

Foster Kids from Poor Families—Exploring the Adoption and Safe Families Act of 1997**Brendan McFeely****Publication Date**

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 The Politics of Poverty
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Foster Kids from Poor Families—Exploring the Adoption and Safe Families Act of 1997

I. Executive Summary

Child welfare has long been the subject of government policy. In an effort to update the child protective net in the 1990s, the bipartisan Adoption and Safe Families Act of 1997 was passed. Intending to prioritize child safety and swift adoptions, the policy ultimately caused increased foster care stays and separated families. The 2017 Families First Prevention Services Act tried to solve these issues, but more federal intervention will be required to ensure successful state implementation.

II. Background of Child Welfare

Promoting the well-being of children has long been a target of government intervention. The state has used its power to protect children from their own families. Poor parents, constructed as deviant paupers, were found to be “neglecting” their children, so the state would swoop in and foster the children until they could be returned (Gossett 2018:813). As a result, the child welfare system necessitates state intervention in families, asserting the state’s obligation as *parens patriae* (Gossett 2018:813). It also serves as a motivator for successful parenting, forming “a critical institution of social supervision” (Roberts 2014:1778).

III. Policy or existing proposals history—The Adoption and Safe Families Act of 1997

The Adoption and Safe Families Act in 1997 overhauled the child welfare system to conform with the attitudes of the day. It was seen as an attempt to prioritize child safety over keeping families together, as previous legislation gave too much leeway to abusive households. The Child Welfare Act of 1980 prioritized keeping families together, and encouraged short-term foster care stays to promote family unification; in reality, it meant that children were either stuck in foster care until they aged out, or were placed back in unsafe homes with their guardian (Gossett 2018:777). In response, the system was changed to fix these issues, prioritizing quick adoptions and a decreased emphasis on parental rights.

Policy in Practice: How the ASFA works

The basic process of a child welfare case is as follows, as adapted from the Children’s Bureau:

After a report has been filed with substantiated claims of neglect, a child welfare agency (eg, California’s Child Protective Services agency) will initiate a court process. If the court finds neglect, the child(ren) moves to a different family guardian’s residence or foster care. Foster care is intended to be temporary, until a parent can regain their custody following a plan (eg, drug rehabilitation), until adoptive parents can be found for a child, or until they age out of the system. The Adoption and Safe Families Act made the following changes to the system:

- **Emphasis on child protection over family ties.** The stated purpose was to protect children and minimize harmful placements. This was manifested by removing the requirement that agencies make “reasonable efforts” to prevent the removal of children from their homes and to return as soon as possible (PBS Frontline 2014).
- **Adoption and foster care incentives.** The federal government incentivized states to promote quick adoptions and provided matching benefits to children in foster care.
- **An expedited timetable.** Permanency plans, which detail the long-term goals of a child’s stay in the state’s care, must be made no less than a year after a child is removed from their home. Similarly, a parent’s rights will be terminated if their child has been in foster care for more than 15 of the last 22 months.

Underlying Assumptions of the ASFA

The ASFA was founded on several assumptions, many of which undergird the entire welfare system:

- **“Poverty” is not the issue. The issue is “neglect.”**

In child welfare, the issue ostensibly targeted is neglect and maltreatment of children. In reality, neglect functions as a euphemism for the systemic issues plaguing the poor. Bad housing, nutrition, or medical care could all be justifications for removing a child from a home (Children’s Bureau 2020), which are all caused by a lack of access to those resources. To be sure, there are issues which are commonplace regardless of class (eg, child abuse), but affluent parents evade the scrutiny of the child welfare system. Thus, as Professor Daniel Hatcher succinctly puts it, “foster kids don’t come from rich families” (Hatcher 2019).

- **Neglect is a Problem of Persons, who are also Solution**

Because the issue is neglect, the parents who are targeted for removal of their children are grouped together not by their class, but by their failure to parent properly. This means that they are targeted not as *disadvantaged*, who deserve the government support (Schneider and Ingraham 1993:336). They are constructed as a deviant class, whose moral pathology led them to be lazy, drug-addled, neglectful parents (Katz 2013:19). Their issues are their own, and custody of their children is contingent on their transformation into effective members of society. In the meantime, their children (who are constructed as innocent victims of poor parenting) should be taken care of by the state.

Particularly of note is the racially-coded assumptions held within this. In practice, the foster care system is racially biased, with a disproportionately high population of Black children. This perpetuates stereotypes of unmarried Black women as domineering ‘Sapphires’ (Ferris State) or dependent ‘welfare queens’ (Roberts 2014:1777). Child Protective Services exists as a way to ensure they are following the rules—both legal and social—at the risk of losing their children.

