CHILD PROTECTION OVERSIGHT

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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CHILD PROTECTION OVERSIGHT

THURSDAY, APRIL 22, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:06 a.m., in room B–318, Rayburn House Office Building, Hon. Nancy Johnson (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE
April 15, 1999
No. HR–4

CONTACT: (202) 225–1025

Johnson Announces Hearing on Child Protection Oversight

Congresswoman Nancy L. Johnson (R–CT), Chairman, Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the implementation of a Federal review system to hold States accountable for their child protection systems and the impact of the Adoption and Safe Families Act of 1997 (P.L. 105–89) on the number of adoptions in the U.S. The hearing will take place on Thursday, April 22, 1999, in room B–318 of the Rayburn House Office Building, beginning at 10:00 a.m.

Oral testimony at this hearing will be from invited witnesses only. Witnesses will include representatives from the Administration, the Congressional Research Service, State policymakers, and advocacy groups. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

Under both the Interethnic Adoption Act of 1996 (Section 1808 of P.L. 104–188) and the Adoption and Safe Families Act of 1997 (P.L. 105–89), the U.S. Department of Health and Human Services (HHS) is responsible for reviewing State child protection systems and for holding States accountable for how children are faring in these systems. HHS had been responsible for overseeing child protection programs under previous legislation as well, especially the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96–272). However, in 1989, Congress imposed a moratorium on the collection of penalties levied on States for failing to comply with Federal law. Then in 1994, Congress directed HHS to develop a child protection review system to monitor State compliance with Federal foster care and adoption laws. Congress further required that the new review system allow for corrective action and impose penalties. Final regulations from HHS were to take effect in 1996. In November of 1998, HHS published preliminary regulations and invited public comment. Final regulations are still pending.

The Adoption and Safe Families Act of 1997 was intended to increase the number of adoptions out of foster care. Preliminary survey findings confirm that the new adoption law is having its intended effect with significantly more children adopted out of foster care in 1998 than in 1997. Several States have reported that the unprecedented rise in adoptions can be attributed to the new adoption law as well as several innovative State initiatives.

In announcing the hearing, Chairman Johnson stated: "The Subcommittee has a strong interest in how HHS is monitoring State compliance with Federal adoption reforms and other Federal child protection laws. In addition, our Subcommittee wants to know what has caused the recent increase in adoptions so we can do more of it."

FOCUS OF THE HEARING:

The hearing will focus on two main issues. First, the Subcommittee wants to examine the status and adequacy of the Federal child protection review system proposed by HHS last November. Of particular importance are the performance measures adopted by the Administration, the methods used to determine State performance, the measures used to determine permanency, and the use of penalties for violations of Federal requirements. Second, the Subcommittee wants to learn as much as possible about the causes of the recent increase in adoption. In addition, it is interested in learning about the details of how specific States and localities have changed their policies to increase adoption.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, with their name, address, and hearing date noted on a label, by the *close of business*, Thursday, May 6, 1999, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Human Resources office, room B–317 Rayburn House Office Building, by close of business the day before the hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette WordPerfect 5.1 format, typed in single space and may not exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at "http://www.house.gov/ways means/".

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman JOHNSON of Connecticut. Good morning. The hearing will come to order.

I can't help but comment, in light of Tuesday's tragic events, that brain research in this country and developmental research is leading us to an understanding of how children who have no empathy and no control and no real grasp of consequences are amongst us. And I hope that we will all begin to read books like "Ghosts From the Nursery" and think through what are the implications of modern science for our children because very clearly science is demonstrating that there are certain things that we are actually doing as irresponsible adults that are creating human beings who are incapable of empathy, who do not think in a way that brings consequences to their concrete understanding, and who don't have the normal controls that we assume in a human society and that are essential to a civil society.

So I would just say I am reading those things and thinking about those things. And we will be open to your thoughts on what we do with the very clear evidence that many of our children are growing up without the essentials necessary to being part of a human community.

Today, we do have a host of wonderful witnesses who will shed light on two important issues in regard to abused and neglected children. Recently, under the very strong leadership of this Subcommittee, of my colleague Clay Shaw from Florida, this Subcommittee adopted a very progressive national policy governing adoption that has resulted in a dramatic increase in the number of children finding love and security with adoptive parents.

Many people in this room worked on that 1997 adoption bill. Among other important provisions, this law gave States a cash incentive for increasing the number of adoptions out of foster care. Perhaps of even greater long-term importance, the law required States to make decisions on terminating parents rights within 15 months of the time children enter foster care.

These and many other important provisions were designed to reduce the time a child lived in foster care limbo by increasing adoptions.

Now, 2 years later, reports from the North American Council on Adoptable Children and the General Accounting Office report truly dramatic and wonderful news: Adoptions have increased between a whopping 52 percent and 101 percent. And without objection, I would like to enter both of these studies into the record.

In fact, in its study of Connecticut, Florida, Illinois, Iowa, and Texas, GAO found that, "The emphasis on adoption in the Adoption and Safe Families Act was among several factors that State officials cited as contributing to an increase in fiscal year 1998 foster care adoptions over the base numbers."

This is something important. We passed a law on a bipartisan basis requiring important changes in social policy throughout our country and it has helped kids. We must do more of this.

Two concerns have developed as a result of our success. Because adoptions have increased so dramatically in numbers and so rap-

idly, the amount of money we have in the law for incentive payments is inadequate. This is a good problem to have. I asked CBO to check it out, and they are now estimating that we will be around $28 million short this year.

I think I speak for all Members of this Subcommittee in saying that we will figure out how to get this money. States have done a great job, and they should and will get the payments they have earned.

The second concern I would raise is far more long-term. The greater our success with adoption, the fewer children in foster care, and the fewer dollars flowing to the States in spite of the need of troubled families. That long-term concern has got to be very real for all of us.

But now to the second issue we address today. It is the child protection regulation issued last September by the Clinton administration. Republican Members of the Ways and Means Committee, including Mr. Camp, along with Senator DeWine and Senator Craig, sent a detailed letter to the administration stating that the draft regulation had both great strengths and serious weaknesses.

Let me mention a few of the weaknesses. First, the proposed review system does not state as clearly as it should the specific measures for which States will be held accountable. Thus it is unclear precisely how HHS will determine the adequacy of State performance and at what point inadequacy will result in the imposition of fines.

Second, neither the length of time a child remains in foster care nor increases in the number of adoptions are included in outcome measures. Let me repeat that: Neither the length of time a child remains in foster care nor increases in the number of adoptions are included in outcome measures. I mean, it has been simply astounding to me as a national policymaker who served on this Subcommittee for 6 years in the eighties that we have not known and never been able to say how many kids were in foster care.

There's one thing I do want to know. I want to be able to know how many kids are in foster care. How long have they been there. And how many kids were adopted. So these are two of the most important measures of State performance and simply must be included as outcomes.

Third, the child safety goal is to be measured by both protecting children and by maintaining children in their own homes. Safety and keeping families intact are separate goals and cannot be considered together. There is a tension between them. They are both important.

We are fortunate to have Dr. Golden to explain the regulation in greater detail and to answer our questions. I also would like to say I am terribly apologetic, but I must leave the hearing for about 15 minutes and I will be back. But after hearing the testimony by the administration on the regulatory issues, I do hope that we will be able to resolve that dialog satisfactorily.

[The opening statement and attachments follow:]

Opening Statement of Hon. Nancy L. Johnson, a Representative in Congress from the State of Connecticut

Today we have a host of wonderful witnesses who will shed light on two important issues concerning national policy for abused and neglected children.

The first issue we want to examine is recent increases in the number of adoptions. Many people in this room worked on the splendid 1997 adoption bill—a bill, by the way, that was first drafted by members of this Subcommittee. Among other important provisions, this law gave states a cash incentive for increasing the number of adoptions out of foster care. Perhaps of even greater long-term importance, the law required states to make decisions on terminating parent rights within 15 months of the time children enter foster care. These, and many other fine provisions, were designed to reduce foster care limbo by increasing adoption.

Now, two years later, thanks to superb reports from the North American Council on Adoptable Children and the General Accounting Office, we find that adoptions have increased dramatically—in the GAO study by between a whopping 52 percent and 101 percent. [Without objection, I'd like to put copies of both studies in the record.] In fact, in its study of Connecticut, Florida, Illinois, Iowa, and Texas, GAO found that—"The emphasis on adoption in the Adoption and Safe Families Act was among several factors that state officials cited as contributing to an increase in fiscal year 1998 foster care adoptions over the base numbers."

Now here's something new. We pass in law in Washington on a bipartisan basis, important changes in social policy take place throughout the country, and the status of children improves. We should do more of this.

By the way, there is lots of concern that because adoptions have increased so much, so fast, that the amount of money we have in the law for incentive payments is inadequate. We have asked CBO to check into this problem and they are now estimating that we will be around $28 million short this year. I think I speak for both myself and Mr. Cardin in saying that we will figure out how to get this additional money. States have done a great job—they should and will get the payments they have earned.

The second issue we address today is the child protection regulations issued last September by the Clinton Administration. Republican members of the Ways and Means Committee (including Mr. Camp), along with Senator DeWine and Senator Craig, sent a detailed letter to the Administration stating that the draft regulation had both great strengths and serious weaknesses.

Let me mention a few of the weaknesses. First, the proposed review system does not state as clearly as it should the specific measures for which states will be held accountable. Thus, it is unclear precisely how HHS will determine the adequacy of state performance and at what point inadequacy will result in the imposition of fines. Second, neither the length of time a child remains in foster care nor increases in the number of adoptions are included as outcome measures. These are two of the most important measures of state performance and simply must be included as outcomes. Third, the child safety goal is to be measured by both protecting children and by maintaining children in their own homes. Safety and keeping families intact whenever possible are separate goals and cannot be considered together. The conflation of these goals may suggest that HHS is still overly invested in the philosophy of family preservation. I know that some of our witnesses have other concerns about the regulations. We are fortunate to have Dr. Golden here to explain the regulation in greater detail and to answer our questions. I trust that after hearing our cogent arguments, the Administration will make appropriate changes in the regulation.

U.S. GENERAL ACCOUNTING OFFICE
HEALTH, EDUCATION, AND HUMAN SERVICES DIVISION
WASHINGTON, DC 20548

April 20, 1999

B–282472

The Honorable Nancy L. Johnson
Chairman, Subcommittee on Human Resources
Committee on Ways and Means
House of Representatives

Foster Care: Increases in Adoption Rates

Dear Madam Chairman:

The Adoption and Safe Families Act of 1997 (ASFA) authorizes incentive payments to states for increasing the number of foster child adoptions in fiscal years

1998 through 2002. States may receive up to $6,000 for each finalized adoption of a foster child over a state's base number for a fiscal year. The Department of Health and Human Services (HHS) is responsible for determining the base number of foster child adoptions that a state must exceed in order to be eligible for incentive payments. To determine each state's base numbers for fiscal year 1998, HHS averaged that state's number of finalized foster care adoptions for federal fiscal years 1995, 1996, and 1997. Recently, the North American Council on Adoptable Children (NACAC) reported that, of the 42 states that provided estimates for the survey, at least 36,000 foster children were adopted in fiscal year 1998, which represents an increase of 7,859 over the base numbers.[1]

This letter responds to your request that we determine the source of information states used to derive both the fiscal year 1998 and the base numbers of finalized foster care adoptions, and to identify factors that contributed to the increases in foster care adoptions. You were interested in the increases reported in finalized adoptions of foster children in five states—Connecticut, Florida, Illinois, Iowa, and Texas. These five states estimated increases in finalized foster care adoptions for fiscal year 1998 of at least 50 percent over their base numbers. In responding to your request, we conducted interviews with state child welfare officials in March 1999.

STATE DATABASES WERE PRIMARY SOURCE OF NUMBERS REPORTED TO NACAC

Officials in four of the five states we reviewed told us that they derived the fiscal year 1998 and base numbers of finalized foster care adoptions reported by NACAC from their state child welfare databases. These databases contain child-specific records of a state's foster care population and are the source of data submitted by these states to the federal Adoption and Foster Care Analysis and Reporting System.[2]

The fifth state conducted a manual count of finalized adoptions; although that state included the name of each foster child in the tabulation of fiscal year 1998 adoptions, it did not do so for the earlier base numbers. Thus, with the exception of the base numbers for one state, all five states could identify the individual children included in their counts.

Table 1.—State Estimates of Finalized Foster Care Adoptions in Fiscal Year 1998

State	Baseline Total	Fiscal year 1998 estimated total	Number change	Percentage change
Connecticut	207	314	107	51.7
Florida	987	1549	562	56.9
Illinois	2,200	4,423	2,223	101.0
Iowa	350	537	187	53.4
Texas	880	1,548	668	75.9

Source: *Adoptalk* (Winter 1999), p. 2.

ASFA CITED AS CONTRIBUTOR TO INCREASED ADOPTIONS

The emphasis on adoption in ASFA was among several factors that state officials cited as contributing to an increase in fiscal year 1998 foster care adoptions over the base numbers. Other factors included administrative reform, such as assigning additional staff to efforts to move children toward permanent placement; increased recruitment efforts, such as state funding for recruitment of adoptive parents for children with special needs; and court-related changes, such as an increase in the number of staff attorneys to help caseworkers prepare cases for court reviews.

[1] Joe Kroll, "1998 U.S. Adoptions From Foster Care Projected to Exceed 36,000," *Adoptalk* (Winter 1999), pp. 1–2.

[2] The federal Adoption and Foster Care Analysis and Reporting System (AFCARS) is the primary source of federal administrative data about foster care and adoption. It allows HHS to perform research on and evaluate state foster care and adoption programs, and it assists HHS in targeting technical assistance efforts, among other uses.

Table 2: Factors Cited by State Officials as Contributing to Increased Foster Care Adoptions

Factors	Number of states
Increased emphasis on adoption in federal or state laws	3
Changes in internal processes or administrative reform	3
Increased emphasis on recruitment of adoptive parents	2
Streamlined court process or increased court-related personnel	2

An official in one state told us that she expects the number of adoptions to continue to increase. Officials in two other states expected the number of adoptions in those state to remain high but to not increase above the level estimated for fiscal year 1998. Officials in the remaining two states did not offer estimates of future adoption levels.

AGENCY COMMENTS

We requested that HHS review a draft of this letter. HHS provided no substantive comments.

As we arranged with your office, unless you publicly announce its contents earlier, we will make no further distribution of this correspondence until April 22, 1999. At that time, we will send copies to other relevant congressional parties and to the Honorable Donna E. Shalala, the Secretary of Health and Human Services.

If you have any questions about this information, please contact me on (202) 512–7215. Major contributors to this correspondence were David D. Bellis, Kerry Gail Dunn, and Ann T. Walker.

Sincerely yours,

CYNTHIA M. FAGNONI
Director, Education, Workforce, and Income Security Issues

(116031)

Adoptalk

A Publication of the North American Council on Adoptable Children Winter 1999

1998 U.S. Adoptions from Foster Care Projected to Exceed 36,000

By Joe Kroll

Finalized adoptions of children from the U.S. foster care system rose significantly during the last year. Preliminary reports from 42 states for federal fiscal year 1998 project adoptions of at least 36,000 foster children, which includes increases of 7,859 over the average number of adoptions from the previous three years. Following recent changes in public opinion, political support, and law, many states have shortened foster care stays, found more adoptive homes, and designated new resources to support adoptions. As a result, more children than ever before have found permanent families.

In December, NACAC staff began polling states to obtain their data on the number of finalized adoptions completed in fiscal year 1998. Of the 42 states that submitted figures, all but five reported an increase in adoptions. Dramatic changes were seen in several states: Illinois more than doubled the number of adoptions from foster care—the state averaged only 2,200 adoptions from 1995 to 1997, but achieved 4,423 adoptions in 1998. State officials attribute this 101 percent increase to reduced average caseloads (from 75 children to 25 per worker) and streamlined court processes. In Texas, adoptions from foster care are up 75 percent (to 1,548 in 1998) due to changes in state law that limited the length of time children could remain in foster care and administrative reforms that assigned additional staff to move children to permanence. Iowa's 54 percent increase is the result of the creation of adoption specialist positions, expanded recruitment activity, and the commitment of former Lieutenant Governor Corning to the cause. Wyoming nearly doubled the number of adoptions in one year (from 16 in 1997 to 29 in 1998). The state attributes the dramatic jump to an increased focus on terminating parental rights (TPR), including the assignment of a staff person in the attorney general's office who is dedicated to TPR hearings.

Nineteen states experienced increases of 20 to 55 percent. Several states reported even higher increases, including South Carolina (84.8 percent), Mississippi (64.9 percent), North Dakota (68.1%), and Minnesota (61.2 percent).

The increased adoptions show great promise that the country can meet the goals identified in President Clinton's Adoption 2002 initiative and the Adoption and Safe Families Act (ASFA) of 1997. In addition to

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Jennifer

An active 12-year-old, **Jennifer** likes playing with her friends, singing, dancing, crocheting, swimming, drawing, playing soccer, and doing gymnastics. She is doing well in her sixth grade classes, but is emotionally immature and seeks both positive and negative attention. As a result of her past, Jennifer is receiving therapy to address issues of loss and oppositional behaviors. All families will be considered, but Jennifer would do best with an experienced, two-parent family who has an understanding of loss issues and where she would be the youngest child. Jennifer has a brother with whom she would like to remain in contact. To learn more about Jennifer (CAP #I-7485), contact Children Awaiting Parents, Inc., 700 Exchange St., Rochester, NY 14608; 716-232-5110. To see other waiting children, check CAP's web site: www.adopt.org.

Adoptions...*from page 1*

legislative guidance that helps states increase the number of foster children who are adopted, ASFA also included an adoption incentive program that will make additional funds available for child welfare services. Beginning with fiscal year 1998, states became eligible to receive incentive payments for all adoptions over a baseline number determined by HHS.[1] The chart at the right shows each state's baseline figure, the state-reported estimate of finalized adoptions for 1998, and the difference between the two figures. For each adoption over the baseline, HHS will pay the state $4,000, plus an additional $2,000 if the child has a federal Title IV-E adoption assistance agreement in effect. States may spend incentive payment funds on child and family services, including post-adoption support.

Unfortunately, there may not be enough funds to provide states with their full adoption incentive payments. Congress appropriated $20 million per year for four years for the incentive program. If we assume that 75 percent of adoptions will qualify for the total payment of $6,000, the appropriation will cover increases of 3,636 adoptions for 1998.[2] If claims exceed the appropriated amount, ASFA requires HHS to reduce the incentive payments proportionately. As NACAC's preliminary estimates show, states have already achieved increases of 7,859—more than twice the 3,636 mark—with eight states and the District of Columbia not reporting. NACAC expects the final numbers to reflect total increases of more than 8,000, which would result in dramatically reduced incentive payments.

Many child advocates want Congress and the administration to approve a new appropriation so that states receive the full incentive payments. NACAC has shared our preliminary results with federal officials, and we hope that the data will encourage policy makers to fully fund the incentive program to help even more children find and remain in adoptive families.

[1] To determine the baseline for each state, HHS averaged the number of finalized adoptions for federal fiscal years 1995, 1996, and 1997. States are eligible to receive incentive payments for federal fiscal year 1998 only if they have an approved Title IV-E plan for the year, provide HHS with data to determine the baseline, meet other data requirements, and exceed the baseline number of adoptions.

[2] This assumption is based on the fact that at least 75 percent of children adopted during federal fiscal years 1995, 1996, and 1997 were eligible for Title IV-E adoption assistance.

Finalized Adoptions from Foster Care

State	Baseline Total*	FY 98 Estimated Total†	Number Change	Percentage Change
Alabama	139	142	3	2.2%
Alaska	108	95	-13	-12.0%
Arizona	357	—	—	—
Arkansas	138	—	—	—
California	3,287	4,298	1,011	30.8%
Colorado	417	—	—	—
Connecticut	207	314	107	51.7%
Delaware	39	55	16	41.0%
Dist. of Columbia	110	—	—	—
Florida	987	1549	562	56.9%
Georgia	493	664	171	34.7%
Hawaii	85	—	—	—
Idaho	44	57	13	29.5%
Illinois	2,200	4,423	2,223	101.0%
Indiana	495	—	—	—
Iowa	350	537	187	53.4%
Kansas	349	529	180	51.6%
Kentucky	211	217	6	2.8%
Louisiana	308	221	-87	-28.2%
Maine	108	112	4	3.7%
Maryland	342	444	102	29.8%
Massachusetts	1,116	1,115	-1	-0.1%
Michigan	1,905	2,234	329	17.3%
Minnesota	258	416	158	61.2%
Mississippi	114	188	74	64.9%
Missouri	557	727	170	30.5%
Montana	115	145	30	26.1%
Nebraska	185	—	—	—
Nevada	149	138	-11	-7.4%
New Hampshire	45	51‡	6	13.3%
New Jersey	621	801	180	29.0%
New Mexico	147	201	54	36.7%
New York	4,716	4,790	74	1.6%
North Carolina	467	576	109	23.3%
North Dakota	47	79	32	68.1%
Ohio	1,287	—	—	—
Oklahoma	338	485	147	43.5%
Oregon	445	662	217	48.8%
Pennsylvania	1,224	1,522	298	24.3%
Rhode Island	261	217	-44	-16.9%
South Carolina	256	473	217	84.8%
South Dakota	56	58	2	3.6%
Tennessee	328	338	10	3.0%
Texas	880	1,548	668	75.9%
Utah	225	328	103	45.8%
Vermont	75	120	45	60.0%
Virginia	298	—	—	—
Washington	607	766	159	26.2%
West Virginia	182	187	5	2.7%
Wisconsin	467	640	173	37.0%
Wyoming	15	29	14	93.3%
Total for States That Have an Increase over Baseline			7,859	

* Source: U.S. Department of Health & Human Services as reported to NACAC, December 22, 1998.

† Source: Preliminary reports from states to NACAC, January and February 1999.

‡ New Hampshire includes IV-E only.

Chairman JOHNSON of Connecticut. So we will now call forward our first witness——

Mr. CARDIN. Madam Chair, if I——

Chairman JOHNSON of Connecticut. Oh, excuse me, I am sorry. I yield to my colleague Ben Cardin.

Mr. CARDIN. I will be very brief, Madam Chair. First, let me ask consent to include my full statement in the record and the letter from the citizen review board for children, which is the Maryland Citizens Board for Review of Out-of-Home Placement of Children, dated April 21 for the record.

Madam Chair, let me first comment as you did on the tragic events that took place in Colorado, the stark reminder to all of us that no neighborhood is safe and that protecting our children is a concern of every neighborhood in our country. And I applaud you for holding today's hearings on our programs to protect our children.

There is no greater obligation for any Member of Congress, particularly those of this Subcommittee, than ensuring the safe care and protection of America's neglected, abused, and abandoned children.

As you pointed out, we do have some positive news, and that is the number of children in the foster care system that are finding permanent, loving homes. The statistics are very, very encouraging.

I want to congratulate Dr. Golden, who is the Assistant Secretary for Children and Families in the Clinton administration, on placing a very high priority on our children. And we are starting to see many of those results.

Also due in large part to the passage in 1997 by Congress of the Adoption and Safe Families Act. That was passed on a bipartisan basis, Madam Chair. I think it reminds all of us that if we work together in a bipartisan way, we can get a lot accomplished for our children in this country.

The Adoption and Safe Families Act maintains the requirement that States attempt to reunify children with their birth families when they have been removed from their homes. However, the law made it clear that reunification was not appropriate where it posed a clear danger to the child or meant the child would be doomed to linger in foster care for a long period of time.

Well, at this hearing, we want to hear how the States are attempting to achieve that critical balance between restoring families and protecting children and the permanency of the relationship between the child and his or her parents. It is also important that we hear from the witnesses today of changes that may be needed in the Adoption and Safe Families Act.

For example, it appears the annual cap funding financial incentives paid to the States, that increase adoptions out of foster care, may need to be adjusted and raised if we are going to continue to provide bonuses promised in the 1997 legislation.

We also want to hear from you at this hearing how we can improve our child welfare system. For example, more must be done for children who are aging out of foster care. And I am very opti-

mistic under Mrs. Johnson's leadership that this Subcommittee and, indeed, this Full Committee will address this issue. There are additional issues that we need to consider in the child welfare system, including that courts have sufficient resources to fulfill the requirements of the Adoption and Safe Families Act.

And finally, we must address the clear link between child abuse and substance abuse, which contributes to 7 out of 10 cases of child abuse and neglect.

So I do look forward to the panel of witnesses we have today and to Dr. Golden as we work together in a bipartisan way to try to ensure that the laws that we pass are adequate and do whatever we can to make sure our children are safe.

[The opening statement and attachment follow:]

Statement of Hon. Benjamin L. Cardin, a Representative in Congress from the State of Maryland

Madame Chair, let me start by commending you for holding today's hearing on our Nation's child protection system. There can be no greater obligation for any Member of Congress, particularly those of us on this Subcommittee, than ensuring the safe care and protection of America's neglected, abused and abandoned children.

