association for Marriage and Family Therapy, Washington, DC, January, 1990, p. 17.

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APPENDIX A

FEDERAL COSTS OFFSET

We recognize that our recommendations for States to tie resources to strict time and service requirements, provide additional court resources, and enhance training will increase State and Federal costs. It is likely, however, that at least some (perhaps all) of the additional service and training expenditures could be offset by savings in the foster care program.

We believe our recommendations would result in more timely adoption of foster children who cannot return home. While we are unable to predict how much faster children will be adopted if the process for terminating parental rights is made more rational and timely, we can *illustrate* the savings in foster care costs that would result if time in foster care was reduced by one year. On average, children who leave foster care for adoptive homes in the States reviewed for this report do so between 3.5 and 5.5 years after they enter the foster care system. According to the American Public Welfare Association's Voluntary Child Information System, the median time in care for all children in FY 1986 was 1.5 years. Further, as shown in Figure 3, the implementation process for adoption plans can be completed in an average of 30 months if the system works at its most efficient pace. Therefore, using the reduction of one year in foster care as the basis, it is not unreasonable to illustrate the potential savings offset.

If we assume that the time spent in foster care by children with a permanency plan of adoption will be reduced on average by one year through implementation of these recommendations, the Federal foster care maintenance costs would be reduced by $37.4 million. States could achieve similar savings in foster care expenses.

Additional Federal savings could also result in reduced administrative costs. A recent review by the Office of Audit Services, OIG, indicated that about 80% of foster care administrative costs are for child placement-related services. (See Management Advisory Report: CIN-A-90-00274). Therefore, reduction of time in care for these children would affect foster care administrative costs. Savings of $51.5 million in administrative costs could result from the one-year reduction in foster care.

Since title IV-E also covers costs for adoption assistance for special needs children, removing such children from the foster care system into adoptive homes mitigates the savings realized by more timely placements. Federal costs for subsidized adoptions are about one-third the costs of foster care. However, we cannot estimate the percentage that will go into subsidized adoption. In our savings estimate we took the more conservative approach of assuming that all would indeed receive such subsidies, resulting in $9.9 million in subsidies.

Total one-year Federal savings for maintenance payments and administrative costs are estimated at $79 million ($37.4 million + $51.5 million - $9.9 million).

Savings Calculation

The one-year savings calculation was derived as follows:

A. Maintenance Payments

Total number of foster care children covered by Title IV-E, 1988 = 120,000.
[Data from OIG report A-90-00274]

Annual Federal costs per child for foster care maintenance = $4,500.
[Data from OIG report A-90-00274]

About 13% of children in foster care have permanency plans of adoption. Therefore, the total number of children with adoption plans = 15,600.
[The 13% figure is for FY 1985, as cited in the American Public Welfare Association publication listed in ENDNOTE #2.]

Total annual foster care maintenance costs for children with adoption plans = $70.2 million ($4,500 x 15,600).

Federal title IV-E adoption assistance maintenance payments for 35,000 subsidized adoptions totalled $75 million in 1988. Therefore, title IV-E adoption assistance payments averaged $2,100 per child in 1988 ($75 million/ 35,000 = $2,100).
[Data on adoption assistance payments from the Office of Human Develop-ment Services]

Total annual adoption assistance maintenance payments assuming that all children with a permanency plan of adoption require and are eligible for such subsidies = $2,100 x 15,600 = $32.8 million.

Maintenance cost reduction = $70.2 million - $32.8 million = $37.4

B. Administrative Costs

Annual per child Federal foster care administrative costs = $3,300.
[Data from OIG report A-90-00274]

Total number of foster care children with permanency plans of adoption = 15,600.

Total administrative costs for foster care children with permanency plans of adoption = $51.5 million (15,600 x $3,300).

C. ***Adoption Subsidy Costs***

Annual per child Federal subsidized adoption administrative costs = $629
($22 million administrative/ 35,000 children = $629).
[$22 million figure obtained from OHDS for FY 1988]

Total administrative costs for subsidized adoption = $9.9 million (15,600 x $629).

D. ***Total estimated Federal Financial Participation Savings = $79 million***

(maintenance savings of $37.4 million + administrative savings of $51.5 - adoption subsidy costs of $9.9 million).