This assumption reinforces the neoliberal model of welfare, where the state “takes over primary child-rearing responsibilities from poor parents” (Gossett 2018:813) without providing “basic economic support to poor families” that they desperately need (Roberts 2014:1485).

➤ **Solution to the Issue of Bad Families is Prioritized Adoption**

The bill also saw the solution to problematic family placements as a strengthened foster care system with expedited adoption systems. This was a marked difference from the previous 1980 legislation, which sought to keep families together as much as possible (Gossett 2018:777).

Political Debate and Framework

The bill was passed by unanimous consent in the Senate and a massive bipartisan margin in the house. It was the product of consensus, as both parties wanted to help solve children’s issues. First Lady Hillary Clinton helped kickstart the bill and compromise was reached after negotiations with Republicans led by Senator John Chaffee (R-RI). The major debate, in the end, was on how quickly to terminate parental rights, and how much funding should be allocated to foster-care prevention programs (Sengupta 2000). Ultimately, swift termination of custody and adoption incentives were prioritized, and the bill passed on the last day of the 1997 Congressional session.

Impacts of the ASFA

The ASFA was implemented to prevent unsafe family matches through prioritizing adoption and terminating parental rights. How did it fare in these regards?

It certainly took away parental rights, but the rise in adoptions was not mirrored the same way. More children entered foster care but left via adoption or emancipation at the same rates (Gossett 2018:757). One of the major reasons was because of the funding pathways in the ASFA. The federal government provided cash incentives for each child adopted out of foster care to increase the adoption rate. The result? States received more money for putting children in foster care than they did keeping children with their families (Moore 2000). In addition, a matching grant-in-aid program to any foster care benefits meant that states could—and would—siphon foster children’s disability or survivor benefits and use them to pay for their foster systems (Gossett 2018:793). So while more children were separated from their families, the numbers in foster care increased, and the amount who were never adopted increased from 1998 to 2017 (Phagan-Hansel 2020).

The ASFA failed to help parents as well. Oftentimes, the swift timetable of separation of parental rights meant that parents were cut out of their children’s lives, even as their children languished in foster care. This was amplified with other policy decisions made at the time: particularly mass incarceration, which hurt Black women most of all. The disproportionate rate of Black children in foster care can be attributed in part to the undue burden these new regulations put on Black mothers, whose drug incarceration rates increased 828% from 1986 to 1991 (Roberts 2012: 1480). Women in prison could not meet to discuss permanency plans, and

mandatory minimums meant they were likely to be in prison for more than 15 of the last 22 months. Even when they retained custody of their children, policies restricting welfare benefits to formerly convicted people meant they struggled to provide outside of prison as well (Roberts 2012:1499).

IV. Implemented Change: The Family First Prevention Services Act

One major change to the policy was passed and implemented in the past four years: the Family First Prevention Services Act of 2017. The FFPSA passed with bipartisan support and sought to fix the lengthy foster care stays the ASFA caused by incentivizing states to fund “kinship programs” and foster families. It also provided funding for drug treatment and mental health treatment as a response to the opiate epidemic, which caused a sizable bump in the foster care population (Gossett 2018:809).

One fundamental assumption in the FFPSA is explained by a letter of support from the Children’s Defense Fund and 300 other children’s support organizations: “Children fare best in families, and this newly enacted law represents an historic step toward better aligning federal child welfare policy with this goal” (CDF 2018). This assumption was minimized during the passage of the ASFA, as families were seen as possible dangers to child welfare. The other assumptions, about the problem of neglect and poor parents, remain unchanged—with the change that it promoted drug and mental health treatment, perhaps signalling a shift in the assumptions about drug addiction’s causes as structural rather than personal.

V. Briefly address counterarguments, and Conclusion

While the Family First Prevention Services Act serves as a meaningful and needed update to the FFPSA, it is not without its flaws. The increased funding to kinship retention and drug treatment plans requires states to elect to pursue these plans. In addition, federal funds only cover 50% of the plan until 2026, which states may use as justification to hold off on the proposal. Further legislation can ameliorate this issue by establishing federal matching funds in perpetuity, as previous expansions of ASFA did. Even with such expansions, however, legislation on child welfare still fails to provide parents with meaningful solutions to the issues they are facing. Until a child welfare bill seeks to provide more assistance in housing, nutrition, or medical care, neglect will still be a euphemism for poverty, and the poor will be hurt most of all.

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