Fortunately, we have some positive news to report about children in our foster care system—more of them are finding permanent, loving homes. In fact, it appears that adoptions of foster care children rose 40% nationwide last year compared to 1995.

This is due in part to the Adoption and Safe Families Act enacted at the end of 1997 with broad bipartisan support, and it should once again remind all of us of what we can accomplish for America's children when we work together. Of course, we must continue to vigilantly oversee the implementation of that law to ensure that the safety and well-being of children is always the paramount concern when placement decisions are being made.

The Adoption and Safe Families Act maintained the requirement that States attempt to reunify children with their birth families when they have been removed from their home. However, the law made it very clear that reunification was not appropriate when it posed a clear danger to the child, or if meant that child was doomed to linger in foster care for a prolonged period of time.

We want to hear how States are attempting to achieve that critical balance between restoring families and providing protection and permanency for children.

It is also important for us to hear whether our witnesses believe any changes are needed to the Adoption and Safe Families Act. For example, it appears the law's annual cap on funding for the financial incentives paid to States that increase adoptions out of foster care may need to be raised if we are going to provide the bonuses promised in the 1997 legislation.

I also look forward to hearing from our witnesses about other challenges this Subcommittee must confront to improve our child welfare system. For example, we must do more to help children in foster care who do not return home and who are not adopted—in other words, children who age out of the system. Under the leadership of Mrs. Johnson, I am confident this Subcommittee will address that important issue shortly. Additional issues to consider include whether the current child welfare system, including the courts, have sufficient resources to fulfill the requirements in the Adoption and Safe Families Act. And finally, we must address the clear link between child abuse and substance abuse, which contributes to 7 out of 10 cases of child abuse and neglect. Thank you.

April 21, 1999

The Honorable Benjamin L. Cardin
House of Representatives
Washington, DC 20515-2003

RE: **Notice of Proposed Rule-Making: Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews**

Dear Rep. Cardin:

We wanted you to have the benefit of our thinking as you participate in tomorrow's Ways and Means Committee hearing on child welfare accountability. We have attached the comments we submitted last December on the Notice of Proposed Rule Making. Our comments are grounded in the experience of our 400 local reviewers who serve on 62 boards and who conducted nearly 13,000 case reviews in state fiscal year 1998. Among our members are many social workers, educators, health professionals, lawyers, foster and adoptive parents, and other citizens with experience in helping children.

We support many aspects of the proposed rules, including:

- The basic approach of the Children and Family Services System Plan Review of determining substantial conformity on safety, permanency, and well-being as measured by seven specified outcomes (1355.34(b)) and the capacity to delivery seven specified services (1355.34(c)); and
- The definitions of "foster care" and "permanency hearing;" however, the latter will require significant additional judicial capacity, especially in Baltimore City.

We do have three serious concerns, however, that the ambitious scheme for holding states accountable for outcomes related to safety, permanency, and well-being will not be successful unless certain revisions are made to the accountability procedures.

First, the review team of federal and state personnel should be required to interview key personnel from the judicial and administrative review systems (such as Maryland's

MARYLAND CITIZEN BOARD FOR REVIEW OF OUT-OF-HOME PLACEMENT OF CHILDREN
311 West Saratoga Street, 1st Floor • Baltimore, Maryland 21201-3521 • (410) 767-7794

citizen reviewers) and to examine court orders and the reports issued by administrative reviewers. These sources will often supply valuable independent assessments of casework activity beyond what the caseworker writes in the case plan.

Second, the standard of 95% substantial achievement is unrealistically high for some of the outcomes, given the serious conditions of parental substance abuse, physical and sexual abuse, neglect, mental illness, and other extreme conditions which bring the children and their families to the foster care system. We believe that the adoption of unrealistic standards will create pressure for compromising the objectivity of the data-gathering process or cause states to avoid serving the neediest families.

Third, the penalties for failure to achieve substantial conformity are insufficient. State child welfare systems still need very significant additional budgetary and staff resources to achieve the goals of the federal law. If fiscal penalties are to be the motivator, they must be of adequate size or they will be ignored.

We find that the federal government often plays a critical role in improving the child welfare system and recent events in Maryland offer a fresh example. We have advocated for SB 464, which was passed by the General Assembly this month and which will involve our program for the first time in review of the Child Protective Services System. This is the system which identifies children who are abused or neglected and places them in out-of-home care. Language in the Child Abuse Prevention and Treatment Act (as amended October, 1996) helped us win passage of this bill.

We very much appreciate the energy and thought you have invested in efforts to improve the case review process for foster care and the support you have offered for objective citizen review in the State of Maryland and for the National Association of Foster Care Reviewers. Thank you for considering our views on the matter at hand and for your ongoing efforts. If you have any questions or concerns, do not hesitate to contact Charlie Cooper at 410-767-7781.

Sincerely,

LaDean D. Barksdale
State Board Chairperson

Charlie Cooper
Administrator

Chairman JOHNSON of Connecticut. Thank you very much, Ben, and I would also like to recognize Mr. Camp of Michigan who was part of the Subcommittee last year and played such an important role in these regulatory issues.

Mr. Camp.

Mr. CAMP. Well, thank you, Madam Chairman. I just have a brief statement. I would like to call the Subcommittee's attention to the testimony of Janet Snyder, for the record, of Hear My Voice.

[The information follows:]

Statement of Janet R. Snyder, Executive Director, Hear My Voice, Protecting Our Nation's Children, Ann Arbor, Michigan

Chairman Johnson and other distinguished members of the subcommittee, this testimony is submitted to you on behalf of Hear My Voice, "Protecting Our Nation's Children," a nonprofit, child advocacy organization with headquarters in Ann Arbor, Michigan, and chapters in many parts of the country. Hear My Voice (HMV) was established to promote the right of all children to have safe, permanent families. Within this context, HMV informs the public and decision-makers that children's rights and needs are often unrecognized in our judicial and social service systems, and that they may be harmed by this lack of recognition.

Thank you for the opportunity to offer comments on needed changes for the proposed regulations on The Adoption and Safe Families Act of 1997, (PL 105–89).

Hear My Voice began its sixth year of work on August 2, 1998. During the past five years, HMV has advocated for more than 150 individual children in communities across the country, and has given referrals and advice to thousands more. The fundamental work of HMV is to bring support to the public domain in order to broaden the definition of family, and to change the perceptions of judges, social workers, legislators, and other decision-makers who impact the lives of those who look to them for protection. In helping to bring about these changes, HMV affects the lives of children who are now at risk as well as thousands of others who will follow.

We were very pleased with the passage of ASFA in November, 1997, and worked to support this passage. We were asked to testify before the House Ways and Means Committee in April, 1997 in support of ASFA. It was gratifying to see that after almost 20 years, through this new law, child safety and permanency became key points for child welfare work. We are equally interested that the proposed regulations do indeed accurately reflect Congressional intent, and that these encouraging changes for children are supported.

Please consider the following points of response:

1. [Page 50073} Section 1356.21(b), paragraph 11 of page addressing "Reasonable Efforts," beginning: "determination that (1) Reasonable Efforts were made to prevent...." It has been very difficult to consistently define and understand the term of "Reasonable Efforts." Each State, agency or caseworker may hold its own understanding of what is meant by this and interpretations may often be to the detriment of the child. Any time this term is used, some sort of guideline emphasizing the safety of the child must be addressed.

2. [Page 50074] Section 1356.21(b)(4) paragraph 4: "Judicial Determination...." (when reunification is not the permanency goal): The age of the child involved and the permanent goal should be of paramount concern in assessing how often the case goes to court for determination. The guideline for every three or six months should be that the priority cases are children whose goal is adoption, and/or any child who is not currently living in a permanent placement. These needs should be considered by the court during the review of individual cases.

3. [Page 50076], paragraph 13 of page, Section 1356.21 (i), paragraph 7 of section, "Requirements for Filing a Petition to Terminate....," paragraph beginning, "In Subparagraph (i)(1)(i)(C), we propose that...:" It is critical that all time spent in the foster care system is addressed when calculating the issue of 15 out of 22 months. A child's sense of time, permanency and belonging should not be disrupted when possible manipulation of time elements, based upon strategically timed hearings and determinations, may be utilized in order to prolong any termination of parental rights.

4. [Page 50086}, paragraph 6 of page, paragraph 3 of section, Section 1355.20, Definitions (a), paragraph 3, beginning "Date the child enters foster care means:" Calculating the date the child enters foster care in this way could actually prolong the time of permanency planning hearings, in much the same way as done previously. It is within Congressional intent that the foster care entry date be kept to the time-line, or up to 15 months after the date the child was physically removed from the home.

5. [Page 50074], paragraph 8 of page, Section 1356.21(b)(5), paragraph 3 of section, "Circumstances in Which...," beginning, "In circumstances in which the criminal proceedings...." It is extremely important that ASFA give States direction in the definition of aggravated circumstances that do not require reasonable efforts for reunification. It is not within Congressional intent to return children to extreme situations simply due to the fact that the particular circumstance is not listed in federal law. It is not right for a child to be harmed or killed because decision makers were unclear as to what acts are too heinous to deny reunification.

The goal of ASFA is to streamline the adoption process for children in the foster care system, to support children who can be reunified with a biological family and to assure safety for all these children. While reunification with a biological family is of great importance, there are times when it is just not feasible. As Congress has recognized, in some situations children can not safely go back to a biological home for any number of reasons. ASFA attempts to prevent these children from languishing in the foster care system by freeing them for adoption in a timely fashion, while attending to their safety.

We need strong federal law to guide the States in their efforts of keeping children safe as per the Congressional intent with which ASFA was written. As existing presently, many of the proposed regulations do not address a penalty structure should States not follow the law. What, then, is the motivation for addressing children's needs in any fashion other than that used over the past, almost, 20 years?

We need strong methods by which to educate decision makers on ASFA and the implications for their work with children. Through our work with specific cases we have found a great lack of awareness about ASFA, even to the point of its existence, in many States from numerous people working closely with children.

We urge you to address the proposed regulations by upholding Congressional intent in the writing and passage of The Adoption and Safe Families Act of 1997. Our nation's children deserve the safety and permanence at the foundation of this new law.

Thank you for your consideration.

JANET R. SNYDER
Executive Director
Hear My Voice, Protecting Our Nation's Children

Mr. CAMP. I met with Janet last week, and I know she regrets not being able to be here today, and I strongly believe that we would not be talking about foster care and adoption without the efforts of Janet and her organization. I think the Adoption and Safe Families Act was a team effort because of child advocacy groups like Hear My Voice and their key role in pushing for this legislation, which promoted children's right to safe and permanent families.

They didn't let up, and they also gave me a lot of personal encouragement to keep going forward. So I would also encourage the Department of Health and Human Services to pay careful attention to her recommendations and her testimony as you continue to implement the legislation.

Thank you, Madam Chairman.

Chairman JOHNSON of Connecticut. Thank you. And now, I'd like to bring forward Hon. Olivia Golden, Assistant Secretary for Children and Families, of the U.S. Department of Health and Human Services. Welcome.

STATEMENT OF HON. OLIVIA A. GOLDEN, ASSISTANT SECRETARY FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. GOLDEN. Thank you.

Madam Chairman and Members of the Subcommittee, thank you very much for the opportunity to appear before you today to discuss Federal oversight of the child welfare system. I want to thank all of you for your leadership. This work is enormously important, and I appreciate your leadership and your commitment.

These last 5 years have seen extraordinary changes in the laws and procedures affecting child welfare and significant investment in resources designed to strengthen systems and improve outcomes for hundreds of thousands of children and families. I'd like to mention some of the most important accomplishments. First, as already cited, thanks to congressional leadership, the administration's Adoption 2002 Initiative, the passage of new Federal legislation, and innovative activity supported by States and foundations, we have made great progress in finding adoptive families for children waiting in foster care. Between 1996 and 1997, the number of children adopted grew from 28,000 to 31,000, and it appears the increase in 1998 was even greater.

Second, in response to the Adoption and Safe Families Act, 33 States have already passed legislation to promote better outcomes for children.

Third, we have made significant investments in new child welfare information systems and tremendous strides in the reporting of data. For instance, all States are now submitting adoption and foster care data, compared to the 33 to 37 States that previously submitted data in any given reporting period.

Yet, we still have a long way to go. I would like to briefly summarize the key actions that the Congress and the administration have taken to strengthen the national framework and national oversight of child welfare, and the most important next steps that we must take on behalf of children.

The success we have seen in adoption reflects the work that we have done together to strengthen the national framework for child welfare. Over the last several years, the administration and Congress, working together in a bipartisan manner, have passed critically important child welfare legislation, including the Adoption and Safe Families Act, the Multiethnic Placement Act, and Interethnic Placement provisions.

These laws have made children's safety the primary consideration, emphasized the need for timely decisionmaking on behalf of children in foster care, torn down barriers to adoption, and placed increased emphasis on accountability and the achievement of positive outcomes for children and families.

In response to these legislative changes, we have held States accountable for promptly bringing their laws and policies into compliance, and we have provided technical assistance to help them do so.

A key part of our strategy for improving child welfare has been a focus on developing the capacity to measure results and to hold all partners in the system accountable for improved performance.

The progress made in adoptions demonstrates the effectiveness of this strategy.

I would like to mention two additional areas where we are moving forward in focusing on results in child welfare. First, as required in the Adoption and Safe Families Act, the department has developed, in consultation with the field, an initial list of results measures that can be used to gauge State performance in ensuring child safety and permanence. The list has been published for comment in the Federal Register, and we are now reviewing input received.

Second, in response to legislation adopted by Congress in 1994, we have published a proposed regulation for a new outcomes-based child welfare monitoring system. We realized from the beginning that this statutory requirement offered an important opportunity to redesign the monitoring system to focus on results rather than process and to dramatically improve the way the child welfare system works for children.

At the same time, we realize that this ambitious goal would require major changes in the previous system and that no one person or organization had the answers for how to do it. Therefore, following passage of the law, we undertook extensive consultation and conducted 24 pilot tests.

These pilot reviews served to hold States accountable in new ways as they uncovered both systemic problems and strengths that the old approach to monitoring had not identified. They also suggested a number of lessons about monitoring that are reflected in our proposed regulation.

For example, structuring a review around the outcomes we want for children and families, safety, permanence, and well-being, help to reorient all parties involved in the review process to focus on the improvements needed to assure those outcomes.

We are now carefully reviewing and analyzing the extensive and thoughtful comments we received and working to complete the final rule.

At the same time that the Federal Government has a critical role in accountability for results, it is also essential for us to invest in building the capacity of States to provide quality services.

My long statement presents much more detailed information in this area, including our support of 10 national resource centers, the initiation of a national longitudinal study of child welfare, and the approval of child welfare demonstration projects in 18 States.

In conclusion, we are at a critical juncture in child welfare. We have together strengthened the legal framework for children, increased attention to outcomes, and begun to address the capacity needs of courts and agencies.

Now is the time to continue the momentum of change. This is a critical time for States to take the next step to move reform from the policy arena to changes in frontline practice of every child welfare worker and to build strategies that go far beyond the child welfare agency to involve every community.

At the Federal level, we must remain an active participant in helping States achieve these improvements by exercising leadership, providing resources and assistance, and holding States accountable for positive results.

Thank you for the opportunity to appear before the Subcommittee today, and I would be delighted to answer questions.

[The prepared statement follows:]

Statement of Hon. Olivia A. Golden, Assistant Secretary, Children and Families, U.S. Department of Health and Human Services

Madam Chairman and Members of the Subcommittee,

Thank you for the opportunity to appear before you today to discuss federal oversight of the child welfare system: the network of state, local, and private organizations that seeks to ensure safety, permanence, and well-being for our nation's most vulnerable children, those children who have experienced or are at risk of child abuse and neglect. This work is enormously important and I want to thank the Committee for your leadership and commitment. I am also pleased to have the opportunity to report to you on our success in increasing the number of children adopted from the foster care system.

These last five years have seen extraordinary changes in the laws and procedures affecting child welfare and significant investment in resources designed to strengthen systems and improve outcomes for hundreds of thousands of children and families. In fact, a significant achievement of the last five years is that today all parties involved in child welfare—from the federal government to state government to private providers—are looking at outcomes and working to determine how to improve them. The changes that we and the states have made have the potential to make significant improvements in the results achieved from these services. Among the most important accomplishments:

- Thanks to the Administration's Adoption 2002 initiative, federal legislation, and innovative activities supported by states and private foundations, we have made great progress in finding adoptive families for children waiting in foster care. Between 1996 and 1997, the number of children adopted grew from 28,000 to 31,000 and it appears the increase in 1998 was even greater.
- In response to the Adoption and Safe Families Act, 33 states have passed legislation to promote better outcomes for children, including provisions that strengthen the focus on safety by clarifying circumstances when it is neither necessary nor appropriate to reunify children with their parents.
- We have made significant investments in new automated systems that can generate the data and information needed by states and the federal government to track results and manage cases effectively.

Yet we still have a long way to go. Because of the continuing problems of child abuse and substance abuse and other factors, the number of children in foster care continues to grow and too many children remain in care for too long; the median length of stay nationally is 21 months. And approximately 18 percent of children have been in care for 5 years or more. There are simply too many children who drift in foster care wondering to whom they belong.

In my testimony, I would like to provide an overview of the child welfare system today, highlight the key actions that the Congress and the Administration have taken to strengthen the national framework and national oversight of child welfare, and summarize the results we have seen so far. I would also like to identify the most important next steps that we must take on behalf of children.

CHILDREN AND THE CHILD WELFARE SYSTEM

Each year, child protective services (CPS) agencies investigate reports involving almost 3 million children, nearly a million of whom are found to be victims of substantiated or indicated abuse and neglect. These figures have begun to decline slightly over the past several years, following two decades of steady increases in the number of children reported to CPS. While the majority of children coming to the attention of CPS remain with their families, about 15 to 20 percent of the victims of abuse and neglect must be removed from their homes and placed in foster care for some period of time in order to ensure their safety. Approximately 520,000 children were in foster care as of the end of March 1998, an increase of 28 percent over the estimated 406,000 children in care at the end of 1990.

Every day, front line workers, administrators and judges across the country are called on to make incredibly difficult decisions about the lives of these children and their families. How can they best ensure a child's safety? Can a family facing multiple problems be strengthened to provide appropriate care and nurturing of its children? Can a child's need for a permanent place to call home best be achieved by working with the family of origin, or should an adoptive family be sought?

The child welfare system is complex—involving many organizations, institutions, and individuals. Public child welfare agencies, other public human services agencies, juvenile courts, private service providers and, of course, families themselves, all share responsibility for ensuring children's safety, permanence and well-being. Historically, child welfare services began largely as a function of private agencies and later developed as a responsibility of state and local governments. Ultimately, it is state government that has primary responsibility for carrying out child welfare programs and for protecting children in their care and custody. And, it should be noted states retain significant latitude in the design and delivery of child welfare services to help fulfill this responsibility in a manner that best meets the needs of their jurisdiction. Consequently, there is significant variation across states in practice and policy, including distinctions in the definitions of abuse and neglect and the standards for intervening in family life.

The federal role in child welfare is a relatively recent historical development. Today, the federal government's role includes creating and implementing a common policy framework in which child welfare services are to be carried out; sharing in the financing of child welfare services; and, holding states accountable both for using federal dollars in an appropriate manner and for achieving the results these programs are intended to accomplish. The federal role also includes helping to establish goals and priorities that provide direction to states; promoting innovation in service delivery; funding research and evaluation that help us to understand the dynamics of the child welfare system and the practices that can lead to better results; and, providing technical assistance to help states and localities strengthen their programs.

INCREASES IN ADOPTION

In at least one area of child welfare, the adoption of children from the foster care system, we already have begun to see positive changes resulting from the reforms in federal and state laws and the increased federal attention being paid to child welfare issues. In November 1996, the Administration launched the "Adoption 2002" initiative, the centerpiece of which called for doubling the number of children who are adopted from the foster care system by the year 2002.

This ambitious and specific goal, along with a set of strategies to reach the goal, have served to elevate the importance of adoptions, hold states accountable for their actions, and reward progress in increasing the number of adoptions.

The Congress, in responding to the President's initiative, made key legislative reforms and by authorizing and appropriating funds for the adoption incentive program, provided vital leadership to encourage greater state activity. The results have been impressive. In fiscal year 1997, there were approximately 31,000 children adopted from the foster care system, up from about 28,000 the year before. Preliminary analyses of data for fiscal year 1998 suggest that there was an even greater increase in adoptions last year. And, the fact that there is now national attention being paid to the number of adoptions has prompted the states to improve their collection and reporting of information on children being adopted from foster care. These improved reporting systems allow states to identify and solve problems sooner and help us all better track states' progress.

STRENGTHENING THE NATIONAL FRAMEWORK FOR CHILD WELFARE

The success in adoption reflects a part of the work we have done together to strengthen the national framework for child welfare. Over the last several years, the Administration and Congress, working together in a bipartisan manner, have passed critically important child welfare reform legislation, including the Adoption and Safe Families Act, the Multiethnic Placement Act of 1994 and the Interethnic Placement provisions of 1996. Together, these laws:

- make it clear that ensuring children's safety and well-being is the first consideration of the child welfare system;
- require timely decision-making on behalf of all children in foster care;
- tear down barriers to adoption, whether based on racial discrimination, geographic boundaries or simply outmoded assumptions about which children are adoptable;
- provide additional resources for services and encourage greater collaboration to create a network of supports for families at risk or in crisis; and
- place increased emphasis on accountability and the achievement of positive outcomes for children and families.

In response to these changes in federal law, we have held states accountable for promptly bringing their laws and policies into compliance. After the passage of the Multiethnic Placement Act, for instance, we found that 29 states and the District

of Columbia had laws or policies that allowed race-based discrimination in foster care and adoption placements and we worked with them to eliminate discriminatory policies. Similarly, to ensure that states would promptly change laws as required by the passage of the Adoption and Safe Families Act (ASFA), we provided technical assistance for state legislatures through the National Conference of State Legislatures and others at the same time that we made clear to states the funding consequences of failure or delay in passing appropriate legislation. As of April 1, 1999, 33 states have passed the appropriate legislation to come into compliance with ASFA and another 7 states have passed legislation that is now being reviewed by ACF to determine if it does comply. Two states have passed laws that do not fully conform to ASFA and we will work with them to correct these problems. The remaining states either have not begun a legislative session since passage of ASFA or have legislation that has been introduced but not yet passed. We will continue to hold states accountable to ensure that all come into compliance with ASFA's reforms.

FOCUS ON RESULTS

A key part of our strategy for improving child welfare since early in this Administration has been a focus on developing the capacity to measure outcomes and hold all partners in the system accountable for improved performance. The progress we have made in adoptions demonstrates the effectiveness of this strategy. Tracking adoption outcomes, setting goals for the future, making those goals visible, and providing fiscal incentives tied to results have been key elements of this successful strategy. Another key element, described more fully below, has been the improvement of state capacity to measure adoptions as well as other outcomes, which has required a sustained effort to improve dramatically the quality of state information systems. To push the results agenda beyond adoption and hold all partners in the child welfare system accountable for the key goals of safety, permanence, and well-being, we must build on the knowledge we have attained through the adoption strategy and three key accomplishments:

- As required in the Adoption and Safe Families Act, the Department has developed, in consultation with the field, an initial list of results measures that can be used to gauge State performance in ensuring child safety and permanence. The list has been published for comment in the *Federal Register*, and we are now reviewing input received from almost two-thirds of the states, at least 12 organizations, a number of researchers, several members of Congress, and other interested individuals.
- The Department has conducted 24 pilot tests of an outcomes-based monitoring system and has published proposed regulations that draw substantially on the lessons from those pilots. We currently are reviewing public comments on the regulations and intend to publish a final rule before the end of this year.
- As a result of federal financial assistance, technical support, and clear accountability that includes phased-in penalties, states are now collecting and able to report much more timely and accurate data on foster care and adoptions. Reporting on child abuse and neglect also has improved considerably, as a result of both financial and technical assistance.

Each of these elements which focus on results is described more fully below.

ASFA REQUIREMENT FOR NATIONAL CHILD WELFARE OUTCOME MEASURES

To develop a list of measures that would reflect the best available knowledge in the field, the Department engaged in extensive consultation, including focus group discussions at major child abuse and child welfare conferences. We also formed a consultation work group comprised of state and local administrators, state elected officials, advocates, researchers, and others, who met twice and participated in several conference calls to help select and refine measures and discuss their appropriate use. Since publication of the initial list in the *Federal Register* in February, we have been reviewing the extensive comments that we received and analyzing the availability of data to support suggestions that were made. We plan to finalize the list of measures soon and will then submit the first annual report based on these measures later this year.