APPENDIX B

OIG RESPONSE TO DEPARTMENTAL COMMENTS

We received comments from the Office of Human Development Services (OHDS), the Assistant Secretary for Planning and Evaluation (ASPE), the Assistant Secretary for Management and Budget (ASMB), and two external agencies. Please refer to Appendix C for the full texts of the comments.

Office of Human Development Services

The OHDS concurred with the report. They recommended several changes in language in the recommendations and findings.

> *We have adopted the language suggested by OHDS either within the recommendations in question or within the explanatory text.*

The OHDS agreed with the recommendation to the States concerning adequate resources for State courts to handle termination of parental rights cases, but urged that States examine current court functioning to determine "whether courts need to be involved in routine reviews."

> *We agree that the OHDS should encourage States to review their utilization of their court systems in child welfare cases. The recommendation calls upon States to provide the resources to the courts to carry out the functions assigned to them.*

The OHDS agrees with the recommendations addressed to the Administration for Children, Youth and Families (ACYF), and notes that preliminary planning is underway for implementing these recommendations.

> *We are pleased that the OHDS has begun preliminary planning to implement the recommendations. We urge the ACYF to pay particular attention to the need for aggressive efforts to disseminate the information gained from the various research, demonstration, and pilot programs, and to the States' needs for support in implementing successful features of these programs. We are hopeful that projects funded to implement treatment programs will be focused on the full array of family problems that bring children into care and not on direct foster care services, except as part of a larger treatment plan that is also part of the funded program.*

The Assistant Secretary For Management and Budget

The ASMB pointed out the importance of distinguishing among the issues relating to "reasonable efforts to reunite." These issues are insufficient documentation, ambiguity surrounding what constitutes "reasonable efforts", and failure to provide services.

We maintain that all three factors should be considered in understanding the problem, and we believe the report adequately reflects and distinguishes these factors. Failure to provide adequate services not only undermines the possibility that children will ever return home, it jeopardizes the State's ability to place the child permanently in another home. Unless well-focused, intensive services are provided, the State agency has no grounds for its contention in termination proceedings that parents were given the opportunity to improve their functioning but did not. We have added language to the discussion of the "reasonable effort" finding that explicitly explains this double bind into which the current system places children.

The ASMB noted there is a need to evaluate the effectiveness of new State practices such as expedited tracks and training.

We agree. The report describes a number of promising initiatives that are worthy of further testing and evaluation.

The ASMB provided extensive comments regarding our estimate of $79 million in savings. The ASMB states that our estimate completely ignores the cost of implementing our recommendations.

The report clearly states that such cost increases may occur. The illustration was of potential savings in Title IV-E costs that could be used to offset the increased costs of the recommended changes. We have amended the language in the cost section to more clearly make this point. We believe that, while it is important to acknowledge the need for additional expenditures, it is also important to recognize that the changes in child welfare practices which we advocate could reduce the time and costs of foster care.

The ASMB was also concerned that we had not demonstrated that our recommendations would result in shorter foster care stays.

Our one year savings estimate was developed to illustrate the potential impact of more timely permanency placements. We have made some changes in the text to more clearly indicate that the savings estimate was used as an example of the potential cost offset of foster care administrative and maintenance cost reductions.

Finally, the ASMB notes that our cost reduction analysis should not include administrative costs because ". . . they are much more a function of State claiming practices than of the number of children or length of time in care."

We agree that State claiming practices affect total administrative costs billed to the Federal government. But these costs are also directly related to foster care caseloads. A recent review by the Office of Audit Services, OIG, indicated that about 80% of foster care administrative costs are for child placement services such as the following: development of the case plan, case management and supervision, referral to services, preparation for and participation in judicial decisions, and placement of the child. (Please refer to Management Advisory Report: CIN-A-90-00274).

The Assistant Secretary for Planning and Evaluation

The ASPE agreed conditionally with the report.

The ASPE was concerned that the report note the hardship of extended delays on children awaiting adoption, particularly on harder to place children.

> *We have substituted in the background section the ASPE's language concerning the effect on children of extended periods awaiting implementation of permanent plans.*
>
> *The report found no distinction in the barriers facing special populations of children in going through the termination of parental rights process, except, as noted in the report, when various decision-makers' perceptions of adoptability influence their willingness to free children for adoption.*

The ASPE suggested expanding several of the findings as stated in the Executive Summary. In particular, they urged more detail in the findings concerning scheduling and conducting court hearings and the development of new practices in some States.

> *We agree with these recommendations and have added more detail to the Executive Summary.*

The ASPE noted the need for the Administration for Children Youth and Families to support State efforts to improve the process of freeing children for adoption.

> *We agree. Our recommendations call upon ACYF to perform specific functions to guide and support State efforts such as serving as a clearinghouse for information, and providing demonstration and seed monies to assist in developing new practice and administrative models.*

Finally, the ASPE expressed several concerns about the figure concerning time required for various activities (Figure 3) and the corresponding text.

> *The times specified as lower and upper estimates are the ranges of State averages for each individual activity. We have added explanatory text, and have made the other corrections as requested by ASPE to make the section clearer and more consistent.*

OIG RESPONSES TO EXTERNAL AGENCY COMMENTS

We also received comments from the American Public Welfare Association (APWA) and the National Council of Juvenile and Family Court Justices (NCJFCJ). Please refer to Appendix C for the full text of their comments.

The American Public Welfare Association

The APWA stated that the recommendations for removing some of the barriers to freeing children for adoption provided a "useful starting point for future policy making considerations." They expressed several reservations, however, with the findings and recommendations concerning the definition and implementation of "reasonable efforts" requirements. The APWA's concern was that the treatment of "reasonable efforts" in the report gave too broad a mandate to public child welfare agencies, while simultaneously implying that government should ration services by prescribing limits on the level of services each family can receive.

> *We do not hold public child welfare agencies responsible for remediation of the whole array of ills that bring children into care. The point of the "reasonable efforts" discussion is to indicate that in many of the jurisdictions surveyed the lack of consistent standards means that the court system frequently does hold State foster care programs responsible for meeting needs well beyond their public mandate.*
>
> *The report does not call for prescribed limits on services for families. In fact, our intent is to call attention to the need not only for additional services but for better planning and delivery of those services as well. The purpose of the call for State definitions of "reasonable efforts" is to provide guidance to social workers, attorneys, and judges in making determinations of whether State efforts have adequately protected the rights of the parents. The vagueness in the current situation meets the needs of no one, least of all those of the children.*
>
> *We have added additional language to make the discussion of the "reasonable efforts" question clearer.*

The APWA urged greater attention to the question of which children are adoptable.

> *We agree, and intend that the recommendations to ACYF for improved information dissemination would address this issue.*

The APWA urged that the report review the Notice of Proposed Rulemaking (NPRM) for the "national child welfare data base" and make recommendations on implementation requirements for such a system.

> *Such a recommendation would be beyond the scope of this report.*

The National Council of Juvenile and Family Court Justices

The NCJFCJ concurred with the report's findings and recommendations.

APPENDIX C

DEPARTMENTAL COMMENTS AND COMMENTS FROM EXTERNAL AGENCIES

Assistant Secretary
Washington DC 20201

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TO: Richard Kusserow
Inspector General

FROM: Assistant Secretary for
Human Development Services

SUBJECT: OIG Draft Report: "Barriers to Freeing Children for Adoption", OEI-06-89-01640

file
Inspect
Work p.

We have reviewed the draft of the Inspector General's report on barriers to freeing children for adoption. We find the report to be quite comprehensive and appreciate the fact that much time and effort went into this critical study. We have the following comments:

1. OIG Finding:

Administrative barriers in the child welfare delivery system cause the most excessive delays in freeing children for adoption.

- o The consideration of long-term placement options for children is delayed. (p. 12)

OHDS comment:

We recommend rewording the sentence to read: The consideration of long-term care options for children is delayed.

2. OIG Recommendation:

State Governments should:

- o Prescribe clear time and service requirements for "reasonable efforts" and provide sufficient State funding for compliance. (p. 20)

OHDS comment:

We suggest this statement read as follows: Prescribe clear case assessment, case plan and service requirements...

We also recommend an additional bullet, as follows:

Provide necessary resources to enable State agencies to ensure adequate case assessments and services to families.

3. OIG Recommendation:

State Governments should:

- Provide adequate resources to enable State courts to hear and rule on child dependency cases in a timely manner. (p. 21)

OHDS comment:

We agree with the recommendation. However, we suggest that States examine whether courts need to be involved in routine reviews especially where a change of legal status is not involved.