CHILD WELFARE MONITORING

As you know, another area where we have been working to increase the focus on outcomes is in our proposed revision of the child welfare monitoring process. In fact, one reason we have been able to make good progress in response to the ASFA requirements for outcome measures is that, as part of our work to revise child welfare

monitoring, we already had articulated the basic goals of the child welfare system: child safety, permanence, and child and family well-being. These three goals are now well accepted by the child welfare field and are being used by many states in their own work with child outcome measures.

We had begun work to revise our process for conducting both programmatic reviews and title IV–E foster care eligibility reviews in 1994, when Congress adopted legislation requiring a new approach. The law required the Department, in consultation with state agencies, to promulgate regulations for review of state child and family services programs in order to determine whether programs are in substantial conformity with applicable state plan requirements and federal regulations. Among other requirements, the statute said that the regulations should afford the states an opportunity to develop and implement a corrective action plan, receive technical assistance, and rescind the withholding of funds if a state's failure to conform is ended by successful completion of a corrective action plan.

We realized from the beginning that this statutory requirement offered an important opportunity to redesign the monitoring system to focus on outcomes rather than process and to dramatically improve the way the child welfare system works for children. At the same time, we realized that taking on such an ambitious goal would require major changes in the previous system and that no one person or organization had the answers for how to do it. Therefore, following passage of the new law, we held numerous focus groups to gain public input into the revision of the procedures used for both programmatic and financial reviews. In addition, we determined that we would have to go out and conduct pilot reviews in order to design and field-test an effective and practical way of assessing state performance with an outcome focus. This entire process did result in a delay in issuing regulations for longer than any of us would have wanted, but provided invaluable insight into the major redesign of the monitoring system.

Before publishing proposed regulations, we conducted a total of 24 pilot reviews—12 Child and Family Services Reviews and 12 title IV–E Foster Care Eligibility Reviews. These pilot reviews suggested a number of lessons about approaches to monitoring, and they also served to hold states accountable in new ways as they uncovered both systemic problems and strengths that the old approach to monitoring had not identified.

Among the key lessons from the pilots that drove the design of our proposed monitoring system:

- A review team comprised of both federal and state staff fostered working partnerships that more effectively assisted states in identifying strategies for corrective action and technical assistance.
- In the program reviews, where we went beyond state officials and included local caseworkers, recipients of services, foster parents, and other stakeholders in the process, we found that this strategy broadened the perspective of the review.
- An emphasis on program improvement planning in the eligibility reviews led to specific recommendations for improving the accuracy of title IV–E eligibility determinations, foster care licensing, and the quality of services provided to children.
- Structuring a review process around the outcomes we want for children and families—safety, permanence and well-being—helped to reorient all parties involved in the review process to focus on the improvements needed to assure those outcomes.
- By contrast, focusing solely on procedural steps and on the case records that document compliance with those steps is insufficient for improving performance in child welfare services. As reviewers looked at the case folders that had been designed to meet previous requirements, they found that these folders often reflected a focus only on documenting procedural steps. As one reviewer noted, "We got what we asked for." The case folders often did not reflect a focus on the key goals of safety, permanence, or well-being of children.

The work we did and the lessons we learned through the pilot review process informed the development of a Notice of Proposed Rulemaking (NPRM) relating to both title IV–E foster care eligibility reviews and Child and Family Services State Plan Reviews. In our NPRM, published on September 18, 1998, we outlined the new procedures that we are proposing for both types of reviews. In response to the *Federal Register* notice, we received 176 letters primarily from state and local child welfare agencies, national and local advocacy groups for children, educational institutions, and individual social workers. We also appreciated receiving the thoughtful comments of several members of Congress. We have been carefully reviewing and analyzing comments and working to complete the final rule.

CHILD WELFARE INFORMATION SYSTEMS

The third critical building block of a results-based strategy for improving child welfare performance is improvement in child welfare information systems. The last several years have seen dramatic progress, as a result both of state commitment and federal financial assistance, technical support, and clear accountability.

• The Omnibus Budget Reconciliation Act of 1993 authorized enhanced Federal financial participation at the 75 percent rate for statewide automated child welfare information systems (SACWIS). This enhanced level of funding was initially authorized for three years, through September 30, 1996, but was later extended to September 30, 1997. Federal funds continue to be available at the 50 percent match rate. To date, 19 States have SACWIS systems that are fully operational.

• On the same day that guidance was issued to the States on applying for SACWIS funds, the Department also released the final regulations for the Adoption and Foster Care Analysis and Reporting System (AFCARS). The AFCARS collects automated case-level information on all children in foster care for whom the state child welfare agency has responsibility for placement, care or supervision. It also collects information on children whose adoptions from the foster care system have been finalized. AFCARS data are reported semi-annually.

• We are now seeing substantial improvements in the completeness and quality of the AFCARS data after an initial developmental period. To encourage the submission of timely and accurate data, our regulations outlined a penalty structure for data submissions that are missing data or that fail certain quality checks. No penalties applied during the first three years (or six reporting periods) of data collection. However, beginning with the submission of data for the period of October 1, 1997—March 31, 1998, states are liable for penalties, if they fail to correct the problem within six months. Consequently, we are seeing significant improvements in the data. All states and the District of Columbia are now submitting data, whereas in the past only 33–37 States submitted data for any given reporting period.

• In the area of child abuse and neglect, we are also making progress in the reporting of data through the National Child Abuse and Neglect Data System (NCANDS). Almost all states have submitted aggregate data for eight consecutive years (1990–1997) on the numbers and characteristics of children reported to child protective services, providing the most complete trend data ever collected on child abuse and neglect. In response to amendments made in the 1996 reauthorization of the Child Abuse Prevention and Treatment Act, the number of data elements on which states report annually also has been expanded. In addition to progress in the submission of aggregate data, we are seeing increasing numbers of states submit automated case-level data that enables us to undertake more complex analyses.

The investments of financial and technical assistance resources we are making in information systems and data collection are critical for at least two reasons. First, new information systems will provide State child welfare agencies—from administrators down to caseworkers—with access to expanded and more timely information that will better enable them to serve children and families. Second, the systems will be capable of collecting and reporting the data that States and we need to be able to track outcomes.

SUPPORTING SUCCESSFUL PERFORMANCE: TECHNICAL ASSISTANCE, TRAINING, RESEARCH, AND DEMONSTRATION

At the same time that the federal government has a critical role in accountability for results, we also believe it is essential for us to invest in training and technical assistance to build the capacity of states to implement legislative reforms and provide quality services. For instance, the Children's Bureau in ACF provides over $6 million annually for 10 resource centers whose role is to build the capacity of state, local, tribal and other publicly administered or publicly supported child welfare agencies. These resource centers are organized around subject areas (e.g. Special Needs Adoptions, Child Maltreatment, Permanency Planning, Organizational Development, Legal Issues, etc.) and can provide specialized assistance in each of these areas tailored to state needs. The resource centers also develop written materials for broad distribution, such as the guide on the implementation of the Multiethnic Placement Act and the Interethnic Adoption provisions developed by the National Resource Center on Legal and Court Issues, which is operated by the American Bar Association's Center on Children and the Law. Through training grants, we also have seeded partnerships across the country between schools of social work and public child welfare agencies to improve the training of front line workers and managers.

Another important area of federal activity is the support of research and innovation. I would like to highlight two different areas of activity that will increase our

understanding of the child welfare system and promote knowledge about innovative practices in service delivery and financing.

Thanks to the authorization of funds for a longitudinal study of child welfare included in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, we have awarded a contract to the Research Triangle Institute to conduct a National Survey of Child and Adolescent Well-Being. This study will provide nationally representative, longitudinal information on the functioning, service needs and service utilization, and outcomes for children and families who are referred to the child welfare system within a one-year period. We expect that the first report from this study, describing the characteristics of the children and families in the sample will be available by the end of 2000.

A second area of activity that we expect to generate important new information is the title IV–E child welfare waiver demonstrations, which this committee was instrumental in creating. Through the end of FY 98, 18 states—the maximum number allowed by the statute—have received approval for demonstration projects, and we currently are awaiting state responses to the announcement seeking applicants for FY 99 demonstrations. The demonstration projects involve waivers of certain provisions of title IV–E and related regulations, and each one includes a rigorous evaluation. The demonstrations cover a wide range of topics, from broad systems reform strategies to specific projects that focus on addressing substance abuse, increasing the number of adoptions, and testing strategies for assisted guardianship.

FUTURE DIRECTIONS

We are at a critical juncture in child welfare. We have strengthened the legal framework for children. We have increased attention to outcomes. We have begun to address the capacity needs of both courts and agencies. We have started to build more collaborative arrangements with other human service agencies whose services are critical if we are to meet the needs of children and families in the child welfare system. We have also begun to tap the broader resources of communities to support families before they go into crisis and to help find new families for children in foster care who cannot return home safely.

Of course, there is a great deal remaining to be accomplished. Far too often, despite the dedication and creativity of state and local policy-makers and the extraordinary commitment of front-line child welfare workers, state child welfare systems are overwhelmed by high caseloads, burn-out and high turnover among workers; lack of training and experience among both workers and supervisors; lack of communication across agencies and between state agencies and the community; unclear or shifting missions; and, information systems that —despite the recent improvements catalogued above—far too often feel like a burden rather than a support to staff. Under these circumstances, changes in policy can take a very long time to translate into true improvements in services for children. And under these circumstances, children's well-being—and, too often, even children's live—are at risk.

Now is the time to continue the momentum of change and seize the opportunities that federal and state policy have created—opportunities that build on the dramatic improvements in adoption, the shift to a focus on results, the stronger information systems, and the national investment in technical assistance, research, and demonstration. This is a critical time for the states to take the next steps to move reform from the policy arena to changes in the frontline practice of every child welfare worker, and to build strategies that go far beyond the child welfare agency to involve every community. At the Federal level, we must remain an active participant in helping states achieve these improvements, by exercising leadership, by providing resources and assistance, and by holding the states accountable for achieving positive results. As part of this leadership, we must finalize regulations for monitoring and fully implement the results-based approach to federal oversight.

There also is at least one additional area that warrants increased national attention through passage of federal legislation—the issue of children aging out of the foster care system. Just last month, this Subcommittee held a hearing on the issue of how to help youth emancipated from foster care become self-sufficient, productive and healthy adults. As you know this is an issue which the President identified as a priority in his FY 2000 budget, and on which we have submitted proposed legislation. We are very much looking forward to working with you to enact a bipartisan bill this year. In doing so, I believe we will make a difference in the lives of the estimated 20,000 young people who are emancipated from foster care each year, just as we have helped to make a difference in the lives of thousands of children who now are living in adoptive families, rather than remaining in the limbo of foster care.

Thank you for the opportunity to appear before the Subcommittee today. I would be pleased to answer any questions you may have.

Chairman JOHNSON of Connecticut. Thank you very much. You know, it is interesting to me that we have had almost a decade now, since we suspended the penalty process, and with it, certain aspects of Federal oversight. We also have not promulgated regulations that were supposed to be promulgated in 1995. And, you know, when you look at, in a sense, the relative lack of regulatory mechanisms and oversight mechanisms in a number of areas in the last 10 years, and now a really new approach that you are taking, do you see—what would you say is the effect of those regulations?

Did they create an opportunity to experiment with new systems? Are there things you have learned from our having relieved the regulatory environment through, sort of, default in the last 10 years?

Ms. GOLDEN. Well, I think I would describe the 5 years since Congress required that monitoring be in regulation as an enormous opportunity for us because it really reflected the consensus it was time to change the system substantially. This was the first time that the monitoring process was to be addressed through regulations, the previous monitoring system had not been regulated.

I think that what we did was take the opportunity to try out what an outcome-based system would look like; that's why we conduct 24 pilots. We also didn't wait for the regulations to create an environment of accountability. What we did was push on accountability through a lot of different mechanisms, through the pilot reviews themselves, where States learned what they needed to do, and through enforcement with States based on the statute. For example, after passage of the Adoption and Safe Families Act, we didn't wait for regulations to tell States that they needed to change their laws.

We gave them technical assistance and made sure they did it. And we also created an environment of accountability around data collection. So we didn't wait for the regulations. But I believe that when they are final, they will give us a very important additional tool. You also asked what we learned from the pilots. I would like to talk about that because I think, based on what I observed on one pilot review and what I have heard from others, we have learned an enormous amount.

One of the things we learned is that when you do outcome-based reviews, you really do focus everybody on what has to change in order to make a difference for children. I think there are many examples of that and having the regulations final will give us an extra tool to make that happen.

Chairman JOHNSON of Connecticut. I am very interested in this aspect because really the substance and the guidance for welfare reform came from States doing things that they had never done that were out from under the law, using their own resources, particularly. And the regulations that were—the laws that were adopted in 1994 and the regulations that were supposed to be in place by 1995—the fact that they weren't in place I don't consider that

necessarily a bad thing. But it is true that is what we had anticipated.

But it did give the States a framework in which they thought we wanted them to perform with also an opportunity for them to think about how best to do that. And so I would like to gain a better understanding of what kind of State experiments and State efforts are reflected in your regulations because I think we have to be sure that now that we have come back with regulations, we don't stifle the variety of changes that we are seeing happening. And I personally would like to see some loosening up of the waiver process.

You know, with the Ed flex bill, basically you are seeing this kind of movement into education. That's what I see happening in children's services in my State. And so I want to be sure that those initiatives are well-reflected by your regulation.

Ms. GOLDEN. Well, a couple of examples might address that. I think you are raising two issues that are both really important. One is about the monitoring structure and regulations and one is about the contents of how States do their programs.

On the monitoring side, Connecticut is actually, I think, an example of how we learn from the pilot reviews and how the State learned. We did a pilot review there. The State, and we learned some things from that, including areas where they could be stronger, such as training. They were doing administrative case reviews but they weren't necessarily feeding what they learned from it back into their practices fully.

And they have made some of those changes. They are one of the States where we learned how, when you do the review together, you really can push change and improvement.

On the demonstration side, I really appreciate your leadership and the Subcommittee's leadership in making sure we have that demonstration authority. Eighteen States now have waiver authority from us, and the maximum allowed by the law through the end of 1998. We are awaiting State responses for 1999.

And just some examples there. We have States working on substance-abuse issues; we have States working on guardianship strategies; we have States working on various kinds of systems reform, how to get dollars to counties in different ways. We have a number of States working on youth issues. And I know, in light of the tragedy that both you and Mr. Cardin noted, I do think that all the work that is being done in the youth area is especially important.

So I would say that we have an array of very interesting demonstrations going on, and we are looking forward to the evaluation results.

Chairman JOHNSON of Connecticut. Would you support eliminating a numerical number on the number of waivers that you can approve?

Ms. GOLDEN. Well, I think what we have found helpful about the limit on the number of demonstrations is that it has made the States have to compete a little bit. It has created somewhat of a pressure for effective demonstrations. If the Subcommittee was interested in making some proposals to change the number, we would certainly review them. But at this point, I think we feel as

though the existing authority has been a pretty effective one and has enabled us to get some really good demonstration projects.

Chairman JOHNSON of Connecticut. I am going to recognize Mr. Cardin and yield the chair to Mr. English.

Thank you.

Mr. CARDIN. Dr. Golden, welcome. It is always a pleasure to have you before our Subcommittee.

Obviously, the fact that the number of foster children being adopted is at record numbers is good news. And all of us are very pleased to see this trend. Let me just comment on the Washington Post article and ask for your comment on it, where the article points out that experts caution, however, that the surge in placements could have dangerous side effects. With pressures building for increased adoptions, this may lead to more cases of ill-prepared families taking on emotionally troubled children.

And then the article goes on to suggest that there is no information as to the age of the children or the minority status of the children currently being adopted and that we may have good numbers because of the easier children and it is going to be more difficult getting the older children and minority children and those with disabilities adopted.

Your comments on both points; that is, whether we are at risk because of the surge in adoptions, whether the families are prepared. Second, whether we are just dealing with the easier, the younger foster children?

Ms. GOLDEN. Well, I'd to share a couple of thoughts. The first is that what we all clearly want is permanent, loving adoptive homes that succeed for those children. So we all share a goal here, which is about enabling children to move quickly to adoption, not to linger in foster care.

In terms of the issue of whether families are prepared, I think the key issue is making sure that at the Federal level we are holding States accountable, and then at the State level that they are building partnerships and investments to make sure that families are prepared. The Promoting Safe and Stable Families Program authorized by the Adoption and Safe Families Act offers some dollars. And in addition, a couple of the demonstrations that we have approved involve States that are focusing, to some degree, on postadoption services.

So I really see this as an area that we all have to be committed to working on.

Mr. CARDIN. That actually brought me to another question, and that is, what have we learned from the demonstration programs. And that's good to hear. You feel comfortable that—obviously there is always risk—but you feel comfortable that there is adequate authority and attention by the States to this particular issue?

Ms. GOLDEN. I guess the way I would say it is that I don't think we are done yet, but I think it is the right thing for us to be focusing on. In some ways, as I think you said earlier, there are some good problems to have. As we succeed in moving children more quickly through the system, we have to focus on making sure that we are supporting families so they can succeed with those children.

And I do think that we are going to learn a lot more about how to do that and that we have some of the core authority to do that.

Mr. CARDIN. Good. And I would encourage you to place priority on the followup.

With respect to the $20 million cap on the bonuses that we pay for foster children being adopted, with the large number of adoptions, is there a concern that we might be reaching this cap? Is there a need for us to look at changing that cap?

Ms. GOLDEN. Well, let me tell you where we are now on that, and then I think that is one on which we will be coming back to you as our information gets more firm.

Right now, we are still reviewing the final 1998 information. We don't quite have the final numbers either on the total number of adoptions or on the breakout of the number with or without special needs. So we are working on that. You are right to note that we are delighted by what we see in the State performance so far and that it really does look as though there has been very substantial improvements beyond what was expected.

And it is also right that if that holds up as the numbers become final, then the amount that is there now wouldn't be enough to do the total bonuses. The provision that is in the statute right now would have a pro rata reduction of the amount of the bonus if the increase is greater than anticipated. So right now we are reviewing all that information. It is not quite final yet.

Mr. CARDIN. Is it possible you will be coming in and asking for an adjustment?

Ms. GOLDEN. Right now, where we are is that we are looking at the information and we will get back to you.

Mr. CARDIN. We should try to get that done as quickly as possible.

One of the requirements in the law is that States with certain exceptions, must institute a termination of parental rights if the child has been in foster care for 15 out of the 22 months. My question: Are any of the pilot programs dealing with that? Do the States have adequate resources in order to really follow up with that requirement? What is the status of compliance with that part of the Federal law?

Ms. GOLDEN. Well, the first important thing about compliance is that we were really clear with States that they needed to change their own State laws and policies to comply with the ASFA statute. And 33 States have done that. Seven States have passed legislation that we are still reviewing to see if it is fully in compliance. Two States we are still working with. And the rest are awaiting legislative sessions.

What we have been doing in terms of support for States as they do that is to provide technical assistance. We have had the National Conference of State Legislatures as a technical assistance source both working with the States up front and also tracking what some of their choices are.

So that is a status report on where that is.

Mr. CARDIN. Is there any indication that there may not be enough resources in order to deal with this requirement? Or does it look like it is adequate?

Ms. GOLDEN. I have not yet heard about that being an issue. What I have heard is that States are moving forward. So I think we will keep an eye out for that.

Mr. CARDIN. Thank you. Thank you, Mr. Chairman.

Mr. ENGLISH [presiding]. Thank you. The Chair recognizes Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman, and thank you, Dr. Golden. It is a pleasure to see you again, and certainly was good to work with you on this legislation. And I have a great deal of respect for you. I especially appreciate your testimony about the increase in adoptions since 1996, 1997, and even the greater increase in 1998. And I think some of that is a result of the legislation we worked on with the administration, and I think that is very good news.

I am interested in talking to you about a letter that the Chairman, then-Chairman of the Subcommittee and I sent you along with Senators Craig and DeWine in December of last year really dealing with this whole area of regulation. And I have some concerns that it is unclear to me how HHS will determine the adequacy of State performance under this legislation.

I don't see any objective benchmarks in this, and I wonder if you could just comment briefly on that. I have a couple of other points, and I realize my time is limited. So I have some other points I want to make as well.

Ms. GOLDEN. Sure. Well, I'd like to say a couple of things briefly. The first is that our goal in the regulations, and I think it is our shared goal and one that you have really exercised leadership on, is that what we want is a monitoring system that will improve State performance, that will be better for children. And I think you are highlighting the fact that clarity about expectations is an important part of that.

You are raising the specific issue of how to go about creating that clarity in the regs. That is an issue which we got a lot of comment on, and we are now reviewing those comments. Because of where we are in the regulatory process, I'm not in a position to talk about specific proposals because we are governed by the Administrative Procedures Act when we review comments. But where we are is that the issue of what's the best way to be clear about expectations is an issue that is serious and is one a lot of people commented on. We are now reviewing and thinking about those comments.

Mr. CAMP. I think the idea of some objective benchmark would be very, very helpful. The other point. In determining a permanency, and in understanding the permanency, and I realize my letter wasn't written to you, but we haven't gotten an answer back yet. And if we could get an answer in writing at some point, it would be very helpful.

Ms. GOLDEN. Let me just say, what we usually do during the regulatory process is we simply acknowledge comments. They are all available publicly. And then we review all the comments. So we wouldn't typically do a point-by-point answer.

Mr. CAMP. An acknowledgement would be nice.

Ms. GOLDEN. OK. I apologize. I am very sorry if we haven't done that.

Mr. CAMP. The letter wasn't written to you. So I am not trying to put you on the spot.

The other area is the item of permanency. And I think there are two important items that have been left out. And that is the length

of time a child is in foster care. Obviously that is one of the main things that drove this whole effort, was the length of time a child spends in foster care as a factor of this whole permanency issue. And second of all, the idea of adoption being the best measure of permanency. And those two items were left out. And I wondered if you could just comment just briefly on that.

Ms. GOLDEN. Well again, let me give you the general framework of how that fits into the regulation. As you know, since we worked on the legislation together, we completely share the commitment both to reducing the amount of time children spend in foster care, not letting them remain in limbo, and to making sure that children who can't go home have permanent adoptive homes.

The specific question of what measures should be where in the regulations is again an issue that we got considerable comment on. We received your comments, which were helpful. We received other comments about what measures to use and how to use them and where to use them in the review framework. So where we are right now is that we are looking at all of those comments as we move into the final rule.

Mr. CAMP. Another area of concern is the approach to aggravated circumstances. And, you know, obviously we made a conscious decision not to expand on a specific, enumerated list of what constituted aggravated circumstances. It was a definite attempt to give the States flexibility so that when reasonable efforts of reunification were not required—and I think that it is very important that we make it certain that the State know, this is not a list of limitation. It is a list of illustration. And I want to make sure we deal with that.

And then I guess I just have two last questions. When we expect the final regs to be published and made final? And then second, I guess 33 States have legislated in this area. Has there been any analysis of the quality of that legislation?

For example, I think New York has this reasonable efforts override, but then they require a 12-month waiting period, which is not in conformance with our legislation. So I think we need an analysis of various States' efforts in this matter.

Ms. GOLDEN. On the first point, on the timing. I don't have a date for you. Where we are right now, we received about 170 letters, of which your thoughtful letter was one, and many of those letters included many issues. We are now reviewing those, and we want to move as fast as we can, consistent with the need to give serious reflection to the issues raised. So we are really pushing on it, but I don't have a date for you.

In terms of the question of analysis, we are, through NCSL and through our regional offices, collecting the information on the State laws. As I said to Mr. Cardin, 33 States have laws that are in compliance; seven have laws that we are still reviewing. So there are seven that have just passed and we are still reviewing to see if they are in compliance. Two have passed laws about which we have concerns and we are working with those States. As you recall, the statute staggers the time that they have to pass laws depending on their legislative sessions. So the remaining few States are either still in sessions or awaiting them. And we can certainly share with

you the particulars of which are the States that are finished and which aren't.

Mr. CAMP. Thank you very much.

Ms. GOLDEN. Sure.

Mr. ENGLISH. The Chair recognizes Mr. Lewis.

Mr. LEWIS of Kentucky. I have no questions.

Mr. ENGLISH. In that case, in your testimony, Dr. Golden, you specifically refer to the fact that the Adoption and Safe Families Act "makes it clear that ensuring children's safety and well-being is the first consideration of the child welfare system." And that is certainly a marvelous sentiment, yet as you heard in the Chair's opening statement and in the letter that Mr. Camp referenced, the regulations appear to be somewhat confused on this issue. And here I am referring to the child safety indicator that will measure "the children are first and foremost protected from abuse and neglect and maintained safely in their homes whenever possible."

I am curious, why did HHS combine these goals?

Ms. GOLDEN. Well, let me start by noting that we do clearly share the goal that a child's safety is paramount, and we haven't waited for the regulations to make that clear to the States. We have been clear in our guidance, and in our technical assistance. As the States pass legislation, for example, we are making sure that they pass the provisions around TPR, termination of parental rights, and around the aggravated circumstances issues.