4. OIG Recommendation:

The Administration for Children Youth and Families should:

- Serve as a clearinghouse for information concerning permanency planning training and effective practices for implementing permanent plans. (p. 21)

OHDS comment:

In response to the OIG report, ACYF is proposing to fund up to three projects in FY 1991 which will focus on permanency planning. Specifically, these projects will compile and focus available resource materials to better address barriers in the child welfare, legal and judicial systems which inhibit and delay the processes by which children are reunited with their families, placed in adoptive homes, or established in other permanent placements. These projects will be conducted by existing National Child Welfare Resource Centers which already have in place extensive mechanisms for dissemination.

5. OIG comment:

The Administration for Children, Youth and Families should:

- o Explore staff retention strategies. (p. 22)

OHDS comment:

In response to the OIG report, in FY 1991 ACYF proposes to fund up to five two-year projects to demonstrate ways to reduce staff turnover, improve employee morale, and improve child welfare service delivery, including child protection. The projects will be evaluated and findings will be disseminated to the field. In addition, the National Child Welfare Resource Centers provide information to States and agencies on staff retention, (especially the National Resource Center for Management and Administration).

6. OIG Recommendation:

The Administration for Children, Youth and Families should:

- o Through the Department's discretionary funding authority, provide seed monies for implementation of treatment programs that deal with current family issues. (p. 22)

OHDS comment:

We agree with the recommendation to provide seed monies for implementing treatment programs focusing on family issues. Through the years, ACYF has funded projects addressing treatment for families and children to prevent out-of-home placement of children and to facilitate the return home of children already in out-of-home placement. In FY 1991, ACYF proposes to fund up to three projects to develop or replicate model programs to provide specialized family foster homes for drug and alcohol affected infants who need a specialized level of care that their families are unable to provide. These projects will also address the rehabilitation of parents and reunification of

families. In addition, ACYF proposes to fund up to five projects to develop model programs for the provision of day treatment for children who would otherwise be removed from their homes and placed in residential care; or to facilitate the reunification of children who can be returned from residential care earlier with the support of day treatment services. In contrast to residential care, day treatment services permit extensive involvement of family members in the treatment program.

7. OIG Recommendation:

The Administration for Children, Youth and Families should:

- o Move quickly to complete and implement the national child welfare database. (p. 22)

OHDS comment:

We agree with the recommendation.

Thank you for the opportunity to comment on the draft report.

Mary Sheila Gall

EOS Region 6
AT Baltimore
cc
SEC
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MEMORANDUM TO: Richard P. Kusserow
Inspector General

FROM : Kevin E. Moley
Assistant Secretary for Management and Budget

SUBJECT : ASMB Comments on the Draft OIG Report:
"Barriers to Freeing Children for Adoption"
OEI-06-89-01640

Thank you for the opportunity to review and comment on the draft OIG report: "Barriers to Freeing Children for Adoption". While the report contains some important and interesting discussions on the problems encountered in moving a child through the child welfare system and into an adoptive placement, we believe it has some flaws which should be corrected to preserve the integrity of these discussions. The problems and needed changes are highlighted below under the headings of Report Findings, Report Recommendations and Budget Savings.

Report Findings

Failure to make "reasonable efforts to reunite families" in an effective and timely manner should not be cited as a "barrier" to freeing children for adoption. A clear distinction needs to be made in the OIG report between insufficient documentation of reasonable efforts, ambiguity surrounding what constitutes "reasonable efforts", both of which are administrative barriers that cause delays in the adoption process, and the failure to provide services, which is a barrier to achieving the best possible outcome for the child and family (which could be a return home), but should not be considered a barrier to adoption. In fact, failure to provide services, or delays in providing services could allow already fragile family relationships to deteriorate completely, resulting in the need for adoptive placement. This distinction should be reflected in both the body of the report and in the Executive Summary.

Report Recommendations

Two of the four recommendations for State action, mandating expedited tracks for freeing certain children for adoption, and increasing multi-disciplinary training for child welfare staff, judges, attorneys and contractual service providers, are based on actions and initiatives already undertaken in many States. Although the report describes these efforts already underway on pages 19 and 20, it offers no evaluation results that would lead to a conclusion that they decrease barriers and should be implemented on a national basis. If evaluation results are available, the report should include them as a basis for making these recommendations. If evaluations are not available, then the report should recommend that evaluations be done before every State takes on these efforts.

Budget Savings

We disagree with the OIG's estimate of $79 million in budget savings associated with the recommendations contained in the report for the following reasons:

- These savings would result in Title IV-E "if time in foster care was reduced by one year" for children with adoption plans, according to the report. It is true that some savings in the Title IV-E program would occur if time in foster care is reduced, but the report offers no basis for assuming that the OIG's recommendations will result in shorter stays in foster care. The report may state that if stays are reduced by one year, there may be some savings in Title IV-E, but these savings should not be tied to the report's recommendations.

- The $79 million savings figure assumes savings of $41.6 million from Foster Care Administrative costs due to shorter stays in foster care. Administrative cost savings should not be included because they are much more a function of State claiming practices than of the number of children or length of time in care. There is no evidence of correlation between claims for administrative costs and the number of foster children or the length of stay in care. In fact, it is more likely that States would attempt to increase claims for foster care administrative costs if more intensive efforts to free children for adoption were made.

- The OIG's savings estimate completely ignores the cost of implementing its recommendations which will increase State and Federal costs dramatically: providing adequate State funding for compliance with "reasonable efforts" requirements; providing adequate resources to enable State courts to hear and rule on child dependency cases in a timely manner; and increasing training for all professionals in the child welfare field. Although it is difficult to estimate the total cost of these efforts, we believe it would exceed by far any savings achieved in Title IV-E.

- Any recalculation of Title IV-E savings estimates should be coordinated with either OHDS or the Budget Office in ASMB so that the most up-to-date costs can be used. Estimates are revised every six months, and using data from another OIG report, as this report does, will not allow for accurate calculations.

Washington, D.C. 20201

MEMORANDUM

NOV 19 1993

TO: Richard P. Kusserow
Inspector General

FROM: Assistant Secretary for
Planning and Evaluation

SUBJECT: OIG Draft Report: "Barriers to Freeing Children for Adoption" -- CONDITIONAL CONCURRENCE OEI-06-89-01640

I concur with the report sent for my review provided that my concerns outlined below are addressed. In general I found the report to be very thorough and informative. The report could be strengthened by including several findings that other studies have documented concerning children awaiting adoption. These are discussed in the first section of this memorandum. The second section focuses on the study's findings and recommendations, and the third elaborates a number of edits which would improve the report's readability.

Children Waiting Adoption

The report clearly shows that adoptable children are unnecessarily spending many months, and even years, in foster care. Apart from the concerns you raised with this in the report, the study should also make clear that the perpetuation of this problem takes a terrible additional toll on children who have already been victimized by their original parents. I suggest that the background section specify that extended unnecessary stays in foster care also severely compromises the healthy development of these fragile children. In addition, it has been well-documented that older and minority children face the largest barriers to timely adoption. This fact should also be included on page 10 which only addresses how long the average child must wait. I think it is important to provide both of these facts in the Executive Summary of the report as well.

Findings and Recommendations

The body of the report contains many excellent findings that should be made more readily accessible in the Executive Summary. For instance, on page 16, the report states that "in non-urban areas of most States, child custody cases...may be interrupted at any time for other civil matters." This sentence could serve as an excellent addition to the bullet associated with the finding in the Executive Summary which currently reads "scheduling and conducting court hearings delay implementation of adoption plans." In fact, virtually all of the findings in the Executive

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EX SEC ✓

Summary could be made more explicit if an additional sentence or two were taken from the body of the report and added to each.

The recommendations for actions to be taken by State governments and the Administration for Children Youth and Families (ACYF) should be strengthened to provide for an integrated approach. Currently, two of the report's recommendations specify that State governments "prescribe clear time and service requirements for "reasonable efforts" and "offer increased training...for child welfare staff, judges, public attorneys, and the staffs of contractual providers." I suggest that similar recommendations be made for ACYF to support State efforts in these areas. For instance, ACYF could provide needed guidance to States attempting to define reasonable efforts by sponsoring a study of State practices in this area and issuing a set of recommendations and perhaps even model State legislation. In terms of training, ACYF could develop training modules which States could utilize to provide much-needed training.

Editorial Comments

(Page ii). Unlike the other headings in the "Findings" section, there are no bullets under the heading that reads "Some States have developed new practices." A few brief bullets on the findings under this heading would be helpful and appropriate to this section.