The specific issue you note in the regulations, which is exactly how should we structure the indicators, is one that we got a lot of comment on. So again, as I said to Mr. Camp, we are at the point where we are reviewing all the comments on how we structure the regulations, how we structure the indicators, and in what way it makes sense to do that in the final rule.

So I won't be specific about giving you an answer about next steps, but we received an array of comments on that issue and we are reflecting on them now.

Mr. ENGLISH. Fair enough. Dr. Golden, I have one last question. This predates my presence in Congress. But we have testimony that the 1994 legislation required HHS to promulgate regulations establishing a new system by 1995 to take effect in 1996, and yet we are still wrestling with the final regulations. Is that a fair summary?

Ms. GOLDEN. Yes. I think that when Congress passed the statute in 1994, telling us to redesign the monitoring system, and to put the requirements in regulation for the first time, I think there was a consensus that we had a big opportunity to try to do something completely different, or at least substantially different, that would really change results of the system. And it has taken longer than I wanted it to, or any of us wanted it to.

But I think the reason it has taken longer is that no one knew how to do an outcomes-based system at the beginning. We did a lot of consultation. We actually, and this was really interesting, we looked at other kinds of approaches. For instance, how do they do accreditation in the health world and other worlds? We used that information, and then we did 24 pilots to make sure we knew how to do it right. So we haven't waited for the regulations to get actions from the States.

And that is why we are right now at the point of reviewing the draft regulation.

Mr. ENGLISH. And I appreciate that insight. Let me say, I have no further questions——

Mr. CARDIN. Would the gentleman yield just for 1 second on that point and the point that Mr. Camp raised?

Mr. ENGLISH. Certainly.

Mr. CARDIN. And Dr. Golden, I appreciate your response. One of the concerns expressed is that we are going, hopefully, more to outcome and less to a lot of paperwork going back and forth. It just might be useful for you to respond on the record. I understand that is your goal. You want this to be less bureaucratic and more outcome-based. And the final regulations, in your anticipation, will move us in that direction?

Ms. GOLDEN. Absolutely. Our goal is that the final regulations will carry out a monitoring process that is about outcomes and, really, about results for children, about safety, about permanence for children. And that what we learned from the pilots was that what you need to do is get people focused on those results and then you can get changes in the performance of the system.

That's our goal.

Mr. CARDIN. And less burdensome to the States with paperwork?

Ms. GOLDEN. I think it will be less burdensome with paperwork. I think the aim is that the burden that is there is really about changing the system and making it succeed. The strategy is to conduct the reviews with the States and to identify corrective actions, the changes that have to happen to achieve better results, so that we can embark on those right away and get genuine change.

Mr. ENGLISH. Thank you, Dr. Golden, as always for your testimony.

Mr. CAMP. Mr. Chairman, if I could just make a comment.

Mr. ENGLISH. Certainly, Mr. Camp.

Mr. CAMP. It is in response to a question that Mr. Cardin asked and regarding the incentive moneys that were in the original legislation. We do have a CBO estimate that there will be more money needed there. And our estimate is $28 million. And I would like to work with you on a bipartisan basis to try to find the money to continue that part of the bill because I do think we will need to have an effort there. And if we could work together on that, I think that would be something——

Mr. CARDIN. If the gentleman would yield, the Chairman would yield.

Mr. ENGLISH. Certainly.

Mr. CARDIN. Absolutely, and the reason why I mention it is that our information is similar that we are going to exceed the cap, and we will hopefully have—the administration will be getting us material soon. And I think we are going to need to do that.

Mr. CAMP. But it is something we are aware of and need to, obviously, continue some effort there. So thank you.

Mr. ENGLISH. Thank you, Dr. Golden, and thank you again for your testimony.

Ms. GOLDEN. Thank you.

Mr. ENGLISH. The Chair recognizes the next panel participating today, consisting of Karen Spar, from the Congressional Research

Service; William Waldman, executive director of the American Public Human Services Association; Kimberly Warburton, chairman of the board of the KidsHELP! Foundation, and Mary Lee Allen, director of Child Welfare and Mental Health for the Children's Defense Fund.

STATEMENT OF KAREN SPAR, CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS

Ms. SPAR. Good morning, Mr. Chairman and Members of the Subcommittee. My name is Karen Spar, and I am with the Congressional Research Service. Thank you for inviting me to testify before you this morning.

I have been asked to address two specific issues in my testimony. First, to outline the history of the Federal Child Welfare Review System leading up to the recent proposal of the administration, and second, to briefly discuss the role played by advocacy litigation in providing public oversight of child welfare programs.

I would like to preface my comments by noting that when analysts from the Congressional Research Service testify before Congress, it is typically to discuss some particular research that we have conducted. In this case, I have not conducted a formal CRS study of child welfare research systems or litigation; rather, I have been asked to testify today in my capacity as a nonpartisan observer of Federal child welfare policy and to give the Subcommittee background information that might be useful as it conducts oversight in this area.

On September 18 of last year, the Department of Health and Human Services published a proposed rule in the *Federal Register*. When final, this regulation will establish in the review system for Federal review of State compliance with requirements under title IV–B and IV–E of the Social Security Act.

These requirements comprise the bulk of Federal policy regarding child welfare.

The history of this review system goes back almost 20 years, to passage of the Adoption Assistance and Child Welfare Act of 1980. That legislation established titles IV–B and IV–E in their current form and specified for the first time certain Federal protections for children in State foster care systems.

At that time, many of these protections were included in section 427 of the Social Security Act and were voluntary incentives for States to meet in order to receive their full allotment of child welfare grant funds. Among these protections, States were required to conduct an inventory of all children in foster care, to provide each foster child with a written case plan, and to review each foster child's case according to prescribed timetable in order to achieve a permanent placement for that child.

The 1980 law also established eligibility requirements to determine which children could qualify for federally subsidized foster care payments under title IV–E. Those requirements also contain child protection provisions. For example, Federal reimbursement was allowed only for children for whom reasonable efforts were made to enable them to remain with their family or to return to their family.

In the early eighties, HHS developed and operated review systems for monitoring State compliance with the section 427 protections and with the Federal foster care eligibility requirements under title IV–E.

However, beginning in 1989, Congress suspended the collection of penalties associated with those reviews, and in 1994 Congress directed HHS to develop a new system all together. Advocates, agency officials, and Members of Congress grew dissatisfied with the early review systems for various reasons, both procedural and programmatic.

Procedural concerns included a lack of formal regulations frequently resulting in confusion about the standards the States were expected to meet. Reviews were conducted retrospectively, sometimes for fiscal years long past so that current practices were not examined.

Of greatest concern, however, was the perception that the reviews did not result in improved services for children and families. Both section 427 and title IV–E eligibility reviews focused on paper compliance with legal requirements. For example, section 427 reviews primarily identified whether certain mandatory procedures were conducted according to the prescribed timetable but did not evaluate the quality of those procedures or the outcomes for children. Moreover, States were sometimes held accountable for circumstances beyond their control such as the schedule of the courts.

Likewise, foster care eligibility reviews focused on whether the court had properly documented it finding that the State had made reasonable efforts to avoid foster care placement for an individual child. But if a judge failed to document this finding correctly, the State could fail its review regardless of the services actually provided to that child and family.

The reviews were criticized for focusing on isolated components of the State's child welfare system rather than the system as a whole. When problems were identified, penalties were imposed, but little technical assistance was provided. On the other hand, the reviews were also criticized for failing to identify problems. The fact that some States passed these reviews while at the same time they were being successfully sued in court raised additional questions about the effectiveness of the review system.

In 1989, Congress imposed the first in a series of moratoriums prohibiting HHS from collecting penalties resulting from these reviews. And finally, in 1994, Congress mandated the development of a new system altogether to review State conformity with Federal requirements under title IV–B and IV–E.

A 1994 law directed HHS to develop a system that would incorporate the concepts of technical assistance and corrective action. HHS was directed to specify in regulations the Federal requirements that would be subject to review and the criteria that would be used to determine if a State was substantially meeting those requirements.

The law directed HHS to specify a method for determining financial penalties in cases of substantial nonconformity. However, Congress also mandated that before such penalties could be imposed, States must be given an opportunity to implement a corrective action plan and required that HHS provide technical assistance.

I would like to just briefly mention the role of advocacy litigation in providing public oversight of State and local child welfare systems. As I mentioned, one of the concerns about the effectiveness of the old review system was the fact that some States were given a clean bill of health by HHS while at the same time they were found in court to have violated Federal and State child welfare laws.

Since the early eighties, lawsuits have been filed against States and localities in at least 24 States that I have been able to identify based on a quick review of summaries prepared by organizations representing the plaintiffs. Some of these cases and their outcomes have been narrow. Many, however, have been class actions alleging a wide variety of violations of Federal and State child welfare laws as well as Constitutional violations and have sought comprehensive reform.

The kinds of policy and practice changes that have resulted from child welfare litigation, either directly or indirectly, have affected the full range of child welfare services. In some cases, the courts have been very specific in their orders such as in establishing caseload standards, where social workers are establishing timetables for, excuse me, permanency planning. In other cases, court orders or settlement agreements have outlined broader goals such as improved service delivery to foster children or timely planning without specifying the actual steps to be taken by the State or locality.

Mr. Chairman, that concludes my statement. I would be happy to answer questions.

[The prepared statement follows:]

Statement of Karen Spar, Congressional Research Service, Library of Congress

Good morning, Madame Chairman and Members of the Subcommittee. Thank you for inviting me to testify before you today. I've been asked to address two specific issues in my testimony. First, I've been asked to outline the history of federal child welfare review systems, leading up to the recent proposal of the Administration. And, second, I've been asked to briefly discuss the role played by advocacy litigation in providing public oversight of child welfare programs.

I'd like to preface my comments by noting that, when analysts from the Congressional Research Service (CRS) are asked to testify before Congress, it is typically to discuss some particular analysis or research that we have conducted. However, in this case, I have not conducted a formal CRS study of child welfare review systems or litigation. Rather, I've been asked to testify this morning in my capacity as a nonpartisan observer of federal child welfare policy, and to give the Subcommittee background information that might be useful as it conducts oversight in this area.

ORIGINS OF CURRENT REVIEW PROPOSAL

On September 18 of last year, the Department of Health and Human Services (HHS) published a notice of proposed rulemaking in the Federal Register. When final, this regulation will establish a new system for federal review of state compliance with requirements under Titles IV–B and IV–E of the Social Security Act. These requirements comprise the bulk of federal policy regarding child welfare services, foster care, and adoption assistance.

The history of this review system goes back almost 20 years, to passage of the Adoption Assistance and Child Welfare Act of 1980. That legislation established Titles IV–B and IV–E in their current form, and specified for the first time certain federal protections for children in state foster care systems. At that time, many of these protections were included in Section 427 of the Social Security Act and were voluntary incentives for states to meet, in order to receive their full allotment of child welfare grant funds. Among these protections, states were required:

- to conduct an inventory of all children in foster care;

• to provide each foster child with a written case plan; and
• to review each foster child's case according to a prescribed timetable, in order to achieve a permanent placement for that child.

The 1980 law also established the current eligibility requirements to determine which children could qualify for federally subsidized foster care payments. These eligibility requirements address the income level of the family from which the child has been removed and the licensing status of the foster care provider where the child has been placed. The requirements also contain provisions that were intended to work together with other parts of the law to protect children in foster care. For example, the 1980 law limited federal reimbursement only for children for whom "reasonable efforts" were made, to enable them to remain with their family or to return to their family. This provision was meant to reinforce another section of Title IV–E that requires states to make such reasonable efforts for all children in foster care, regardless of whether they are eligible for federally subsidized foster care payments.

In the early 1980s, HHS developed and operated review systems for monitoring state compliance with the Section 427 protections, and with the federal foster care eligibility requirements under Title IV–E. However, beginning in 1989, Congress suspended the collection of penalties resulting from these reviews, and in 1994, Congress directed HHS to develop a new review system altogether. This new system would be established under the regulation that HHS has now proposed.

Problems with Old Review System

Child welfare advocates, state and federal officials, and Members of Congress grew dissatisfied with the earlier review systems for various reasons, both procedural and programmatic. These concerns were expressed during hearings before this and other congressional committees during the late 1980s and early 1990s, and were identified by the HHS Inspector General in a 1994 report. These concerns also were summarized in the preamble to the Administration's September 18th proposal for a new child welfare review system.

Procedural concerns with the earlier review system included a lack of formal regulations, frequently resulting in confusion about the standards that states were expected to meet. Reviews were conducted retrospectively, sometimes for fiscal years that had long past, so that current practices were not examined. Exacerbating this problem was the late release of final reports by HHS, so their findings and recommendations were sometimes irrelevant by the time they were issued. State officials had limited ongoing contact with federal regional office staff, so that formal reviews were seen as adversarial and punitive, rather than collaborative and potentially helpful. The reviews were often seen as time-consuming, labor-intensive, and burdensome for the states.

Of greater concern, however, was the perception that the reviews did not result in improved services for children and families. Both Section 427 and Title IV–E eligibility reviews focused on paper compliance with legal requirements. For example, Section 427 reviews primarily identified whether certain mandatory procedures were conducted according to the prescribed timetable, but did not evaluate the quality of the procedures or the outcomes for children. Moreover, states were sometimes held accountable for circumstances beyond their control, such as the schedule of the courts. Likewise, Title IV–E eligibility reviews focused on whether the court had properly documented its finding that the state had made reasonable efforts to avoid foster care placement for an individual child. But, if a judge failed to document this finding correctly, a state could fail its review regardless of its actual services to that child and family.

Reviews were criticized for focusing on isolated components of a state's child welfare system, rather than the system as a whole. When problems were identified, penalties were imposed but little technical assistance was provided. The review system contained no mechanism for helping states to improve the quality of their programs. On the other hand, these reviews were also criticized for failing to identify problems in state child welfare programs. The fact that some states passed these federal reviews, while at the same time they were being successfully sued in court, raised additional questions about the effectiveness of the federal review system.

Congressional Response

In 1989, Congress imposed the first in a series of moratoriums, prohibiting HHS from collecting penalties associated with these reviews. Finally, in 1994, Congress enacted two significant provisions as part of the Social Security Amendments of that year. First, Congress restructured Title IV–B, so that the foster child protections previously contained in Section 427 were no longer voluntary incentives, but rather

mandatory components of the state Title IV–B plan. Second, Congress mandated the development of a new system to review state conformity with federal requirements, including state plan requirements, under Titles IV–B and IV–E.

The 1994 legislation directed HHS to develop a review system that would incorporate the concepts of technical assistance and corrective action. Specifically, HHS was directed to specify the federal requirements that would be subject to review and the criteria that would be used to determine if a state was substantially meeting those requirements. The law further directed HHS to specify a method for determining the amount of financial penalties that would be imposed in cases of substantial nonconformity. However, Congress also mandated that before such penalties could be imposed, states must be given an opportunity to implement a corrective action plan, and required that HHS provide the states with necessary technical assistance.

The 1994 legislation directed HHS to promulgate regulations, establishing this new review system, by July 1, 1995, to take effect on April 1, 1996. HHS has now proposed these regulations, in the Federal Register of September 18, 1998.

THE ROLE OF ADVOCACY LITIGATION

As I mentioned earlier, one of the concerns raised about the effectiveness of the old federal review system was the fact that some states were given a clean bill of health by HHS, while at the same time they were found in court to have violated federal or state child welfare laws. Since the early 1980s, lawsuits have been filed against states or localities in at least 24 states that I have been able to identify, based on a quick review of summaries prepared by two organizations that represented the plaintiffs in many of these cases. These organizations are Children's Rights, Inc., in New York (formerly a component of the American Civil Liberties Union) and the National Center for Youth Law in San Francisco.

Some of these cases, and their outcomes, have been narrow in focus. However, many of these cases have been class actions alleging a wide variety of violations of federal and state child welfare laws, as well as constitutional violations, and have sought comprehensive child welfare reform. It is important to note that many of the child welfare reforms that have been attributed to litigation were not always directly mandated by the courts or specified in settlement agreements or consent decrees. Rather, some of these reforms were initiated by governors, agency administrators, or state legislatures simultaneously with litigation, or after litigation focused attention on certain problems. In some cases, the litigation helped to produce the necessary data to document these problems.

The kinds of policy and practice changes that have resulted from child welfare litigation, either directly or indirectly, have affected the full range of child welfare services, including child protection, preventive and rehabilitative services for children and families, foster care, and adoption. In some cases, courts have been very specific, such as in establishing caseload standards for social workers or establishing permanency planning timetables. In other cases, court orders or settlement agreements have outlined broader policy goals, such as improved service delivery to foster children or timely permanency planning, without specifying the actual steps to be taken by the state or locality.

In general, some of the outcomes that were frequently sought in child welfare lawsuits include: more timely and thorough child abuse and neglect investigations; caseload standards for social workers and supervisors engaged in protective and preventive services; creation of new administrative units and other initiatives to provide better and more targeted services to children and families; standards to ensure that certain services are provided to children in foster care, such as health screenings; improvement and automation of management information systems; visitation standards for foster children with biological families when reunification is the permanency goal; targeted efforts to reduce stays in foster care and to reduce backlogs of children awaiting adoption; and enhanced training for caseworkers and other employees.

Madame Chairman, that concludes my formal statement. I'd be happy to answer any questions that you or other Members of the Subcommittee may have. Thank you.

Mr. ENGLISH. Thank you, Ms. Spar. Mr. Waldman, welcome. Your testimony, sir.

STATEMENT OF WILLIAM WALDMAN, EXECUTIVE DIRECTOR, AMERICAN PUBLIC HUMAN SERVICES ASSOCIATION

Mr. WALDMAN. Thank you. Congressman English and Members of the Subcommittee, I am Bill Waldman. I am the executive director of APHSA, the American Public Human Services Association. I want to start by thanking you very much for the invitation. The organization that I direct, represents all the States and the localities that are engaged in human services, significant among which are programs of public child welfare.

The testimony I am going to provide today was gleaned from many meetings and much work of our association members. I want to say it is also supported by some of my own experience. Prior to joining APHSA, 9 months ago, I concluded a 33-year career in public human services, starting as a caseworker, ending up as a commissioner of human services in New Jersey, working for Governors of different political parties. I also served for 3 years as the State's child welfare director.

Balancing those two things, I want to start off with an important point. I want to reiterate what several of you have said about the significant progress that has been made. I want to express our appreciation to Congress for the law that contributed to a sea-change of thinking about how we practice out in the States and localities, also to our Federal partners, and I want to acknowledge very much the State performance in this area. I think the States have made an extraordinary effort. A few of my colleagues that are here today representing the States of Illinois and Florida have made some outstanding progress.

The second point I wanted to make is that the regulations, on balance, are, in fact, very positive. There are issues we have with them, and I am going to summarize those very quickly for you, but I think they are a step in the right direction because they focus on outcomes and accountability, which are key.

In going through the areas, rather than read the testimony, what I'd like to do is summarize the four principles that I think are vital to adhere to in the Federal-State relationship, and in the nature of these kinds of regulations.

The first principle I would postulate is that these kind of regulations have to have accountability for outcomes balanced with flexibility on how those outcomes are achieved. That is an extraordinarily important principle that has been historically lacking in this field. If you look, for example, at how the whole system is financed, you will see a rigidity. In fact, the Chair mentioned it in her opening comments about it being directed predominantly to foster care.

We are working on some changes in that area. We hope that you will be open; and we hope to present those to you at a future time.

Oftentimes, when States talk about flexibility there is a feeling or perception, I think, that we don't care about accountability, we want to avoid that. I'm here to say that is not true. We don't want flexibility as a smokescreen to be able to redirect Federal funds for this purpose to other areas. I'm not here to advocate for a block grant but I think we need to do things to unleash the creativity and the innovation that I believe is out there in my many colleagues that I have worked with for many years in the States.

In my view, if we are to sustain and expand these important gains, we have to look at this issue very, very seriously.

In that particular area or principle, I am concerned about the degree to which the judicial determinations are required to be documented. The regulations are very extensive, and I would say rigid. And I will ask the department, and for your consideration as well, to make those more flexible. That's a difficult area for States.

The second principle is the idea that oversight should be conducted in a framework and spirit of program improvement. We are not saying that penalties aren't appropriate to be used. But we think there is a process that needs to be involved and I think is generally reflected here, that starts with identification, remediation, corrective action, technical assistance, and then penalties if there is no success in achieving the desired result.

I think the rules generally adhere to that formula. There is one around MEPA, the Multiethnic Placement Act, that doesn't follow that, and we hope that that is adjusted as well. We think there has been some real good technical assistance provided by the department, but we think, given the challenges ahead, that needs to be expanded and include peer-to-peer assistance as well.

The third point I would make or principle, is that regulations should be judged from a standpoint of general clarity, fairness, and balance. As several of you have expressed, I am concerned about the lack of specificity around certain terms, particularly those associated with the children and family services reviews.

What, for example, does "substantial compliance" really mean? What are the elements that determine it from partial compliance or noncompliance? Will the people who do the reviews be trained so there is a consistent application of those across the States. I was encouraged to hear what the assistant secretary had to say, that more work has to be done with that.

There is an issue about the sample size for those reviews. Only 80 cases are taken. I used to live through the old 427 reviews. Some of you may be familiar with them. And frankly there is some element of luck of the draw in this. There was 1 year I was sure I would fail it, and we passed. And it could have been the other way around, certainly.

The last issue I would mention is the need for congruence and consistency in regulations. There are two outcome measures that are being used here that I'm not sure relate to each other, and they are both important. One is the results from the children and family service review; the other is the report to Congress on the aggregate performance of the States.

The way I understand it is that a State may pass one and fail the other, or do very well on one and poorly on the other. I think these items should be looked at as building blocks, not separate stovepipes, as indications of performance. So I would urge the department to look at that.

I would also look for a more comprehensive review and rationalization of the penalty system. Again, not trying to avoid penalties, but there are MEPA penalties, AFCAR's penalties, and jurisdictional adoption penalties, and the list goes on and on. And I think if we stepped back and looked at a broader system that relates to a cohesive whole, we could be more effective.

In closing, we recognize our responsibilities. We are doing some work as an association. We are committed to promote successful implementation. We are focusing on outcomes ourselves. We support that work. We have a list very similar to what the department has. We are working on important collaborations with the substance-abuse community and with the judicial community as well. We have a task force on facilitating interstate adoptions.

I look forward to working with you to improve this. We are committed to it.

Thank you.

[The prepared statement follows:]

Statement of William Waldman, Executive Director, American Public Human Services Association

Chairman Johnson, Congressman Cardin, Members of the Subcommittee, I am William Waldman, Executive Director of the American Public Human Services Association (APHSA).

I am pleased to have the opportunity to testify today about federal oversight of child protection programs. As the national organization representing state and local agencies responsible for the operation and administration of public human service programs, including child protection, foster care and adoption, APHSA has a longstanding interest in developing policies and practices that promote improved performance by states and in the process that the federal government uses to monitor and assess state performance in operating these programs.

Prior to joining APHSA nine months ago, I concluded a 33-year career in the public human services in the state of New Jersey. I began as a caseworker, and held numerous titles and responsibilities including those of director of the state child welfare agency—the New Jersey Division of Youth and Family Services—as well as Commissioner of the New Jersey Department of Human Services, a cabinet level position with responsibility for broad array of human services. I served three governors—Democrat and Republican. In the course my career, I have implemented many federal and state child welfare initiatives and value the state and federal partnership that is critical to the success of many public human service programs.

On behalf of states, we are pleased that this hearing is also examining state successes in increasing adoption. In the year and a half since enactment of the Adoption and Safe Families Act (ASFA), states have enacted legislation to comply with ASFA and are building on their own reform efforts initiated in recent years, consistent with the goals of ASFA, to achieve safety, permanency, and well-being for children served by the public child welfare system. ASFA has clearly contributed as a part of a sea change in public child welfare practice. We have seen tremendous strides taking place in the states resulting from ASFA and state reform initiatives and innovations. For example, statistics have demonstrated significant state successes in increasing the number of adoptions of children from foster care—with increases in nearly every state, in many cases rising by 50 percent or more in less than two years. .Agencies are employing a number of promising practices such as subsidized guardianship, performance-based contracting, family group decision making, cross-system collaborative efforts with substance abuse agencies and juvenile courts—all of which are promoting more safe, stable and timely permanent arrangements for children, whether they be adoptions, reunifications or guardianships.