(Page iii). In the note at the bottom of this page, the capitalization of the words "maintenance" and "administrative" (in reference to foster care costs) should be made consistent.

(Figures 2 and 3). Even though they describe the same process, it is hard to relate the information in these two figures to each other. For instance, it is not clear where the "family reunification determined infeasible" step to adoption in Figure 3 is shown in Figure 2, which is a flow chart of the entire adoption process. Labels in both figures should be made consistent.

(Figure 3). It is unclear how the upper and lower range of estimates in this figure was derived. For instance, do these represent average State differences (meaning an average or median was found for each State) or is this an absolute range (meaning the highest and lowest case-specific estimates across (or perhaps even within) States are compared? This should be explained in the text of the report or in a footnote to the Figure.

(Page 8). It is very hard to follow the discussion on this page in relation to Figure 3. Briefly, Figure 3 estimates the entire adoption process takes 30 to 108 months. The second paragraph states "in actual practice" children are in care from "six months to 4.5 years" (54 months) before adoption is specified in the permanent plan. Moreover, the next sentence states that "in most of the States providing detailed information" children spend "2.5

to 3.5 years" (30 to 42 months) in foster care before a determination is made that adoption is in their best interest.

It would be helpful if: one, the text and the figure gave these figures consistently in either years or months (or supplied a translation in parentheses as I have done above); and two, additional explanatory text was provided that included direct comparisons of the differing estimates to help account for their differences thereby providing the reader a better-defined context with which to interpret these numbers.

The final two lines of text on page 10 should be deleted as they also appear at the top of the next page.

(Page 15). A word appears to be missing in the second sentence of the first paragraph.

Martin H. Gerry

AMERICAN PUBLIC WELFARE ASSOCIATION

Ruth Massinga, President

A. Sidney Johnson III, Executive Director

18 Dec to CCS CC SRO CBS

December 12, 1990

Richard P. Kusserow
Inspector General
Department of Health and Human Services
Office of Inspector General
Washington, D.C. 20201

Dear Dr. Kusserow:

Thank you for the opportunity to review and comment on your draft report, "Barriers to Freeing Children for Adoption." The recommendations for how to remove some of these barriers provide a useful starting point for future policy making considerations.

The major area of concern with the recommendations is over the discussion regarding the reasonable efforts requirement in federal law. On the one hand, the report states that "child welfare agencies frequently remove children from their parents and then cannot or do not provide adequate, appropriate social services and support to remedy the conditions in these homes that brought the children into care." (p.11) It goes on to say that a shortage of certain services reduces agency ability to respond adequately to family problems, such as adequate housing and insufficient substance abuse treatment resources." (p. 14).

The report seems to imply that in order to meet the reasonable efforts requirement, child welfare agencies should be responsible for providing and funding a whole range of services, including housing and substance abuse treatment, for which it has no designated responsibility. The federal reasonable efforts requirement does not prescribe that these or any other services be provided, nor does it provide funding for agencies to provide all of the services which address the conditions under which children come into care. Any discussion about reasonable efforts must be accompanied by a recognition that the child welfare agency can not be responsible for addressing all of these

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concerns; attention to broad social and economic problems affecting families must be the shared responsibility of all levels of government, its institutions, and the community. Even if state agencies do "prescribe clear time and service requirements for 'reasonable efforts,'" these requirements are not likely to include all services that meet the full range of family needs. Your report needs to recognize this point.

More importantly, what is lacking in your recommendations is a discussion about how the federal government can foster activities which span the human service network. As the problems confronting families are multi-faceted, so must be the responses. The recommendation that ACYF provide seed monies for implementation of treatment programs that deal with current family issues is counter-productive in that it assumes that child welfare agencies are the most appropriate agencies to provide these services. A more productive approach would be to require ACYF and other federal agencies, such as the Office of Substance Abuse Prevention and Housing and Urban Development, to coordinate the programs under their jurisdiction. Removing the barriers to cross systems activities -- such as categorical funding and eligibility requirements -- is a more appropriate and visionary way of fostering access to the range of services families need.