In order to ensure that this improvement and innovation is sustained and expanded, we must remove barriers to optimal performance. One of the most serious constraints for states is a federal financing structure for child welfare that is constrained by fiscal incentives that do not necessarily reward the desired outcomes for children. . The current federal financing system disproportionately funds the deepest and often least desired end of the system—out of home care—that we are all striving to minimize in terms of lengths of stay and numbers of children, while funding directed at activities to achieve permanency, safety, prevention and early intervention are comparatively limited. Although we do not support a block grant for child welfare funding, we do strongly urge that additional flexibility in the use of Title IV–E dollars be afforded to states so that they can invest these dollars in the kinds of activities that are yielding success and test innovative ideas to generate new programs that work. Flexibility is also critical to enabling states to develop comprehensive approaches and a broad array of tailored interventions to address the complex and individual needs of children and families rather than encouraging

responses that are driven by categorical programs that deal with only part of the system.

In addition, we would also urge that Congress look at federal policy on the Title IV–E waivers to ensure that the promise of innovation and flexibility agreed to in ASFA is not limited by overly prescriptive and rigid federal implementation. Furthermore, we would also encourage increased federal investment into child welfare programs to meet the increased demands and capacity needs these systems are facing, but increased spending must not come at the expense of other human service programs that serve our nation's most vulnerable children and families. APHSA has a workgroup that is crafting recommendations on how to restructure federal child welfare financing to support the outcomes for children and families we are all seeking to achieve. We anticipate the completion of these recommendations this summer and are very eager share them with this subcommittee.

Before I speak directly to the regulations, I want to make it very clear that states strongly believe that the public child welfare system must focus on results and accountability. Our appeal for flexibility is often characterized as a rejection of accountability and as taking precedence over serving children and families, and I would like to end that mischaracterization here and now. Accountability, safety and permanency for children, and flexibility are not mutually exclusive, but rather are dependent on each other. We view flexibility not as the end goal, but a key means to an end—that is achieving positive results for the children and families we serve.

The proposed regulations issued by HHS in September of 1998 establish two new review processes for monitoring state child welfare activities. The first process, known as the child and family service review, monitors states' conformity with their Title IV–B and IV–E state plan, and replaces what was called the Section 427 review. The other process, known as the Title IV–E eligibility review, revises the review that determines whether Title IV–E funds were legitimately spent on Title IV–E children and providers and that all Title IV–E requirements were met in cases where IV–E funding is being claimed. Furthermore, the regulations address compliance with the Multi-Ethnic Placement Act of 1994 and the Interethnic Adoption Provisions of 1996, and certain provisions of ASFA.

APHSA held a series of conference calls and meetings in which state agency administrators discussed the proposed rules probable effect on state child welfare programs. My testimony today represents the broad consensus resulting from that process.

CHILD AND FAMILY SERVICES REVIEWS

APHSA, and the state and local agencies we represent, have advocated for more than a decade for a review system that is predicated on outcomes and encourages system improvement. HHS, the Congress, and the field, including states and advocacy organizations, have all agreed that the section 427 review system elevated process issues over quality of services and was a poor measure of state performance in operating child protection systems and of results for children being served. The suspension of these reviews in the early nineties and the succession of moratoriums on penalties and disallowances was instituted in response to this realization of their inappropriateness and ineffectiveness. After much deliberation in the field, studies by HHS, APHSA (then APWA) and others, Congress in 1994 called on HHS to develop a new review system that was outcome based, and provided for corrective action and technical assistance. The goal was system improvement and better outcomes for the children and families served.

Many states today are developing outcome-based systems to assess their own performance and to ensure quality services and positive outcomes for children and families. The commitment to outcomes by states is also reflected in the collective work of states undertaken by APHSA last year to develop a core set of national outcome measures for HHS to assess state performance as required by ASFA. We have shared our recommendations with the subcommittee staff on both sides of the aisle.

In order for states to achieve positive outcomes for children and families, child welfare agencies need the flexibility to continue to design and implement innovative programs, and to make individualized decisions and interventions for children and families. For these reasons, the federal rules applied to titles IV–B and IV–E must provide the flexibility to engage families on a case-by-case basis and to emphasize outcomes over process. The general thrust of the new child and family services review recognizes this and we welcome this landmark change in orientation. We commend HHS for its thoughtful development of a new process for federal oversight of child welfare programs and for engaging state agencies and the field in this deliberative process. We also appreciate that program improvement is the foundation of this review system and the recognition that such improvement takes time and,

often, technical assistance. States have long felt that penalties, without opportunity for corrective action and program improvement, are not the way to advance critical program and practice changes. States must be accountable and are committed to being accountable. However, penalties only make sense if they reinforce good practice and are directed toward achieving the right outcome.

The states that underwent pilot reviews to test the new system overwhelmingly valued the self-assessment approach, noting that it was a helpful process and tool for examining their system. That said, states have identified a number of concerns with this proposed review system, even though valuable lessons and modifications have occurred as a result of the pilot reviews. Some of the questions raised are posed here. Will the system equitably and accurately measure state conformity? Will a small sample size accurately reflect the totality of the system? How will terms be defined and measured so that the review process will not be too subjective? How will disagreements among team members regarding substantial compliance be resolved? Will the federal officials recognize and appreciate the uniqueness of specific state programs and reform efforts? Will technical assistance be available and of such quality and diversity to be tailored to the specific program improvement needs of a particular state? How does this system comport with the new annual report on state performance required by ASFA?

We want to be clear that in raising these questions we are not implying that we would want to return to a review system similar to the old Section 427 review system. Yet, we are cautious that even with the best intentions, the system may not, in practice, accurately and equitably assess performance on a system-wide level. Even with the lessons learned from the pilot reviews, the new system is still too untested to conclude at this time whether the process is workable, appropriate and a good measure of conformity with the state plan. Overall, we support the general approach to the reviews but urge HHS to refine it in the final rule based on specific recommendations that we enumerated in detail in the comments we submitted on December 17, 1998, and to build in a process to monitor the implementation and effectiveness of the system in order to make necessary improvements over time.

One of our priority concerns relates to the proposed standard for determining outcome achievement and substantial conformity. While we fully support the overarching outcomes of safety, permanency and well being, states are very concerned about the proposed standard for substantial conformity. We have considered carefully the proposed standard of 90 percent for the first review and 95 percent for subsequent reviews and have deliberated at length about the appropriate standard. State agencies continue to aim for 100 percent compliance and outcome achievement as the goal, but the question for the regulations is not about the goals we aim for but rather the point at which a penalty is imposed. As such, we believe that a standard of 95 percent is too high. Given the potential for human error and the probability of a disproportionate number of unrepresentative cases in such a small sample size of 30 to 50 cases, ninety-five percent is virtually the equivalent of perfection. Setting the standard for conformity at a fair and accurate level is crucial given that the availability of critical federal resources is at risk. Therefore, we recommend 90 percent as the standard for substantial conformity for the initial as well as subsequent reviews, but only if other factors are operating concomitantly with this standard.

These other factors are as follows: First, the sample size of cases must be representative of the state—otherwise the information is anecdotal at best, and we question how the judgment of conformity can be credibly made. Second, the review must be conducted by federal reviewers who have demonstrated knowledge and experience in child welfare. Third, the outcomes criteria must be consistent with the annual report to Congress on state performance. Lastly, significant discrepancies between the aggregate data and the on-site review findings must also be considered as a factor in determining the state to be in substantial conformity, not just to determine that a state is not in substantial conformity as is described in the preamble of the regulations. The specific level of outcome achievement we are recommending is contingent on these recommendations regarding the statistical validity of the sample size, the quality and experience of the federal review team and the interrelationship with the outcome measures in the annual report to Congress. These items are all inextricably linked to a fair and effective review system. If the three factors mentioned above are not addressed as a package with the recommended standard for conformity, then the standard must be lowered further. Furthermore, we urge HHS (1) to regularly monitor the review system, (2) study and assess its impact on practice and compliance, and (3) build into the regulations a process for amending and changing it. Vulnerable children and families and the public agencies that serve them deserve no less.

States generally view the qualitative nature of the review as positive. However, this type of approach raises concerns about subjectivity in the review process. States have many concerns about what the actual standard and criteria will be for making the final decision for whether an individual case has substantially achieved, partially achieved or not achieved the outcome in question. States believe that they should be made aware of exactly how ACF plans to assess them. There is also concern about whether outside reviewers will understand the basics of a state's system, its complexity and the nuances in order to make accurate assessments. Again, we raise the issue that training of reviewers and their demonstrated knowledge of and experience with state child welfare administration is critical to the fairness of the process.

We are also concerned about the lack of an explicit link between the outcomes proposed in the child and family services review and the outcomes proposed for the annual report to Congress on State performance on outcome measures which was required in Section 203 of ASFA. It is essential that these two systems are relevant to each other and that the respective outcome measures not only do not conflict but also are in agreement. If states are working to achieve two different sets of outcomes that may be in conflict with each other, it will not advance good practice and improved programs. Furthermore, serious questions would be raised by federal and state legislators and the public if a state was in substantial conformity in the children and family service review system and ranked poorly in the annual report, or vice versa.

These comments are not intended to suggest that the proposed system be discarded and replaced. We truly view the proposed process as an evolutionary one and commend HHS for the work it has done. We have urged HHS to be cognizant of our concerns in approaching and conducting the reviews and to continually monitor the process, revise the instruments and make changes to both as necessary. We have requested to HHS an ongoing dialogue between HHS and the states be maintained, both individually and collectively. We would be pleased to engage in a similar dialogue with this subcommittee as lessons are learned from implementation of the new system.

TITLE IV–E ELIGIBILITY REVIEWS

We are concerned that the focus of the proposed regulations on process and paperwork in the interpretation of specific title IV–E requirements and the proposed IV–E eligibility review process are inconsistent with an outcomes-based approach to monitoring. Paperwork and process are important so as to ensure certain protections for children, but are meaningless and a misdirection of limited resources when they do not comport with outcomes. Our concern specifically relates to the excessively rigid and prescriptive requirements around documentation of judicial determinations. In this respect, the proposed regulations emphasize process and place requirements on court activities that states cannot control. Under these rules agencies could be penalized if these activities are not completed by the courts in the time frames and to the prescriptive specifications required by the regulations that have no statutory bearing. In some respects these concerns are not new, but the proposed regulations exacerbate what has already been acknowledged as a problem by imposing even more prescriptive timelines, processes and documentation on the court and tying them to a state agency's ability to claim IV–E for otherwise eligible children. Under state constitutions' separation of powers, state administrators, governors and legislators have no control over the judiciary. Neither ASFA nor the regulations can make the courts accountable either. As a result, HHS should provide the states with as much flexibility as possible with respect to court activities such as documentation. Denial of IV–E eligibility because of court failures will only make it more difficult for states to realize the goals of ASFA. Such reliance on process is inconsistent with the agreed upon principle of the importance of outcomes over process.

PENALTIES AND CORRECTIVE ACTION RELATED TO MEPA AND THE INTERETHNIC ADOPTION PROVISIONS

State agencies understand that the process for assessing MEPA penalties must be unique to a certain extent, but believe that the statute affords HHS the flexibility to make the MEPA enforcement process aimed at program improvement as well. We are concerned that the process proposed in the regulations is a retreat to the old way of doing business with the states where there is no clear standard of compliance and no real attention to program improvement. Unlike the process outlined for the child and family services reviews, the proposed regulations make no mention of HHS' obligation to inform states specifically of the reasons for non-compliance, to work with states to develop a corrective action plan, to develop a specific timeline

for HHS to approve corrective action plans, or to inform states of what needs to be done to be in compliance.

We strongly disagree with HHS' interpretation of the statute as it relates to penalties for a violation with respect to a person. The statute provides for the opportunity for corrective action before penalties are assessed. However, the proposed regulations impose immediate penalties and successive reductions in funding, with corrective action only serving to stop additional penalties from being assessed. We believe that the regulation is inconsistent with congressional intent, legislative history, and the conference report, and violates the understanding in which the statutory language was negotiated with our organization. We urge the subcommittee to take action to ensure that this matter is resolved in the final regulations so that corrective action is allowed before penalties are imposed.

CUMULATIVE EFFECT OF PENALTIES

There are a substantial number of penalties imposed by the federal government on state child welfare systems (i.e., MEPA, AFCARS, interjurisdictional adoption, child and family service review and IV–E eligibility reviews). Contrary to the views of others who commented on the proposed regulations, we do not view the new review systems established by these regulations as overly lenient with respect to the penalties imposed. In fact, we are concerned that the cumulative effect of these penalties is immense and has the potential to undermine the historic state-federal relationship around the state plan process. While we do believe states must be accountable in how they use federal funds to operate state programs, we contend that this piecemeal approach to penalty assessment obscures the overall impact on states. We urge the Congress and HHS to take a serious look at the current piecemeal penalty approach and consult with the states on a more rational approach to assessing performance across programs, rather than continuing to add on individual penalties by program. If program improvement is a serious objective, we must recognize that resources, along with the opportunity for corrective action and positive incentives that are linked to outcome, are critical to achieving success. We urge you to consider these issues as you undertake proposals on the development of a performance-based incentive system and other proposals related to the restructuring of Title IV–E financing.

The individuals with the most at stake are the children and families we serve. Accordingly, states need to be allowed to focus their time and resources on serving these children and families. While federal regulations are obviously necessary, we want to ensure that they do not hinder states' programs and their ability to achieve the very outcomes the federal law seeks in the process.

We commend HHS for developing a framework for federal review that truly focuses on outcomes and provides a meaningful opportunity for program improvement. We view the proposed review system as a significant improvement over the former system. We are hopeful that the final regulations will address the issues we identified and will support state efforts to achieve our mutual goals of safety, permanency and well-being for children.

In closing, I want to let you know that APHSA is working hard as an organization to promote successful implementation of ASFA and other comprehensive child welfare system reforms. In addition to the work we are doing on outcomes and financing, we have initiated national partnerships with two key entities that are critical to the success of ASFA—one with the juvenile courts through a collaboration initiative with the National Council of Juvenile and Family Court Judges (NCJFCJ) and another with state substance abuse agencies through a joint workgroup with the National Association of State Alcohol and Drug Abuse Directors (NASADAD). We have also established a task force to develop solutions to geographic barriers to interstate adoption. APHSA, and its member states and localities are deeply committed to achieving the goals of ASFA and positive results for children and families, and we look forward to continuing to work with you.

Mr. ENGLISH. Thank you, Mr. Waldman.

Ms. Warburton, we look forward to your testimony.

STATEMENT OF KIM WARBURTON, CHAIRMAN OF THE BOARD, KIDSHELP! FOUNDATION, CHICAGO, ILLINOIS

Ms. WARBURTON. Good morning, Chairman Johnson and Subcommittee members. My name is Kim Warburton. My husband and I entered the arena of child welfare when we adopted, at 4 days old, a little boy who was taken from us by his biological father when he was 4 years old.

We named him Danny. The world knew him as baby Richard. When our son was taken from us, we dedicated the remainder of our life's work to helping children, making sure that they were put first.

KidsHELP! Foundation is a nonprofit human rights initiative for children, dedicated to fostering child-centered systems and seeking to promote early permanent placement of children in stable families. The Adoption and Safe Families Act of 1997 was passed to shift the focus of welfare from reunification at all costs to the child's health and safety. KidsHELP! urges Congress to watch closely over the implementation of the 1997 act to ensure that it is carried out as you intended it to be.

KidsHELP! supports the stated goal of the Adoption and Safe Families Act of 1997. A child's health and safety should be the paramount concern. When Health and Human Services Administration proposed its regulations on the statute, we wrote to ACF, the Administration for Children and Families, and submitted comments that we would like to have reviewed before the regulations become final.

We seek to encourage to adopt regulations that place children first by basing all decisions about a child on the child's health and safety. KidsHELP! comments focus on two central things. One, all decisions about a child should be based on the safety and needs of the child. Two, every child needs a safe and permanent home as early as possible.

These are also the goals of the Adoption and Safe Families Act. These child-centered goals should be the guiding principles of every decision made about a child. Each decision should be based on a child's need for safety and permanency rather than adults' desires for reunification.

KidsHELP! disagrees with several of the outcomes which will be used to judge the results achieved by State programs because they are inconsistent with the act's fundamental goals, to protect the safety and health of children first and foremost.

The first safety outcome provides that children are first and foremost protected from abuse and neglect and are safely maintained in their homes whenever possible. The second phrase in this outcome, "and are safely maintained in their homes whenever possible," undermines the primary goal of ensuring child safety. Maintaining children in their homes may directly conflict with protecting children from abuse and neglect.

This outcome also sends a confusing message to agencies as to whether they should protect children or maintain children in their homes. Congress unequivocally resolved this debate in passing the act by setting the primary goal to keep children safe.

KidsHELP! suggests that the first safety outcome be, children are first and foremost protected from abuse and neglect, period.

The second safety outcome is risk of harm to children is minimized. The goal should be to eliminate harm, not merely minimize it. State programs should be judged on whether they are successful at protecting children, which means eliminating harm to children.

We suggest deleting the second safety outcome because it is redundant, if not inconsistent with the first safety outcome of protecting children.

ACF proposes to use the outcomes as a measure to evaluate whether State programs conform with Federal requirements. ACF plans to use performance indicators to evaluate States' results. Unfortunately, ACF's performance indicators are vague and difficult to measure. The performance indicators should be more quantifiable and focus on child safety, not reunification. The numbers should be broken down and reported by categories. States should report the age ranges for each category, which would enable a profile of entries and reentries to be established and analyzed to assist in the development of future initiatives. States should compare current data with data from the previous 5 years to evaluate the State's progress.

The proposed penalties are too low to encourage compliance. KidsHELP! supports ACF's efforts to forge partnerships with States to develop high-quality child welfare programs; however, ACF should not use program improvements to the near elimination of penalties.

The proposed penalties are too low and should be increased. The best incentive for States to conform to Federal standards is not only the threat of withholding Federal funds but the practice of implementing those penalties when the State, regardless of which branch of government or appropriate agency, fails or refuses to comply with, apply, or implement those Federal standards.

Furthermore, penalties should not be suspended while the State is attempting to come into compliance because if States continue to receive money, they have no incentive to improve. ACF's rules violate the act by requiring States to terminate parental rights of parents who commit certain felonies against children.

There is a slight conflict which exists within the act itself. Under section 675(5)(E), there is a mandatory requirement of termination of parental rights, yet, on the other hand, section 671(a)(15)(D) provides that States need not make reasonable efforts to reunify the child when a parent has committed felonies under the act. Once a court determines that reasonable efforts to reunify are not necessary, the State must hold a permanency hearing within 30 days.

Thus a conflict as to determination of parental rights arises within the act as one section requires termination proceedings when a parent commits a felony against a child while another section, under those same felony circumstances, gives the States the discretion to make reasonable efforts and to proceed to permanency hearings.

I would like to thank you very much today for the opportunity to speak and share our objectives and our viewpoints regarding this particular aspect of ASFA and the regulations that oversee it. We have provided you with a copy of our long-term statement today, and most importantly, I would like to thank you for your concern regarding children.

[The prepared statement follows. An attachment is being retained in the Committee files.]

Statement of Kim Warburton, Chairman of the Board, KidsHELP! Foundation, Chicago, Illinois

I. INTRODUCTION

Good morning Chairman Johnson and committee members. My name is Kim Warburton. My husband and I entered the arena of child welfare when we adopted, at 4 days old, a little boy who was taken from us by his biological father when he was 4 years old. We named him Danny. The world knew him as "Baby Richard." When our son was taken from us, we dedicated our life's work to helping children.

KidsHELP! is a non-profit, human rights initiative for children, dedicated to fostering child-centered systems, and seeking to promote early permanent placement of children in stable families.

II. BACKGROUND

I would like to start with a brief background to the Adoption and Safe Families Act and these rules. In 1980, Congress passed the Adoption Assistance and Child Welfare Act to decrease the number of children in foster care. The statute required states to make reasonable efforts to prevent the removal of children from their homes. "Reasonable efforts," however, was left undefined by Congress. Without guidance, states made every possible effort and left no stone unturned in reunifying families. States wrongly interpreted the statute to require that they must give parents every possible chance and service to get their children back. As a result of the 1980 statute, the number of children in foster care actually increased. The statute was a failure.

There was no effective Congressional oversight of the 1980 statute. Perhaps if there had been, Health and Human Services and the states would not have veered so far astray from the statute's intent. To correct this problem, Congress passed the Adoption and Safe Families Act of 1997 to shift the focus of child welfare from reunification at all costs to child health and safety. KidsHELP! urges congress to watch closely over the implementation of the 1997 Act to ensure that it is carried out as you intended.

KidsHELP! supports the stated goal of the Adoption and Safe Families Act of 1997—a child's health and safety shall be the paramount concern. When Health and Human Services' Administration for Children and Families proposed its regulations on this statute, we wrote to ACF and submitted comments that we would like ACF to review before the regulations become final. We have provided a copy of those comments to you today. We seek to encourage ACF to adopt regulations that place children first by basing all decisions about a child on the child's health and safety.

III. COMMENTS

KidsHELP!'s comments focus on two central themes:

1. All decisions about a child should be based on the safety and needs of the child
2. Every child needs a safe and permanent home as early as possible

These are also the goals of the Adoption and Safe Families Act. These child-centered goals should be the guiding principles of every decision made about a child. Every decision should be based on a child's need for safety and permanency, rather than an adult's desires for reunification. In the comments kidsHELP! submitted in December, kidsHELP! pointed out where ACF's proposed rules deviate from these goals.

A. *OUTCOMES DO NOT PROTECT CHILDREN FIRST AND FOREMOST*.

KidsHELP! disagrees with several of the outcomes which will be used to judge the results achieved by state programs because they are inconsistent with the Act's fundamental goal to protect the safety and health of children first and foremost. In its December comments, kidsHELP! suggested specific changes to the outcomes. Here, I will point out just a couple of examples of how the outcomes need to be more child-centered.

The first safety outcome provides that "children are, first and foremost, protected from abuse and neglect, and are safely maintained in their homes whenever possible." The second phrase in this outcome" and are safely maintained in their homes whenever possible," undermines the primary goal of ensuring child safety and rather is reminiscent of the former focus on family reunification. Maintaining children in their homes may directly conflict with protecting children from abuse and neglect.

This outcome sends a confusing message to agencies as to whether they should protect children or maintain children in their homes. Congress unequivocally resolved this debate in passing the Act by setting the primary goal to keep children safe. KidsHELP! suggests that the first safety outcome be "children are, first and foremost, protected from abuse and neglect," period.

The second safety outcome is "risk of harm to children is minimized." The goal should be to eliminate harm not merely minimize harm. State programs should be judged on whether they are successful at protecting children which means eliminating harm to children. KidsHELP! suggests deleting the second safety outcome because it is redundant, if not inconsistent with, the first safety outcome of protecting children.

B. *OUTCOMES SHOULD BE MEASURED BY OBJECTIVE, QUANTIFIABLE INDICATORS*.

ACF proposes to use the outcomes as a measure to evaluate whether state programs conform with federal requirements. ACF plans to use performance indicators to evaluate state's results. Unfortunately, ACF's performance indicators are vague and difficult to measure. Furthermore, many of the performance indicators improperly address reunification. In its December comments, kidsHELP! made numerous suggestions on revising the performance indicators to make the indicators more quantifiable and to focus on child safety not reunification. For example, the performance indicators for safety outcomes should be indicators such as:

1. Number of cases where there is risk of harm to child
2. Number of cases of neglect
3. Number of cases of abandonment
4. Number of initial and repeat cases of physical or emotional maltreatment
5. Number of child deaths due to physical or emotional maltreatment
6. Number of child deaths following removal and return of child to parents
7. Number of cases in which state did not initiate an investigation within 24 hours of receiving a report

These numbers should be broken down and reported by categories such as biological home, foster care, kinship care, adoptive placements, and subsidized guardianships. States should report the age ranges for each category and compare current data with data from the previous five years to evaluate the state's progress.

State and federal agency employees, as well as the public, need more specific guidance on how to evaluate a state's performance. Please see our December comments for more suggestions on indicators for each of the outcomes.

C. *PROPOSED PENALTIES ARE INSUFFICIENT INCENTIVES FOR STATES TO MEET FEDERAL STANDARDS*.

The proposed penalties are too low to encourage compliance. KidsHELP! supports ACF's efforts to forge partnerships with states to develop high quality child welfare programs. However, ACF should not use program improvements to the near elimination of penalties. The proposed penalties are too low and should be increased. The best incentive for states to conform to federal standards is not only the threat of withholding federal funds, but the practice of implementing those penalties when the state, regardless of which branch of government or appropriate agency, fails or refuses to comply with, apply, or implement those federal standards. Furthermore, penalties should not be suspended while the state is attempting to come into compliance, because if states continue to receive money, they have no incentive to improve. KidsHELP! suggests that Congress and ACF consider a graduated penalty approach whereby ACF immediately withholds a percentage of federal funds and increases that penalty each year until the state program conforms with federal requirements.

D. *PROPOSED RULES CONFLICT WITH REQUIREMENT TO TERMINATE PARENTAL RIGHTS WHERE PARENT HAS COMMITTED A FELONY*.

ACF's proposed rules violate the act by not requiring states to terminate parental rights of parents who commit certain felonies against children. My remaining comments on this point are somewhat technical and require some familiarity with specific sections of the statute. However, I ask for your patience because it is an extremely important point that states be required to terminate parental rights of parents who commit felonies against their children. ACF argues in the preamble to its proposed regulations that children should be returned to parents who have been convicted of felonies against children! This is an unconscionable result.

Section 675(5)(E) of the Act, requires states to terminate parental rights when a court determines that a parent committed certain felonies against a child. This is not a discretionary provision; the state must initiate termination proceedings. On the other hand, Section 671(a)(15)(D) provides that states need not make reasonable

efforts to reunify the parent and child when a parent has committed these same felonies. Once a court determines that reasonable efforts to reunify are not necessary, the state must hold a permanency hearing within 30 days. Thus, a conflict as to termination of parental rights arises within the act as one section requires termination proceedings when a parent commits a felony against a child, while another section, under those same felony circumstances, gives states the discretion not to make reasonable efforts and to proceed to a permanency hearing within 30 days but does not require the state to terminate parental rights.

Rather than resolving this conflict by choosing the mandatory requirements of Section 675(5)(E), ACF chose the discretionary language of Section 671(a)(15)(D). According to ACF, after a parent is convicted, a court will determine if reasonable efforts are required to reunify the parent and child. If a court determines that reasonable efforts are not required, the case will proceed to a permanency hearing within 30 days. If adoption becomes the permanency goal, the state then has 30 days to terminate parental rights. The state would not be required to terminate parental rights if adoption is not the permanency goal. This interpretation completely ignores Section 675(5)(E) which requires a termination proceeding. Section 675(5)(E) does not give states the discretion to terminate only when the permanency goal is adoption. When the parent is convicted of a felony, the state should immediately terminate parental rights without a permanency hearing.

Even more alarming, ACF gives an example of how it would resolve this conflict by returning a child to the home of a parent who has already served prison time for committing a felony against a child. ACF explains that if a court ordered reunification as the permanency goal, this would be "a compelling reason for the state not to file a petition to terminate parental rights." The Act, however, does not give states any authority not to terminate parental rights in such a case. Section 675(5)(E) does not contain any "compelling reason" exception to terminating parental rights. Rather, Section 675(5)(E) requires the state to terminate parental rights in ACF's example.

ACF's proposed rules blatantly ignore the mandatory requirements of the Act. KidsHELP! disagrees with ACF's approach and encourages ACF to follow the mandatory language in Section 675(5)(E).

IV. *CONCLUSION*

Thank you ladies and gentlemen for the time and opportunity to share our views. But most importantly, thank you for your concern for children.

V. *OTHER POINTS*

A. *ACF MUST BETTER DEFINE "SUBSTANTIAL CONFORMITY"*

ACF proposes to use the outcomes to evaluate whether state programs conform with federal standards. States must "substantially conform" with federal requirements to receive full funding. ACF proposes that a state will be in "substantial conformity" with federal requirements if each outcome discussed above is rated as "substantially achieved" in 95% of the cases examined. ACF plans to rate states as "substantially achieved," "partially achieved," or "not achieved" but does not define any of these terms. All four terms should be defined in the regulations. Failing to define these terms, will lead to non-uniform evaluations from state to state and does not give states sufficient guidance as to what they need to do to receive federal funds and does not give the public sufficient information as to the performance of their state agencies.

B. *TIMETABLES FOR REVIEWS NEED TO BE SHORTER.*

The proposed rules provide timetables for reviewing state conformity with federal program requirements. Several of the timetables for child and family service reviews are too long. Every day in the life of a child affected by these regulations is important. Accordingly, states should act as swiftly as possible to serve these children. Please see our December comments for specifics timetables that need to be shortened.

C. *TIMETABLES FOR TERMINATION OF PARENTAL RIGHTS NEED TO BE SHORTER.*

The proposed rules provide deadlines for states to file for termination of parental rights in cases of abandonment or abuse. Several of the deadlines are too long. Every day in the life of a child affected by these regulations is important. Accordingly, states should act as swiftly as possible to serve these children. Specifically, states should initiate termination at the same hearing when the court determines

that a child is abandoned and within 1 week of the court's determination that a parent has committed a listed felony.

D. *ACF MUST ENSURE ACCURATE AND COMPLETE DATA COLLECTION.*

Much of the success of the proposed rules depends on the data ACF collects through its national information collection systems: the Adoption and Foster Care Analysis and Reporting System and the National Child Abuse and Neglect Data System. Although kidsHELP! supports standardized collection of data, ACF must ensure that the information is accurate and complete. KidsHELP! encourages ACF to oversee that states are properly inputting their data.

E. *ACF SHOULD NOT LIMIT TERMINATION PROCEEDINGS TO ONE CHANCE.*

KidsHELP! disagrees with ACF's proposal that states need only initiate termination proceedings once for a child who has spent 15 of the previous 22 months in foster care. ACF states that multiple termination petitions are not necessary because children are provided sufficient protection to achieve permanency through other sections of the statute. Neither the statute nor the legislative history provide any support for limiting termination proceedings to one time. ACF's approach will not promote permanent placements for children but rather will keep children in the system for longer periods. Furthermore, permanency hearings and alternative placements are not sufficient protections for children and cannot replace termination of parental rights. Accordingly, kidsHELP! recommends deleting this section.

F. *ACF MUST BETTER DEFINE "AGGRAVATED CIRCUMSTANCES"*

The Act provides that states need not make reasonable efforts if there is a judicial determination that a parent has subjected his child to "aggravated circumstances." Neither the Act nor ACF define "aggravated circumstances." Failing to define "aggravated circumstances" allows states to minimize what constitutes aggravated circumstances by using only the few examples listed in the statute. Congress intended for states to go beyond the statutory examples and intended for aggravated circumstances to be a broad exception to the reasonable efforts requirement. Accordingly, kidsHELP! suggests defining "aggravated circumstances" to include certain minimum crimes but allowing states to further expand the list.

[An Attachment is being retained in the Committee files.]

Chairman JOHNSON of Connecticut [presiding]. Thank you.

Ms. Allen, welcome.

STATEMENT OF MARYLEE ALLEN, DIRECTOR, CHILD WELFARE AND MENTAL HEALTH, CHILDREN'S DEFENSE FUND

Ms. ALLEN. Chairman Johnson and other Members of the Subcommittee, I am Mary Lee Allen, director of child welfare and mental health at the Children's Defense Fund, and I am delighted to have received your invitation to testify today at your hearing on child protection oversight.

As you know, this is not a new concern for the Children's Defense Fund. We have been working for more than two decades to enhance the implementation and enforcement of Federal and State laws designed to keep children safe in nurturing families and communities. Given that history, I appear today with somewhat mixed emotions. I have a bit of sadness that here we are, 20 years after significant child welfare reform efforts began, still talking about how best to provide Federal oversight for some of our most vulnerable children.

On the other hand, I know that important progress has been made in reforms in communities and States across the country and we will have opportunities to hear about that from the second panel this morning.

I also commend the Subcommittee's interest in examining ways that together we can all do a better job to ensure that the protections and supports for children and families in Federal law, including those in the recently enacted ASFA, Adoption and Safe Families Act, can really make a difference for children.

CDF believes that if we are serious about oversight for the care of children, that we really need to take action in four areas. One of those areas, the pending regulations that address Federal oversight, already has been talked about extensively this morning. Many of our comments on the proposed regulations echo those that have been made already. Therefore, I would like, in my very short time this morning, to focus on the three other areas very quickly.

First, we believe that steps must be taken to increase the capacity of public systems to promote child safety and permanence. Given the mandates of ASFA, we believe that the Subcommittee has a unique opportunity to help States ensure that they can move the 100,000 children for whom the goal of adoption has already been identified into permanent families. It is so important that this be done right.

The challenges to even identify this group of children are enormous. It means first identifying in a State's entire caseload how many children have been in care for 15 out of the 22 most recent months; determining the most appropriate permanent plans for those children; and then comparing what it would take to actually move those children into permanent homes with the existing capacity of the system.

The General Accounting Office projected that in California and Illinois alone we are talking about 104,00 children who have been in care for over that 15-month period specified in ASFA. And in Cleveland, Cuyahoga County, Ohio, a recent report indicated that 4,500 children have to be adopted over the next year to meet that compliance standard. That is nine times more than were adopted in Cleveland last year, which was a record year in terms of the number of adoptions.

I think, though, that States and courts are taking ASFA seriously. When they do take the steps required by ASFA, we urge you to consider giving them the extra one-time assistance they need to move these children into permanent adoptive families.

The request for that sort of assistance will be different in different States. However, increased, specially targeted resources are necessary so that agency and court staff can focus on these cases, but, at the same time, not neglect the children coming into the system on a daily basis and children with other permanency plans.

This step alone, we believe, would mean a lot, not only for these children but also for the other hundreds of thousands of children who, while remaining in the system, might have a better chance of getting what they needed because of reduced caseload.

The second area we think is particularly important involves additional steps to improve the quality of data. Although it has been a long time in coming, we are very pleased about the steps that have been taken to improve the AFCARS system and also the National Child Abuse and Neglect Data System. And these efforts should continue. At their best, however, they are limited. These data systems provide a snapshot, a one-point-in-time look, at what

is happening to children and families in the system. They tell us nothing about the movement of those children throughout the system.

Therefore, CDF recommends that the Subcommittee take steps to help all States develop the data capacity, as Illinois has done, to follow children in the system over time. For example, States could be given incentives to become part of the Multi-State Foster Care Data Archive now maintained by Chapin Hall. There are 11 States now participating in that system, representing about two-thirds of the children in foster care in the country. Those data are extremely useful in better understanding the movement of children in care, by age, by special needs, and other characteristics. They also make it possible to look at the trends and the patterns that exist from State to State.

Third, and finally, we believe that a good system of oversight must include opportunities for input from parents and other citizens, and also judicial recourse to address circumstances when children and families are denied the services and protections they are to be afforded under Federal law.

Early engagement of parents, when safe and appropriate, and I emphasize when safe and appropriate, is essential to ensuring the best interest of the child within the ASFA timeline. Other citizen involvement in child welfare is also very significant, and there is a growing body of experience to draw on. Twenty-six States are using citizens in their review of foster care cases. CASA, Court-Appointed Special Advocate, Programs are now in place in all 50 States and the District of Columbia. Child death review teams, which in a number of States include citizens, are also in place in 48 States—and that is up from 12 in 1990. And then this July, the new citizen review panels mandated by Congress in 1996 in CAPTA, the Child Abuse Prevention and Treatment Act, are supposed to be in place in all of the States as well. These panels are specifically required to look at how States are discharging their child protection responsibilities.

Finally, in any system for Federal oversight, it is critically important that there be an opportunity for judicial recourse for children and families who have been wronged by the system to have an opportunity to challenge these wrongs in Federal court. Karen Spar has already talked about the number of lawsuits in place across the country. There are 30 States now, and the District of Columbia, where child welfare lawsuits are pending or have been completed. And Karen already described, so I won't go into it, some of the issues being addressed by that litigation.

CDF urges the Subcommittee, in relation to this last area, to call upon parents and citizens involved in these review activities, and attorneys involved in some of these class-action lawsuits to hear more about what they are observing and to listen to their recommendations.

The young people you heard from last month, Mrs. Johnson, at the hearing on youths aging out of foster care, was a testament to the value of this sort of input. The opportunity to hear more from those directly involved in oversight activities would be very useful.

We really appreciate the opportunity to present our recommendations today, and we look forward to continuing to work with you to ensure safety and permanence for children.

Thank you.

[The prepared statement follows:]

Statement of MaryLee Allen, Director, Child Welfare and Mental Health, Children's Defense Fund

Good morning. I am MaryLee Allen, Director of Child Welfare and Mental Health at the Children's Defense Fund. The Children's Defense Fund (CDF) is a privately funded public charity dedicated to providing a strong and effective voice for all the children of America. As we seek to Leave No Child Behind, CDF pays particular attention to the needs of poor and minority children and children with disabilities. CDF has never taken government funds.

I appreciate your invitation to testify today on behalf of CDF at the Subcommittee's hearing on Child Protection Oversight. I am pleased to offer CDF's recommendations for some of the steps we believe are necessary to better ensure that children and families actually receive the protections and services for which they are eligible under federal child welfare programs.

As you know, this is not a new concern for the Children's Defense Fund. CDF has been working for more than two decades to enhance the implementation and enforcement of federal and state laws designed to protect children and families. Our 1979 report, *Children Without Homes: An Examination of Public Responsibility to Children in Out-of-Home Care,* made a number of recommendations that were incorporated into the 1980 Adoption Assistance and Child Welfare Act. Since then we have sought, often in partnership with this Subcommittee, to add protections to federal laws and improve enforcement mechanisms. We have provided technical assistance to state and local officials and advocates who are implementing the laws, monitored their impact, sought to promote best practices, and, in some cases, sought relief for classes of children who were being denied the protections to which they had a right under federal law.

With that history, I appear before you today with mixed emotions. On the one hand, it is sad to reflect on the fact that while federal child welfare reform began in earnest about 20 years ago, today we are still struggling to ensure meaningful federal oversight for some of our nation's most vulnerable children and families. Too many of the problems in the child welfare system today are the same ones that CDF chronicled in *Children Without Homes.* Yet, during these two decades, a whole generation of children has been born and grown to adulthood, too many of them with only the state as parent.

On the other hand, I recognize the important progress that has been made in some communities and states, some of which you will hear about from the second panel today. The important steps that have been taken to increase public accountability for what happens to children and families are encouraging. This Subcommittee over the past decade has strengthened avenues for overseeing the care children and families receive. There has been continuing recognition of the importance of core protections for children who have been abused or neglected. States have been given the flexibility to experiment with improved approaches to service delivery through the federal Child Welfare Demonstration Program, that Chairman Johnson played such an important role in developing during her earlier tenure on the Subcommittee. Recent improvements in the establishment of data systems and increased recognition of the importance of a results-based accountability for states also are causes for hope. The September 1998 publication by the Department of Health and Human Services (HHS) of the long awaited guidance on the Child and Family Service Reviews and the Title IV-E Program Eligibility Reviews, prompted by Congress' 1993 legislation in this area, also represents important progress.

We can work together to pass the best new laws, but without adequate enforcement, they offer little to children and families. Therefore, we commend you for holding this hearing today to examine how we can all do a better job to ensure that the protections and supports for children and families in federal law, including those in the recently enacted Adoption and Safe Families Act (ASFA), can really work to benefit children.

In my time this morning, I would like to do two things. First, review with you what CDF considers to be some of the core components of a meaningful system of federal oversight for child protection, and to suggest specific steps that the Subcommittee and Congress could take in regard to each of them to better promote safety and permanence for children. Second, discuss in more detail some of CDF's spe-

cific recommendations for improving the system of federal Child and Family Services reviews proposed last September by HHS.

KEY COMPONENTS OF FEDERAL OVERSIGHT OF CHILD PROTECTION

A federal review system that holds states accountable for their care of children and the operation of their child welfare systems is key to effective federal oversight. However, CDF believes that as HHS works to establish a compliance or conformity monitoring system that will fairly and equitably judge state performance and its true impact on child safety, permanence, and well-being, that significant attention is needed on at least three other fronts at the same time. These include the development of 1) increased system capacity within child welfare and related agencies; 2) improved data; and 3) expanded opportunities for enhanced public and judicial review of system performance. In each, we also believe that there are steps for the Subcommittee to take now to help ensure children and families will benefit from the services and protections offered them through federal law.

Increased system capacity to promote child safety and permanence

Good monitoring systems alone will not protect children, unless at the same time steps are taken to improve the capacity of the public systems charged with the care of abused and neglected children to meet their needs in the manner mandated by federal law. Improved capacity to get the job done means ensuring increased resources and training to provide children what they need within the timeframes within which they need it to achieve improved outcomes.

CDF believes that Congress has a unique opportunity right now—as a result of the Adoption and Safe Families Act (ASFA)—to enhance the child welfare system's ability to better offer children and families what they need.

ASFA reinforces the importance of safety and permanence for children. CDF urges the Subcommittee to take steps immediately to help ensure that states have the capacity to move the 100,000 children for whom adoption is already the goal into permanent families. This means ensuring that states are doing four things:

1. Promptly identifying and reviewing the cases of children who were already in care for 15 out of the most recent 22 months on December 17, 1997, when ASFA was enacted;
2. Determining the best permanency plans for them, and the steps necessary to achieve permanence, including termination of parental rights and adoption;
3. Assessing what it will take to get the waiting children into permanent homes consistent with those plans, what is needed to address the backlog, and how this contrasts with the current capacity of the courts and public and private agencies in the state to accomplish that goal; and
4. Taking action to move these waiting children to permanent homes.

The challenges are enormous. Consider, for example, that the U.S. General Accounting Office has estimated that in Illinois and California alone there are more than 104,000 children who have been in care longer than the 15 out of 22 months. On a smaller scale, there is the city of Cleveland and its surrounding county. A front-page story in the Cleveland Plain Dealer at the end of last month announced that 4,500 children in Cuyahoga County must be placed in adoptive homes by the end of next year, as a result of ASFA. This, officials said, is nine times as many children as the county found homes for last year—a record year for adoptions in the county.

Tasks one and two will have no benefit for children unless the third is acted on as well so the fourth can happen. We recommend that the Subcommittee hold several field hearings before the fall on the implementation of ASFA in order to identify what is needed to eliminate the backlog of children in care who have been identified by states as needing termination of parental rights and adoption. I encourage you to ask judges, state and local administrators, front line workers, parents, foster parents, adoptive parents, and other advocates for children and families what it will take to do the job right for children, and then to help them get it. It is important that it be done right. Children must not be moved prematurely or inappropriately to adoptive families or to families not prepared for the challenges. Post adoption services will be necessary to help adoptive families care appropriately for children with special needs.

It is not sufficient to impose new permanency timelines and then to focus attention only on how to hold states accountable for complying with these timelines. Capacity development is essential. This is especially true given that the "Ways and Means Green Book" notes that virtually all of the funding disallowances that had been made in the Title IV-E Program in the past occurred as a result of states not holding timely periodic reviews and permanency hearings (which at the time were

called dispositional hearings). Therefore, it will take special efforts for states to meet even tighter timelines.

Several states already have coupled state reform mandates with systematic efforts to increase the capacity of counties to comply with the new mandates. For example, as Colorado was implementing its Expedited Permanency Planning Program, it asked counties what help they would need to move younger children into permanent families within one year. Requests included more substance abuse, mental health, and domestic violence services, and increased staff. The state also offered cross-system training and technical assistance. As Alabama implemented a series of court-mandated reforms, it also phased in clusters of counties sequentially. This allowed the counties to get special training and new resources to help implement the reforms.

CDF recommends that the Subcommittee undertake a similar approach at the federal level. Extraordinary measures should be taken to ensure that states get the help they need to move children who are waiting for adoption into adoptive families. State agencies and courts that have identified children who have been in care too long, established permanency plans for them, and know what it will take to move them into permanent homes should be made eligible for special one time assistance to help move these children into permanent families. The Strengthening Abuse and Neglect Courts Act (S.708), introduced by Senators DeWine, Chafee, Landrieu, Rockefeller, Levin, Kerry, and Kerrey, begins this process. It includes a backlog grant program to provide one-time assistance to courts to move these cases to termination of parental rights and then on to adoption. Increased specially targeted resources are necessary so that agency and court staff can focus on these cases without neglecting children with other permanency goals or those just entering the system.

This step alone—carefully clearing the child welfare system of the backlog of children in care who should have been moved to adoptive families many months, and often years, earlier—will positively impact the futures of these children. It also will impact the futures of hundreds of thousands of other children as well. With fewer children in care and reduced caseloads, the child welfare system will be better able to protect children in the future.

Data systems that allow for internal monitoring and tracking of children and also the comparison of trends across states.

Any meaningful monitoring system is only as good as the quality of the data that are available to it. CDF strongly believes that it will never be possible to track the extent to which children are benefiting from the protections in federal law unless significant improvements are made in the data available at the local, state, and national levels. Data that track the movement of individual children in care can provide important indications about the experiences children are having in care—both good and bad.

CDF has been talking with this Subcommittee about improved data in child welfare for close to two decades. We had great hopes when the Adoption Assistance and Child Welfare Act was first enacted, that we would finally be able to have some basic data on state performance. Renewed efforts were then made to improve state reporting in 1986.

Now, more than a dozen years later, there finally has been important progress in the establishment of the Adoption and Foster Care Analysis and Reporting System (AFCARS). Efforts also are being made to improve the National Child Abuse and Neglect Data System. These efforts must continue. However, even in their best form, these two systems will offer only a snapshot of the children in care at one point in time. They present a picture of a cross-section of the system, but do not follow individual children or groups of children over time.

More is needed. CDF recommends that the Subcommittee take steps immediately to help all states become part of the MultiState Foster Care Data Archive. The Archive, now maintained, with some federal support, by the Chapin Hall Center for Children at the University of Chicago, was started with five participating states (CA, IL, MI, NY, and TX) and this year will have 11 states (AL, CA, IA, IL, MD, MI, MO, NM, NY, OH and WI). These states together account for about two-thirds of the children in foster care nationally. The Archive is a multi-state database that contains the complete child welfare history of every child who is in the care and custody of the state child welfare agency. The data are comprehensive at the level of the individual child. They are extremely useful in better understanding the movement of children in care, by age, type of placement, and other characteristics, and also in looking across states at things like different entry and exit patterns, lengths of placements, and placement patterns.

Any such investment must be conditioned upon the assurance that these data would be available to HHS, and in some form to the relevant Congressional committees and the public. The states obviously must have access to the data. Such a system would allow more meaningful oversight of the children in care, and would expand opportunities for establishing outcomes that could be measured within states and applied across states. It also increases opportunities to link these data with data on child protection, the courts, Medicaid, and other systems with which the children and families interact. On a related note, we also ask the Subcommittee to support data improvements for the courts similar to those in the pending bipartisan Strengthening Abuse and Neglect Courts Act mentioned earlier.

Opportunities for parent involvement, citizen review, and judicial recourse to address alleged abuses

A good monitoring system must include federal oversight and improved opportunities for the states to carry out their activities and track the care individual children receive. It must also include opportunities for input from parents and other citizens, and judicial recourse to address circumstances where children or families are denied the services and protections that they are afforded under federal law.

Incentives must be provided for parent involvement in system reform and, where appropriate, in the design and delivery of services to children. Increased parent involvement in case planning and service delivery will help to provide a watchful eye on the system. Certainly there are families who because of the nature of the abuse or neglect involved will have no further contact with their children, but there are many more cases where involvement of the parents at an early stage is essential to ensuring the best interest of the child within the ASFA timelines. Therefore, we are pleased that HHS, in its September 1998 proposed regulations, requires that a child's case plan be developed jointly with the parent or guardian of the child in foster care. (Sec. 1356.21(g)(1)). Early engagement of the parent, where it is safe and appropriate, is essential so services can be provided and a decision can then be made within the first twelve months of care about the most appropriate permanent plan for the child.

Other citizen involvement in child welfare also is an extremely important means of oversight, and there is a growing body of experience from which to draw.

• Twenty-six states now are using citizens in their regular reviews of foster care cases, required by the Adoption Assistance and Child Welfare Act. The trained citizens on the *foster care review boards* review individual cases, and also bring concerns about policies and practices that are impacting children, both negatively and positively, to the attention of state officials and the public. Guidelines that describe how citizen foster care review boards can be used as an accountability tool are pending in HHS.

• *Court Appointed Special Advocates* (called CASAs) oversee the care the individual children receive and make recommendations to the court. Their combined voices also bring information to the public's attention about the larger barriers that prevent children from getting the services and supports they need. Currently there are 843 CASA programs in the 50 states and the District of Columbia. S. 708, the Strengthening Abuse and Neglect Courts Act, includes funds to expand the CASA program in the largest 15 urban areas in the country and in rural areas as well.

• *Child death review teams*, which include citizens in some states, are in place in at least 48 states, up from 12 states in 1990.

• *Citizen review panels,* mandated by Congress in 1996, as part of the Child Abuse Prevention and Treatment Act (CAPTA) amendments, must be operational by July 1999. The panels are to determine whether state and local agencies are effectively discharging their child protection responsibilities. This includes compliance with the state's CAPTA plan, but also the extent of the child protection agency's coordination with the Title IV–E Foster Care and Adoption Assistance Programs and the child death review teams that are in place in the state.

• *Community child protection* activities underway in a number of states aim to promote increased understanding in the community of the problems children face and increased responsiveness on the part of community leaders, businesses, religious organizations, and others to help to keep children safe and in permanent families. They promote community involvement and oversight and the chance for more prompt attention to problems in the system.