We are particularly troubled by the implication of the phrase that precedes the reasonable effort recommendation: "state government should prescribe clear time and service requirements." On its face, such a recommendation could be interpreted to mean that government should ration prescribed doses of services. If the family and child fail to be cured in the prescribed period, the treatment is curtailed, the child is removed from the family, and termination proceedings are instituted immediately. Given the fact that little is now known about the treatment and service interventions that can "cure" family problems, such a move to prescribe time limits on services smacks of a desire to engage in social engineering or to contain costs. Of equal concern is the implied notion that families should somehow be forced to walk lock-step through a series of services which "others" consider to represent "reasonable efforts". What may be a logical service plan for one family does not necessarily mean that it is logical or appropriate for another family.

Our final area of concern with the discussion of reasonable efforts is the very limited discussion it receives in the document vis a' vis its presence as a legal requirement of P.L. 96-272. (Page 2 of the draft report notes its link to the law; page 11 discusses it as a programmatic issue). As you know, the Section 427 review requires that for every child in foster care, the case record must note that reasonable efforts have been made. If such a notation fails to appear in the case record, the state is subject to fiscal penalities. Because of this, states must necessarily seek to assure that they can document that reasonable efforts have in fact been made. Thus, it is important to make note of this requirement in your report.

Another area which requires attention is the question of which children are adoptable. While the report states that "Individuals making these determinations, often judges without experience in juvenile matters, frequently have more limited views of which children can be adopted than experience indicates is true" there is no corresponding recommendation for how to deal with this. Encouraging states to establish guidelines for determining that a child is adoptable and at what time may be a useful way to address this problem. Your report should encourage both adoptive parent advocate organizations and ACYF to direct considerable attention in the 1990's to bring vision and clarity to this issue.

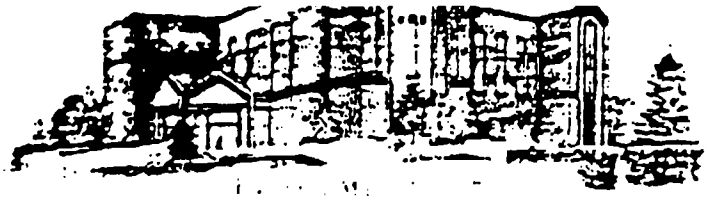
Finally, your report references the "national child welfare data base" which is called for in P.L. 96-272. Section 479 of the Social Security Act, amended in the Omnibus Budget Reconciliation Act of 1986, called for the establishment of a new national adoption and foster care data collection system. The Notice of Proposed Rulemaking (NPRM) for this system was issued by ACYF on September 27,1990. The date for implementation is October 1, 1991. The data elements called for in this new system will finally provide us with the information needed for policy making purposes. However, we are concerned about both the lack of adequate funding for this system and the ability of ACYF to provide technical assistance to the states to develop these systems and to manage and analyze the huge influx of data that will be generated. This report could be strengthened by reviewing the NPRM and commenting on what would be necessary to adequately fund the states and ACYF to implement this national child welfare data base.

I hope these comments are useful for your final report. Please feel free to call Jennifer Miller at (202)682-0100 if you have any questions or need more information.

Sincerely,

Bard D. Shollenberger
Director of Government Affairs

cc: Susan Rousseau O'Connell



NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

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October 29, 1990

Richard P. Kusserow
Inspector General
Department of Health and Human Services
Washington, D.C. 20201

Dear General Kusserow:

I am in receipt of the draft report Barriers to Freeing Children for Adoption, published in September 1990 and recently disseminated for review and comment. Thank you for the opportunity to respond to this timely publication.

A most salient feature of this report on barriers to adoption is its call for increased training and technical assistance to judges assigned to hear cases involving abused and neglected children. The Office of Inspector General (OIG) researchers appear to be right on point in their recommendations, including the conclusion that "increased training on permanency planning, in general, and on termination of parental rights, in particular, for child welfare staff, judges, public attorneys, and the staff of contractual service providers" is needed nationwide.

It was most gratifying to read the report's recognition of "almost a decade of efforts by groups such as the National Council of Juvenile and Family Court Judges," but also disturbing to realize how widespread is our nation's needs for continuing judicial education in this area.

The report serves as a pointed reminder to those of us involved in judicial education of the impact which judges and court systems have on the lives of children and families. The membership and staff of the National Council remain committed to the challenge of permanency planning for all children who come before the nation's courts. This report provides new and needed emphasis on the judicial and interdisciplinary cooperation necessary to achieve this goal. Thank you for your leadership role in the compilation and dissemination of this vital information.

Sincerely,

Louis W. McHardy
Executive Director/Dean

LWMcH:am