Finally, in any system for federal oversight, it is critically important for children and families who have been wronged by the system to have an opportunity to challenge those wrongs in federal court. As of 1998, child welfare reform lawsuits were pending or completed in 30 states and the District of Columbia. In these jurisdictions, the cases address recurrent, systemic problems in a state or local child welfare system, and seek relief on behalf of classes of children harmed by these prob-

lems. Examples of problems addressed in the lawsuits include the inadequacies of case plans and case reviews, preventive and reunification services, termination of parental rights, adoption activities, training of caseworkers and foster parents, staffing, health care, and special services for children with disabilities.

CDF urges the Subcommittee to call upon parents and citizens involved in these activities to learn about what they are observing and hear their recommendations about what it will take to ensure that children are kept safe and placed in permanent families. The young people you heard from last month at the hearing on youths aging out of foster care was a testament to the value of such input. Similarly, attorneys directly involved in child protection litigation should be asked for their views on improving federal oversight. In any system of federal oversight, the views and experiences of these outside entities should be seriously considered and in some cases trigger a federal agency review of compliance.

Meaningful Federal Agency Oversight

My leaving the discussion of federal agency oversight to the last is not intended to suggest its lack of importance. To the contrary, it is an essential part of the monitoring process, but it cannot stand alone, even in its best form.

In discussing federal agency review, I am not going to dwell on the past. The record of the Department of Health and Human Services in the monitoring of state compliance in child welfare has been abysmal through numerous administrations. Now it is time to make it work.

CDF is encouraged by the steps taken by HHS to put a new compliance review system in place that will promote improved permanency, safety, and well-being for children. At the same time, we recognize the challenges involved for both the states and HHS in undertaking the reviews, responding when non-conformity is identified, ensuring that the necessary program improvements are made, and imposing penalties when they are not.

CDF submitted detailed comments to HHS on the September 18, 1998, Notice Of Proposed Rulemaking for Provisions in the Adoption and Safe Families Act, the Multiethnic Placement Act, and the Child and Family Services Review and Title IV–E Eligibility Review and have provided those comments to the Subcommittee staff. This morning, I will summarize just several of CDF's recommendations about the proposed federal review process.

First, CDF believes that there are some key characteristics of the proposed review process that increase the likelihood of its effectiveness and should be retained in the final regulations.

Broad partnership. The review process builds upon partnership and collaboration between the states and HHS, and also broadens the involvement of other interested parties in the state. It recognizes the need for a broad base of community involvement in both the self-assessment and the on-site review. It also provides opportunities for public review and inspection of all self-assessments, reports of findings, and program improvement plans. In our comments to HHS we recommended that opportunities for external representation on the review team and for public response to the reviews and program improvement plans be expanded. We believe that an expansion will promote broader buy-in to program improvement plans, and help to eliminate the likelihood that a state will gloss over problem areas in the review or steer the review team around them.

More than paper reviews. The proposed review process involves more than a paper review. My discussions with representatives of states involved in the pilots of the review process indicate that the self-assessment has been especially helpful in getting the state to identify real barriers to appropriate service delivery and the causes of those barriers. The requirement that the full review involve face to face interviews with children and families, service providers, foster families, and staff also make it more likely that problems in the actual delivery of services, likely to be missed in a case record review, will be identified.

Opportunity for corrective action. CDF agrees that a fiscal penalty without action first to correct the problems identified harms children. Therefore, we support the HHS proposal for states to correct the problems identified in a review within established timelines, and efforts to hold HHS and states accountable for these timelines.

We also believe, however, that there are a number of areas where the proposed conformity review system must be strengthened. Both the states and HHS should be required to take additional steps to ensure that the process will provide the oversight that children and families deserve.

Clarify and increase penalties. We think it is extremely important that HHS make much clearer to state agencies that they must be in compliance with requirements in law and regulations by a date certain or fiscal penalties will be imposed. The bottom line must be clear. Then HHS can state that it is focusing on partnership and

program improvement because it believes that this is the most effective way to ensure conformity with what the law and regulations require to protect children.

Especially in the political context in which so much of the business of human resources is conducted, and where the work of child welfare agencies often is given low priority, the cut off of funds may be the only threat that can trigger corrective action. There may be nothing more compelling to a Secretary of Human Services, who may be several layers removed from the operation of the state's child welfare system, than a notice from the federal government that the state's failure to conform to federal law is depriving that state's abused and neglected children and their families and prospective adoptive families of millions of dollars of support.

On a related note, we believe that the fiscal penalty for lack of substantial conformity, as proposed by HHS, is too modest to provide a real incentive to states to work vigorously to establish the program improvements necessary to protect children. It is troublesome that the funds exempted from penalties are the Title IV–E foster care room and board and adoption assistance payments, thereby allowing states to continue with business as usual if a penalty is imposed. These are the same activities that a state would be most likely to continue if federal funds were cut. We recommend that the pool of funds made subject to penalties should include all the funds subject to state plan assurances. We hope that sufficient program improvements will be made by all states and that penalties will never have to be imposed. But, if they are, they should be applied to all relevant programs.

Increase the capacity of HHS and the states. The success or failure of the proposed review process is totally dependent upon both the capacity of HHS and individual states and we have serious concerns about the adequacy of that capacity, especially given the current staffing limitations within the Children's Bureau and the federal regional offices. Staff expertise is needed for there to be good reviews and good decisions made initially about a state's compliance, and quality technical assistance will be necessary for states to develop quality program improvement plans and make the necessary improvements in a timely fashion. Capacity begins with the quality and experience of those doing the reviews. HHS must assure the state staff and others participating in the reviews that the federal review team will be knowledgeable about all aspects of child welfare practice, the statutory and regulatory requirements against which state performance will be judged, the process for conducting the reviews and determining the level of compliance, and the operation of the child welfare system in the state where the review is being conducted.

The technical assistance also must be high quality. This will mean developing an individually tailored technical assistance package for each state implementing a program improvement plan, and having experts available to provide assistance in the areas identified for improvement. Given how essential technical assistance is to the success of these reviews, we are very concerned by the language in the preamble to the proposed regulations that conditions technical assistance on the Administration for Children and Families "having the resources and funds available." Congress in the 1993 amendments of federal oversight that required HHS to develop a new conformity review process specifically required HHS to make technical assistance available to the states. The lack of technical assistance also was one of the problem areas cited by the HHS Inspector General in that Office's June 1994 report on oversight of state child welfare programs.

Specifying the content on which states will be judged. CDF recommends that changes be made in the proposed regulations for both the self-assessment and the on-site reviews to state more clearly and completely what must be examined. Without some statement of what, at a minimum, states must examine in the self-assessment, there will be no assurance state to state that there has been a comprehensive look at a state's performance with regard to the state's protections for children in the federal child welfare programs. The lack of clarity about the self-assessment is especially troublesome given that the preamble to the regulations says that "the analysis of the self-assessment will provide the focus for the on-site review by identifying particular aspects of State programs that need further review." We recommend, at a minimum, that the outcome measures developed for the annual reports on state performance that were mandated by Section 203 of ASFA should be incorporated in the proposed regulations as measures for assessing state's conformity in the areas of safety, permanence, and well being. We also suggest that the proposed regulations be amended to require that the assessment and reviews examine all of the state plan requirements that are related to outcomes. These must include provisions such as those that require periodic reviews of the care children receive, including permanency hearings and the new requirement expediting termination of parental rights. It is especially important that these and others be added because many of these provisions were amended by ASFA.

Finally, the sample of cases being examined must be large enough to fairly represent the children and families being served and provide a meaningful assessment of specific outcomes. We are all too familiar with the pitfalls of making policy from anecdote. We agree with HHS on the importance of reviewing cases more intensely and doing more than case record reviews, but we recommend that HHS reconsider the "30 to 50" cases referred to in the preamble to the proposed regulations. Instead, it should develop a randomized method of sampling that will better reflect the different numbers of children served by state agencies and the varied experiences in different jurisdictions within the states.

What can Congress do to increase the opportunity for a meaningful conformity review process? We recommend that the Subcommittee take at least the following steps:

- Reinforce to HHS your concerns about the points I have emphasized above;
- Require the Secretary of HHS to provide estimates of the additional staff and technical assistance resources that will be necessary to make the proposed conformity review process work in a timely manner, and suggestions about how to provide the resources.
- Emphasize to the Secretary of HHS and the President the importance of getting the final regulations on conformity reviews published immediately, so children do not have to go another year without these important protections; and
- Request that HHS notify the Subcommittee of the schedule for the conformity reviews to be held in the states during the first three years, and appropriate follow-up. The follow-up should include: the time frames within which those reviews were actually completed; the associations of the individuals, beyond the representatives of the state and Federal agencies, that participated in the reviews; the outcomes of each of those reviews (including the specific areas to be addressed by the states in their program improvement plans); and the timelines within which the individual state review was completed and substantial conformity, or lack thereof, was identified.

Thank you for the opportunity to make recommendations as you examine improved methods of child protection oversight. The Children's Defense Fund looks forward to continuing to work with you to ensure safety and permanence for children.

Chairman JOHNSON of Connecticut. We are going to have to recess for 10 minutes to go vote and then we will proceed with the questions.

[Recess.]

Chairman JOHNSON of Connecticut. Thank you all for your testimony and, Mr. Waldman, I will start with you, Mr. Waldman. I was sorry to have to miss your testimony, and I understand that you did mention the challenge of increasing State flexibility in the use of child protection dollars. And you have heard the administration refer to the waivers and the other means of creating flexibility that they have employed and that are available to them under the statute, but would you comment on whether you think the current tools that they have at their disposal to create flexibility are adequate.

Mr. WALDMAN. I think our association and myself would like to see us go further in that area. I think there are additional opportunities, short of a block grant, for example, where States could be afforded additional flexibility, particularly in use of IV–E funds, which is the major source of funding for this program. I think so.

There could be opportunities, for example, on a limited basis, to permit a State to identify some of the outcomes that we have talked about here today and, if successful, redirect some of the funds that might otherwise be designed for foster care to a whole array of things like preventive primary services, postadoption services, court improvement programs—others that experience has taught us needs to be fixed.

Limiting the funds to that one area can be counterproductive, and I think we can go further in that area.

Chairman JOHNSON of Connecticut. Do you see forces in process that will ultimately reduce the number of kids moving into foster care?

Mr. WALDMAN. I think your observation was right on target this morning. I think another compelling reason to look, review at the funding system is that it will not be adequate over time as States continue to succeed and reduce the length of time that children are on foster care. And I think that we want to reward the positive outcomes, and we may want to think about a shift of how we finance this.

I think your comments are right.

Chairman JOHNSON of Connecticut. If adoption works, if we get to a system, the 15-month system is certainly going to focus on family problems earlier in the process. If we treat those problems, we are going to have fewer children placed into foster care——

Mr. WALDMAN. Exactly.

Chairman JOHNSON of Connecticut. And if you look back at the initiative that Ron and I worked on some years ago, if you had socked in the expected rise in foster care children, then the States would have more money now than they have. So I think it is very, very important to give this issue our immediate attention because if some of the reforms that we adopted in the last couple of years work as we had hoped, the number of children in foster care will decline, and that will steeply cut the amount of money in the system.

And if we could go to something that was more like welfare reform, when the number of people who went off welfare didn't decrease the dollars the State received, then the States would be in a far stronger position.

So this is something we are going to have to think about. And I invite anyone who is interested to help us with the issue of the trigger, what happens if there is a rise? And how can we address the concerns of the States if something happened? But I am very concerned that policies already in place—and then if we succeed in drug treatment, which is really a big challenge, if we succeed in ramping up the drug treatment resources, then you are going to have another reason why families don't get to the point where their kids get placed in foster care.

So, if there is going to be money out there for the protective services, for the drug treatment, for the family strengthening, for the things we know do help, we are going to have to be open to much greater alteration.

And then, briefly, Ms. Spar, would you just comment on the States under court order. I am getting a lot of complaints about those court orders, that they were done a long time ago, that judges don't know much about services, and that sometimes the constraints of the court order are preventing the very reforms that would help kids.

Ms. SPAR. To be honest, I am not qualified to speak about that.

Chairman JOHNSON of Connecticut. OK. I'm sorry. Missed your testimony. So I wasn't quite sure one way or another. And I'll come back to that.

Mr. Cardin.

Mr. CARDIN. Thank you, let me thank all four of you for your testimony. I found it very helpful.

Mr. Waldman, let me comment on a letter that was sent by the Subcommittee last year. It was not sent by Mrs. Johnson or myself, but I would like to get your comments on it.

It dealt with the effectiveness of State penalties, and Mr. Shaw, in authoring that letter, indicated that we have no doubt that there will be occasions when States will need to be fined for violating Federal laws. And the letter goes on to express concern as to whether the penalty provisions will be strong enough in order to bring about the type of action necessary to comply with Federal requirements.

I thought you might want to comment on that.

Mr. WALDMAN. I do have a view on this, and I——

Mr. CARDIN. I thought you might. [Laughter.]

Mr. WALDMAN [continuing]. I had comparable experience of overseeing counties and having both incentives and consequences for not improving. And one of the things I was striking recently—you may have followed the litigation or the turn of litigation that occurred in New York City, where it was recognized that the traditional kinds of settlements with court orders and so forth—and I'm getting a little bit into the previous question—did not bring about the desired change that everybody wanted. Even the advocacy group, the plaintiffs, realized that as well.

I think the judge and everyone opted more for program improvement model, where people from significant national foundations came in to help the city. I think penalties should stay in the law, frankly. But I think there should be, again, that spirit—I think States do want to do the right thing. And I think if you bring it to their attention, I think if you require a corrective action plan, if you require remediation, you provide technical assistance, all else fails, and there is a penalty in it, it should be a serious one.

Mr. CARDIN. Thank you. I would also refer to one of your letters to HHS, on a different regulation, but one that you suggested the State-by-State rankings of child welfare outcomes would not be useful at this time. I am curious as to your concern there because I think people in the State have a right to know how their State is stacking up compared to other States in dealing with these issues.

Mr. WALDMAN. I think that at the point that we have outcome measures that are refined, I think that is the right time to do it. And I think the law envisions putting out that kind of report card. I think we support that at that point.

One of the difficulties I know I have had in several areas is that my own knowledge tells me that laws are different from State to State, even things as basic as what constitutes child abuse. I would just want to make sure that the outcomes that we use are fair to the States and give you really comparable examples. And I am pleased to see that we are moving, and in your law you moved toward that direction, and I think that is positive.

Mr. CARDIN. Oh good. So we can expect a letter that might be different from you in the future.

Mr. WALDMAN. Yes.

Mr. CARDIN. That's good. Ms. Allen, if I could just get your comments on any suggestions you might have as to what we do about substance abuse as it relates to child abuse. I mean, it is one of the major things that we find in a home in which child abuse occurs is substance abuse. And I would be curious if you have any suggestions in that regard as to what we might want to do.

Ms. ALLEN. Certainly the area of substance abuse, as we talk to States who are now faced with implementing ASFA, is a major issue that needs to be addressed. And it certainly could be the subject of a whole hearing, in and of itself.

We believe that partnerships are key to addressing substance abuse and child protection. I mean partnerships between child welfare agencies and substance abuse agencies, and mental health agencies as well because these issues are all intertwined together. Given these partnerships, there needs to be more attention in at least four different areas.

You need attention to how you do that initial screening, identification, and assessment of the problem. You need to put in place the whole range of comprehensive services and treatments that will address the needs, the differing needs, of the families that come forward. You need tracking and monitoring systems to identify what progress is being made and to ensure that children are protected. And you also need aftercare and attention to the fact that we are talking about a lifelong process of recovery for some of these families.

We actually have a lot more recommendations in this area. CDF has been working with a number of groups and would love an opportunity at some point to come back to the Subcommittee informally or formally, to talk more specifically about the issue of substance abuse and child protection.

Mr. CARDIN. Well, I think that is a good suggestion. I am encouraged. If you have some good thoughts on that, just make it available to us. It could be very helpful to us.

Ms. ALLEN. We will certainly do that. Thanks.

Mr. CARDIN. Ms. Spar, very quickly because my time is running out. I was a former State legislator and now a Congressman, so I would like to see legislative action and executive action. I am always leery about court action, even though I applaud many of the court decisions. I look at the need to get a court decision against a State as a failure.

You indicated that there have been numerous cases that have been filed. How many States currently are under court order as it relates to child welfare.

Ms. SPAR. That number is difficult. What I was able to identify was in each—in some cases localities within the State. Yes, I think it could be more than 24. It was 24 that I was able to identify. This is over a period of about the last 18——

Mr. CARDIN. They are not all court orders?

Ms. SPAR. They are not all court—not every case is the welfare system under a court order per se. In some cases, these cases have been resolved. Other cases, they are still open and they are ongoing where the court maintains oversight.

Mr. CARDIN. It might be useful if you, if that information is readily available, if you could make it available to our Subcommittee. It might be helpful.

Ms. ALLEN. Mr. Cardin, on that note, the National Center for Youth Law prepares periodically a docket of all the child welfare reform litigation. I think the most recent one is their 1998 docket. I would be happy to get a copy of that information to you.

Mr. CARDIN. That would be very helpful.

[The National Center for Youth Law Foster Care Reform Litigation Docket 1998 is being retained in the Committee files.]

Ms. ALLEN. Some of these court cases involve actions in counties or cities; some of these are State actions. Many of the States are operating under consent decrees, rather than actual court orders. I would be happy to get that docket to you.

Mr. CARDIN. Thank you. Ms. Warburton, I just want you to know I appreciated your testimony and I agree with the point—and I hope it is our law—that we always put the child's welfare first, that we try to do that in ways, sometimes, that don't always appear like child welfare is first, but you underscored that sometimes it is a very difficult way that our system works in that regard. And I very much appreciate you adding your voice to that particular issue.

Thank you, Madam Chair.

Chairman JOHNSON of Connecticut. Mr. English.

Mr. ENGLISH. Thank you, Madam Chair.

Ms. Warburton, in your testimony you state that the performance measures are vague and difficult to measure, and then you suggest seven indicators to measure safety. I take it these measures are not incorporated in the regulations as proposed, and do you think this submission is significant?

Ms. WARBURTON. I would tell you that those indicators are not in the regulations as they have been proposed. Those were changes that we had suggested that ACF make in order to make measuring the outcome more substantive and more quantifiable so we could focus the issue on the children and make sure that it is the child's need that we are meeting. I believe those, with the indicators we have provided, will be a first step toward helping us determine whether or not we are meeting the child's needs.

I think we could expand beyond that to go further to determine whether or not we are keeping the children safe, are we making the right choices and decisions, and are we moving them swiftly enough.

I think that understanding, as Mrs. Johnson raised this morning as we opened, the need for more research relative to the brain, is important. There has been really only one very small posttraumatic stress syndrome research project that has been undertaken relative to children. And it is a very insightful piece of work, and called for a great body of research to be done so that we understand how it is that we impact a child once they are traumatized.

And we continue to traumatize them. We continue to reexpose them to their victimizers. Understanding what all of that is, the impact on the child, will only then allow us to understand fully how we need to move kids through the system and what we need to do to make sure it is fully their needs that are being met.

Mr. ENGLISH. Ms. Warburton, you also state that the proposed rules, and I quote here, "violate the act by not requiring States to terminate parental rights of parents who commit felonies." Could you please amplify on this objection.

Ms. WARBURTON. Sure can. If you give me 2 minutes, I will do that for you. I had it here in a more lengthy form of testimony.

There are two sections to ASFA, 675(5)(e) that sets out certain felony circumstances within which a State is required to terminate parental rights. Those felonies have to be committed against the child. Then there is another section to the act, 671(a)(15)(d), which provides that States need not make reasonable efforts to reunify the parent and child when a parent has committed these same felonies and that once the court determines that the reasonable efforts to reunify are not necessary that the State must hold a permanency hearing within 30 days.

That is where the conflict arises. In the proposal, ACF sets out two examples how they would resolve that conflict. They resolve the conflict using the lesser standard. And, moving on to—their one example is that after a parent is convicted, a court will determine if reasonable efforts are required to reunify the parent and the child.

If a court determines that reasonable efforts are not required, the case will proceed to the permanency hearing.

If adoption becomes the permanency goal, the State then has 30 days to terminate parental rights. A State would not be required to terminate parental rights if adoption is not the permanency goal.

That interpretation of the act ignores completely the mandatory requirement to terminate when felonies are committed against the child. So we have set up a scenario, thereby saying, if the child is not placed out for adoption, then you cannot terminate parental rights.

How do we then achieve permanency for the child and guarantee the child is safe and healthy?

Mr. ENGLISH. That is a very interesting argument. Well, I want to thank all four of you for testifying today. This has been wonderful, and this has certainly enhanced my understanding of some of the issues involved, having come to this Subcommittee, having participated in the past in a number of hearings on this subject, having seen the very slow progression of the regulations, my hope is that in the near future, we will see these issues resolved.

Thank you, Madam Chairman, and I yield back the balance of my time.

Chairman JOHNSON of Connecticut. Thank you very much.

Mr. Foley from Florida.

Mr. FOLEY. Thank you, Madam Chairman.

Ms. Allen, do you think the regulations give the States enough information on how and what they will be judged?

Ms. ALLEN. No, Mr. Foley, that is one area that we addressed in more detail in our written statement. We think there needs to be further elaboration about what it is against which States will be judged, both in their initial self-assessment and in the followup review as well.

Mr. FOLEY. Let me ask you a more broad question because it is troubling today, when you are looking at the newspapers about

what has just occurred in Colorado, then you look back at the Matthew Shepard slaying, and you look at so many instances where children commit the most heinous, heinous of crimes, and then yesterday's example they do so laughing as they shoot into other people and kill other lives. You know, and all different backgrounds. Some with good families, some from welfare dependency. I talk to judges in local courts where they are now talking about a growing concern over crack babies growing up and having no remorse in court whatsoever. Can any of you shed any light onto some of the causations, some of the cures.

And I know it may not deal directly with adoption, but it is just so frightening today that you see this carnage and people just can't explain it.

Maybe, Ms. Allen, if you start, and then Ms. Warburton.

Ms. ALLEN. I think that is the question that we all have been asking and continue to ask, certainly given the tragedy that we have seen in Littleton.

What are we giving our young people? Are we giving them the guidance and the support that they need? Are we watching for signs, for signals, and responding? Are we being there for them? Again and again these last couple days we have heard the experts who work with young people directly, who have been involved in analyzing these situations around violence, emphasizing the importance of talking to, interacting with, and supporting young people, so that they don't have to look to other sorts of settings for the support that they are not getting in familiar settings.

But I think that it also is something that is related to what we are talking about today. When you have a group of young people who have been abused and neglected, as in the case of the children we have been talking about today, and you do not give them the treatment and ongoing support that they need, then you threaten their futures and you also threaten the futures of other children as well.

We have all got to ensure that we are giving all of our young people what they need. We must ensure that they are making investments, not only in formal systems, like the child protection system that we are talking about today, but also in our informal interactions with our own children, with our neighbors' children and other children as well.

Mr. FOLEY. Ms. Warburton.

Ms. WARBURTON. I would just like to add that Mr. Camp summed it up very well in the floor debates when he said that children deserve a compassionate but effective system that works on their behalf, not one that subjects them to continued abuse. And the reason that I raise that quote is because it has always struck out at me and it relates back to an area that we study a lot and an arena in which we work a lot, which is trauma and its effect on a developing brain stem, and its effect on the developmental trajectory and the ability for children to have remorse.

When a child comes down to even being neglected, if that child is neglected on a long-term basis, and that neglect continues, and the child is not taken into an atmosphere where they are unconditionally loved, unconditionally accepted, nurtured, and loved, a part of the developing brain stem that is emerging never learns the ca-

pacity for remorse. It never understands it. If a child is traumatized during the developmental stage, where the brain is developing the capacity for remorse and that trauma is left untreated, the stimulus from it shifts the endocrines that the brain produces, thereby eliminating the child's ability to develop along that line.

We come back down to repeatedly, in my estimation, in my mind's eye, the inability to fully assess the trauma that a child has sustained, what drove that trauma, and how do we remove that child out of that traumatic situation to relieve the pressures and allow that child to then fully develop as much as the child might otherwise have the opportunity to develop.

When you are dealing with traumatized children, there is never any guarantee that you can ever go back and rebuild that developmental stage with which they have missed. But if we remove the child out of the arena of the trauma, place him in a loving and a nurturing environment, and then work with the child from that point, we stand a very decent chance of then at least helping the child be functional as they arrive into adulthood.

And Bruce Perry out of Baylor Children's Hospital in Texas has done four pieces that speak to this. And the one that really strikes as being most important to all of you is called "Incubated in Terror: Neurodevelopmental Factors in the Cycle of Violence." And it really calls for breaking that cycle and focusing on posttraumatic stress syndrome, identifying it, treating it properly, and dealing with the child's placement.

Mr. FOLEY. Thank you.

Mr. WALDMAN. Just very briefly, I concur with the two previous speakers and the Chair, who opened this hearing by focusing on the importance of brain research. I would just like to add in my own long experience in the field, I have observed that violence is a learned behavior and that the youngsters who experience it in terms of living in households where a spouse is battered or being victims themselves are often doomed to repeat that behavior in future generations unless and until there is a successful intervention.

I know in the battered spouse movement that there is some focus now on children to help them deal with the trauma that they have experienced to unlearn that as a way—that behavior as a way of dealing with frustration or anger.

I think we could do more on that way to understand the deep effects of traumatization that we see in children that we serve today.

Mr. CAMP. Would you indulge for one last person?

Chairman JOHNSON of Connecticut. Mr. Camp.

Mr. CAMP. Thank you, Madam Chairman.

Ms. Warburton, thank you for being here and for the courage that you have and for dedicating your life to helping children. And I think part of the reason we are here and passed the legislation in 1997 was to make sure what happened to you and Danny doesn't happen to anybody else again.

I am very interested in your comments regarding attachment and bonding and how critical that is. In fact, in our discussions of this legislation, we found that the studies are starting to indicate, as you have quoted and others, that this affects a child's, not only emotional state, but also their intellectual ability as well. The lack

of attachment in bonding could have a negative effect on those things.

Is permanency in adoption a way to sort of break that cycle do you think?

Ms. WARBURTON. Yes. I would support that one thousand percent. I believe that how we view as a Nation, how we view families, is very biased and needing to be connected to biology. We overlook that in a tremendous amount of circumstances children create long-term, indepth bonds and attachments with people other than that of biology.

We minimize the importance of those individuals in the children's lives. We view them on a lesser standard. And we feel that their lives are not entitled to Constitutional protections that families of biology are created or are entitled to. Adoption offers a child an opportunity to be unconditionally loved, unconditionally accepted, and know that for the remainder of their life, no matter what, there will be someone there for them. They have a family and they belong.

Mr. CAMP. I think that your written testimony and your oral testimony also that we need to watch closely over the implementation of this act so we don't repeat the mistakes of the eighties with regard to reasonable efforts is very well said and certainly something that we need to take note of.

The other point that you raise, that I have concern about and within the letter that the Senators and the Chairman at that time and I sent to HHS in December about this conflict that you refer to as sort of mixing the safety outcome of the children, child safety is the primary item in our bill, that they are maintained safely in their homes. And that this is mixed in the proposed regulation. And I think that really does have the potential to undercut everything we are trying to do with regard to making child safety the very most important thing.

Can you just comment on that again?

Ms. WARBURTON. Yes. From our focus point and our philosophical viewpoint, children don't come into the system by happenstance; they come into the system for very real reasons. So from our perspective, once a child arrives in the system, if you then resolve the child's legal life, based on the child's needs, then you focus on the child.

But if we start the process from the notion that we are going to try to maintain a child in their home safely, it seems to me our focus then becomes, we are going to keep this family together at all costs, and only under the most egregious of circumstances are we going to remove this child and place him in protective custody.

One of the aspects that we seem to miss the most is emotional abuse in the system. It is the unheard cry of the child. You can't see it, you can't measure it, you can't feel it, but it is very real and it is very difficult for the child.

So if we leave a child who is being neglected and abused in their home, we are not weighing the safety to the child of what we can't measure. You can see physical abuse you can measure. You can see it; you can see the scars. You can't see the actual emotional abuse. So I think we signal to the States that it's OK to leave children in their homes unless you have the worst of circumstances present.

And I think that is very dangerous to the child. And it doesn't place the child first and foremost.

Mr. CAMP. Thank you very much. Thank you, Madam Chairman.

Chairman JOHNSON of Connecticut. I thank this panel very much. On your comments, Ms. Warburton, about some of the research that has been done in Texas and other places—I had a very interesting meeting with Dr. Joan Kaufman at Yale and her work on just the chemical changes that go on in children in the course of placement and replacement. You know, when I look at the money this Nation has put into posttraumatic stress syndrome to try to help veterans recover from the stress that they have endured, and then here are these kids, moved from home to home, home to home, hardly any notice, ties broken, I mean, it is extraordinary that we have paid so little attention to the price the child is paying. And now we do have a lot of evidence that the physical damage is real, it is not going to change, and we are creating children with emotional deficits that will be very compromising of their ability to realize their potential as adults.

I thank the panel very much for their input, and we must move on to the next one.

Welcome. We will start with Kathleen Kearney, the secretary of the Florida Department of Children and Families from Tallahassee. Thank you for being with us.

STATEMENT OF HON. KATHLEEN A. KEARNEY, SECRETARY, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, TALLAHASSEE, FLORIDA

Ms. KEARNEY. Thank you, Madam Chairman.

Chairman JOHNSON of Connecticut. Judge Kearney.

Ms. KEARNEY. Good morning. I am Judge Kathleen Kearney from the State of Florida. I am a recovering judge, as they say. I am now the secretary of the Department of Children and Families. Living proof of be careful what you ask for, you may get it.

I spent 10½ years in dependency court in Florida and was chair of the Supreme Court of Florida's dependency court improvement program, which this Subcommittee oversees and was responsible for. I would like to start first by thanking this Subcommittee and those Members—and I see that Mr. Camp is present today—who were clearly responsible for the passage of the Adoption and Safe Families Act. I am here also on behalf of the Department of Children and Families, and the Florida dependency court improvement program. And we thank you for your leadership in this area.

I have been specifically asked to testify about the increase in adoptions in Florida and the success that Florida has seen in increasing its adoptions as the result of the implementation of the Adoption and Safe Families Act. So my written comments are designed to meet that end for you, but also I will comment on various things that you have brought up this morning that were of interest and concern to the Subcommittee.

Florida has in the past fiscal year 1998 increased adoptions by almost 57 percent. That was over our baseline, which was from 1995, 1996, and 1997 data. We attribute that as follows. First, Florida has had an expedited termination of parental rights proceeding in cases of egregious abuse and neglect, and in cases of

continuing abuse and neglect, notwithstanding provision of services. We have had that prior to the implementation of the Adoption and Safe Families Act, and we believe that that has contributed to our increase in adoptions because that has been up and running for many years in Florida.

There are concerns though that I have both as in my past career as a judge who sat and did termination of parental rights cases, over a thousand in the 10 and a half years I served in that capacity. There are concerns that I had both in my judicial capacity and now as the secretary of the Department of Children and Families that the regulations are in fact confusing as set forth by ACF. I am very concerned they are mixing signals on family preservation and health and safety of the child as paramount concerns.

Florida has taken the lead in using the expedited termination of parental rights proceeding for egregious abuse, and I believe that the current regulations as framed may in fact water down that act significantly.

Also, we attribute our increase in adoptions to the passage of State legislation that would allow tuition waivers in college for children that are adopted out of foster care. We had always had the tuition waivers for children that were in foster care at the time that they entered college, but once the adoption was finalized, at that time then the waiver was lost. So we had many children that would stay in foster care, particularly older children that would not be necessarily adopted, would stay in order to ensure that they would be able to have their college tuition paid for.

In order to give permanency for those children, many of whom were in very stable, loving foster families that wanted to adopt them, Florida recognized that and it passed legislation that would then allow the State to give them a tuition waiver as well.

You will note, if you do look at our adoption data, you will see approximately a 6-month lag time at the end of 1997 that then started up dramatically in the beginning of 1998. That was predominantly because families would wait in order to qualify, which the qualifying date was January 1st of 1998.

Also, we as a department, have implemented outcome measures, including ones pertaining specifically to the number of children who are adopted from foster care. I also share the concerns of the Subcommittee regarding the regulation and the outcome measures and agree wholeheartedly with Ms. Warburton's analysis that those seven outcome measures, ones that we are capable at this moment, absolutely, of giving data on, should be included there. They are absolutely measurable and they truly go to the situation at hand.

Also, we have increased our recruitment efforts, and we have established more significant public-private partnerships to facilitate adoptions.

As to the provisions of the Adoption and Safe Families Act pertaining specifically to adoption, we thank you for your continuation of eligibility for the adoption assistance subsidy in cases of disrupted adoptions. Tragically, we do see that in cases of particularly older children that are adopted. The trauma is so great that without assistance, we are concerned. We are glad that you have continued that.

Also, the adoption incentive payments to States are critical. Florida at this time, because of our statistics this year, would have been entitled to $3 million in assistance, which we plan to use specifically for postadoption support, which was a concern that Mr. Cardin raised about what support the States are giving to families once adoption takes place, especially from foster care. It is critical that Congress, in fact, continue that subsidy and fully fund it so all States can receive that incentive.

Thank you.

[The prepared statement follows:]

Statement of Hon. Kathleen A. Kearney, Secretary, Florida Department of Children and Families, Tallahassee, Florida

Madame Chair and Members of the Subcommittee of Human Resources, I am honored to have been asked to appear before you today to testify about the impact of the Adoption and Safe Families Act of 1997 on adoptions in Florida.

I am Judge Kathleen A. Kearney, Secretary of the Florida Department of Children and Families, hereinafter referred to as the "Department." I was appointed to serve as the Secretary by Governor Jeb Bush on January 5, 1999 and was confirmed by the Florida Senate on March 2, 1999. The Florida Department of Children and Families is responsible for the child and adult protection systems; services for the developmentally disabled; substance abuse and mental health programs for children and adults; licensure of all child care facilities; and economic services for the indigent. The Department employs over 27,000 people and has a budget in excess of $4 Billion dollars for fiscal year 1999–2000.

Prior to accepting this position, I served as a county and circuit court judge in Fort Lauderdale, Florida for ten and one-half years. I have elected "retired judge" status to serve as Secretary of the Department. Throughout my active tenure on the bench I presided over dependency court proceedings including over one thousand termination of parental rights cases. I was appointed by the Florida Supreme Court to chair Florida's Dependency Court Improvement Program (DCIP) in 1996 and still serve as a member of the DCIP oversight committee.

On behalf of the Florida Department of Children and Families and the Dependency Court Improvement Program, I want to express my thanks to members of this Subcommittee who played a major role in crafting the Adoption and Safe Families Act of 1997 (ASFA). I am proud to say that Florida was one of the first states in the nation to incorporate the provisions of ASFA into state law. I have seen the results of your hard work save countless lives and the future of our nation's children, and of our country as a whole, is better because of this historic piece of legislation.

Adoptions of children from foster care in Florida increased in federal fiscal year 1998 from a baseline of 987 adoptions to 1,549 adoptions—an increase of 56.9%.[1]

The Florida Department of Children and Families attributes this dramatic increase in part to the following factors:

• *Expedited termination of parental rights (TPR) proceedings in cases of egregious abuse and neglect*. Florida law allowed for expedited TPR proceedings in certain limited circumstances prior to the passage of the ASFA. The implementation of ASFA has reinforced that the health and safety of the child must be the paramount concern in determining the "reasonable efforts" the state must make to reunify the child and parent.

• *A proactive environment created by the Executive, Legislative and Judicial branches of state government*. Governor Jeb Bush and the late Governor Lawton Chiles established child protection as top administration priorities. The 1999 Florida Legislature has responded with precedent setting budget increases to insure full implementation of ASFA. The Florida Supreme Court has consistently endorsed the work of the Florida Dependency Court Improvement Program and has incorporated DCIP recommendations into court rule.

• *Passage of state legislation providing for tuition waivers at state colleges and universities for children adopted out of foster care*. This legislation removed a long standing barrier to the adoption of foster children. Tuition waivers had previously been available to foster children who were in foster care at the time they entered college, but waivers were not available once the children were adopted. This re-

[1] The baseline was established by averaging the number of finalized adoptions for federal fiscal years 1995, 1996 and 1997.

sulted in many children remaining in foster care rather than being adopted so that college costs would be born by the state.

• *Implementation of departmental outcome measures, including one pertaining to the number of children adopted from foster care*. Florida law requires that budgeting for state agencies be performance based and the state Legislature has mandated that adoption finalization from foster care be a performance based measure.

• *Increased emphasis on recruitment efforts*. The Department has created specialized adoption workers who are responsible for finding adoptive homes for the most difficult to place children. The Department has also continued a strong working relationship with the One Church, One Child recruitment program aimed at finding adoptive homes for African American children. Local initiatives like the Special Needs Adoption Council of Tampa Bay increase community awareness of the need for adoptive parents through the use of local media.

• *Expansion of public-private partnerships to promote adoption of special needs children*. The Department has entered into contracts with private licensed adoption agencies in Florida and throughout the United States to assist in locating adoptive families. These agencies are paid a fee to recruit, prepare and match waiting families for Florida foster children.

• *Establishment of The Adoption Information Center*. The Florida Legislature mandated that the Department establish the Adoption Information Center to promote adoptions. The Center operates a statewide toll free telephone line (1–800–96–ADOPT), responds to inquiries generated by the Department's Internet Website on adoption, and maintains the state's adoption registry service.

The provisions of the Adoption and Safe Families Act of 1997 pertaining to adoption will continue to have a far reaching and positive impact on increasing the number of children adopted from foster care. In particular, Florida will benefit most from the following provisions of the Act:

• *Continuation of eligibility for an adoption assistance subsidy for children who experience the tragedy of a disrupted adoption*. These are children whose adoptive parents have died or who have had their adoption dissolved for some other reason by the court. In Florida, such children were previously eligible for state funded assistance. ASFA allows the state to receive federal assistance in these cases which will allow for increased services to these special needs children.

• *Requirement that states must document their efforts to secure an adoptive placement for foster children*. This requirement will assist the Department in identifying trends and will help in our overall quality improvement initiative.

• *Adoption incentive payments to states*. The state of Florida is projected to receive approximately $3 Million dollars in adoption incentive payments based upon the 56.9% increase in adoption finalizations in our state. This is contingent upon Congress allocating additional funds beyond those currently appropriated by ASFA. Florida plans to use its incentive dollars for post-adoption support to adoptive families, professional development and training for specialized adoption staff, and adoptive parent recruitment activities.

I strongly encourage this Committee, Congress and the Clinton Administration to do everything possible to assure that incentive payments are available at the levels set forth in ASFA.[2]

Additionally, I bring to your attention a concern expressed by adoption staff in Florida regarding the length of time it takes to secure FBI clearances for foster and adoptive parent applicants. It is currently taking up to six (6) months to obtain clearances from the FBI which is resulting in a backlog of adoption cases and denial of permanency for children. This is a new requirement for adoptive applicants and one that is critical to our efforts to place children in safe, as well as loving, homes. However, unless some special provision is made to insure that these FBI clearances are given special priority, full implementation of ASFA is not possible.

Thank you for giving me this opportunity to speak to you today on this very important and exciting topic. I look forward to working in partnership with you over the next four years as we commit ourselves to insuring the safety and well being of all of America's children.

Respectfully submitted this 22nd day of April, 1999 to the United States House of Representatives, Committee on Ways and Means, Human Services Subcommittee, Washington, D.C.

JUDGE KATHLEEN A. KEARNEY, SECRETARY
Florida Department of Children and Families

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[2] States are entitled to an incentive payment under ASFA in the amount of $4000 for each adoption exceeding the baseline, plus an additional $2000 for each title IV–E eligible child adopted beyond the baseline.

Chairman JOHNSON of Connecticut. Thank you very much.
Mr. McDonald.

STATEMENT OF JESS MCDONALD, DIRECTOR, ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES, SPRINGFIELD, ILLINOIS

Mr. MCDONALD. Thank you, Madam Chairperson. I am Jess McDonald, director of the Illinois Department of Children and Family Services and we are pleased to be here for another reason other than a tragedy in our State child welfare system. We have had a 112-percent increase in adoptions over our baseline. We are running 45 percent ahead of last year's rate of adoptions. And we think that we will continue at a high rate.

Now I must issue my disclaimer that it is not that we had foresight and saw that there would be an adoption bonus program, but child welfare systems that grow too fast don't always keep their focus on the right objectives, and our system has had low rates of adoption. Our objective is to have a 20- to 30-percent permanency rate within our caseloads, to see kids moving to adoption or permanency in short times. To have reunification rates that are between 25 and 40 percent, respecting safety as the primary consideration here, and to have our length of stay drop to between 1 year and 2 years—to have a median length of stay of about 12 months.

So Illinois has a ways to go, although we have made significant progress. I do want to tell you that a major reason why we made changes in law was because of H.R. 867. This Committee, and Representative Camp, were instrumental in issuing wakeup calls to many States. Our Governor, Governor Edgar at the time, called together bipartisan groups, brought in advocates, and we changed laws, and we made changes.

The reason we got to where we are at and why we are going to keep going on this direction is through partnerships with the courts and with voluntary agencies. Seventy-five of our cases are served by nonprofit voluntary organizations, like Catholic charities and so on. Those partnerships are absolutely vital. If you don't have a partnership, you may think your system is working well, but if the courts aren't ready for you, nothing will happen.

If you don't capacity, that is, if you do not have workers that have the time to do the work, nothing gets done. You have to have the time to build the case. If you are going to do concurrent planning, you have to have workloads that are reasonable. Our workloads run between 15 to 25 children per worker. And I will tell you, people tell you that the work is harder now then when they had a hundred cases. It is because we expect them to do the work. And it is not easy work.

And you have to have the right incentives in the system. We do have performance contracting which rewards people for getting the right outcomes. As I mentioned in our written testimony, we also have a lot of oversight built into that because you want to make sure that while people are getting the right quantity of what you think are the right outcomes, they have to, in fact, be doing the

work the right way. So there is a lot of oversight that goes into the decisions about adoptions and subsidized guardianship.

The story in Illinois is Cook County. Judge Nancy Salyers has done an amazing job. She is a close partner of mine. We work together in terms of how we plan changes in the system. She has added court calendars. She has done a lot of work. We do a lot of work with the private providers and with our own staff and with the union. And if we aren't working closely together, people try and play one off against the other. You have to understand that the courts are absolutely critical to any changes.

And if you take a look at what is happening in Cook County, we are seeing amazing turnarounds in terms of the drop in the number of cases. It is also in the written materials, but adoptions have gone from about 956 in calendar year 1994 to about the 5,100 we expect this year. And we expect some incredible improvements continuing in the Cook County court system.

The safety issues are interesting because even though we are seeing all these improvements and adoptions, people think we might be losing our focus on safety. In fact, based on research on what we do on the front end and what we do with cases managed, we have seen a 26-percent reduction in reports of reabuse of children where the department has had prior involvement. This includes cases where we have done an investigation and decided that the case was not necessary to open up. So we are seeing significant improvements there.

I want to quickly just make some suggestions to you. There is a lot of information about the stuff in Cook which I think is amazing because urban child welfare systems can work. It is an urban myth that they can't. But you had better make the investments, and you have to make the investments in the courts and you have to make it in terms of the people that do the work.

Four things I would like you to consider. One, we have got to deal with alcohol and other drugs. Everyone is talking about it. It is absolutely vital that we develop systems that can deal with the issue of the two clocks. The fact that the permanency clock in Illinois is now 12 months—judges are going to make decisions in, practically speaking, 6 months, and at 9 months, not the day before we walk into court. If a woman has dropped out of treatment, it is a problem. And 70 percent of our kids in foster care for a year have parents who are involved in drugs.

Seventy-five percent of those parents, unfortunately, have dropped out of treatment or never entered treatment. I have talked to some of these parents who would say I wish I had known there would be these consequences. The power of addiction is incredible. And although we have decriminalized it and treat it as a health issue, I will tell you that in the child welfare field, a lot of our constituencies believe we have recriminalized it with probably the most difficult of all punishments, and that is the loss of your child. So fair treatment systems are critical, and responsive ones are critical. And that would include aftercare.

Most importantly, training. You have got to change the way you reimburse training. We absolutely need to be able to provide training at the enhanced rate, 75 percent, for our private-sector part-

ners. It is a small investment. It will get you enormous returns. You train people better, you will get better results.

And continuing support for court improvements. Not one-shot deals, but continue the support so that the judges who are facing major problems in aligning incentives within the court system to keep good judges, to keep the courtrooms reasonable and have the time to work with families, it is vital they have support.

And last, expand the waivers. If this system is broken, as everyone contends, then what's wrong with innovation that has decent parameters. Every State should be encouraged to have as many waivers that improve the outcomes in their system as is possible. It is not about competing for the 5, or 6, or 10 waivers that might be available, you want everyone looking at how to improve their systems.

Thank you.

[The prepared statement follows. An attachment is being retained in the Committee files.]

Statement of Jess McDonald, Director, Illinois Department of Children and Family Services, Springfield, Illinois

Every child deserves a stable and lasting family life. This basic principle of "permanency," endorsed as far back as the 1909 White House Conference on the Care of the Dependent Child, has been a stated goal of public child welfare systems for most of this century. But only in the last few years has substantial progress been made in bringing permanency to the lives of thousands of children who otherwise would have spent their formative years in foster care.

Thanks largely to bipartisan efforts, state and local governments posted a 40 percent increase in adoptions over federal FY95. The nation as a whole is well on its way towards doubling the number of adoptions out of foster care by 2002.

I am pleased to report that Illinois, the second-largest child welfare system in the nation, was able to achieve this goal in just one year. The federal fiscal year that ended in September of 1998 resulted in a 112 percent increase in adoptions over the annual average of the prior three fiscal years—from 2,200 to 4,456 adoptions. And already, we are 45 percent ahead of last years—performance. If the pace continues, the state will boost the annual number of adoptions to more than 5,500 by the end of June 1999.

Illinois' long-term goal is to achieve permanency for most children within a two-year time frame. If successful, the projected size of our foster care system should shrink to below 20,000 children by 2,003—a substantial change from 1995 when over 50,000 children swelled the state's foster care system.

Setting challenging goals is an important part of our efforts at change. But I am here to emphasize that it is only a start. In addition, we need to build the capacity of workers and service providers to meet the challenge. Furthermore, we must redesign the system so that incentives are directly aligned with the outcomes we want to achieve. And lastly, we need to recognize that our efforts will succeed only if we forge partnerships with private providers, the courts, and allied human service agencies. Building capacity, re-aligning incentives, and forging partnerships are the essential components for honoring our long-standing commitment to permanency.

CHALLENGING GOALS

While the commitment to permanency is long-standing, most states struggled in the early 1990s to make good on the promise. Foster care caseloads rose nationwide from 280,000 children in 1986 to 502,000 children in 1996. There were 6.9 foster children for every 1,000 children—the highest prevalence rate recorded this century.

In Illinois, the magnitude of the problem was much greater. There were 17.1 foster children for every 1,000—the highest prevalence rate in the nation. When I became Director of the Illinois Department in 1994, tensions were understandably high. Foster care growth was eating up far more of its fair share of state revenues. Workloads of 50 to 60 children per caseworker were commonplace. And there were calls to dismantle the agency.

It was obvious that change was long overdue. So we set about the task of making good on our commitments to comprehensive reform that the State had agreed to in its *B.H.* Consent Decree. A central provision of the Decree was the reduction of case-

loads to below 25 children per worker. To accomplish this goal, we needed to get overall growth under control.

First, as a result of the Home of Relative (HMR) Reform Plan implemented in 1995, we were able to curtail the runaway growth in our intake. By more clearly demarcating the lines between child dependency and child neglect when relatives are involved, we were able to cut annual caseload growth from 17.1 percent in 1995 to 5.9 percent in 1996 to 2.5 percent in 1997.

Although the explosive growth in the Illinois foster care system ended in 1997, stabilization of intake was not enough. Our read of the situation was that our substitute care system should be half its current size. Addressing the permanency backlog became our top priority.

In the course of analyzing our caseload dynamics, we found children were staying far too long in substitute care. As a result, the median length of time children who entered remained in care increased from 10 months in 1986 to over 50 months in 1996.

Our studies of children in Illinois foster care showed that many of these children were for all practical purposes "already home." Reunification had been ruled out years earlier, and many of the children in relative care had entered the system in kinship homes that pre-existed state intervention. Our challenge was to convert these stable substitute care arrangements into legally permanent homes.

BUILDING CAPACITY

Turning stable placements into legally permanent homes is no simple matter after years of inattention by the child welfare system. First, state laws had to be changed so that undue hesitancy about terminating parental rights was removed as a barrier to adoption. In 1997, the Illinois General Assembly passed comprehensive legislation ("Permanency Initiative"), which—among other things—eliminated "long-term foster care" as a permanency goal, reduced permanency planning timelines to one-year, and directed the Department to engage in concurrent planning to help achieve permanency at the earliest opportunity.

To do the important work of permanency requires a skilled and qualified workforce. This was a critical deficit in the Illinois system. Years of high worker turnover, lack of professional training, and new agency start-ups had left Illinois with a child welfare workforce that was ill equipped to perform the demanding task of securing permanent homes for children.

The Department responded to this need, first, by sending its supervisory staff back to school to get their MSWs. Second, DCFS initiated the time-consuming but ultimately rewarding task of getting the Department accredited by the Council on Accreditation. As of today, two-thirds of DCFS sites are accredited. And we have made it state policy that DCFS will contract only with accredited agencies in the future.

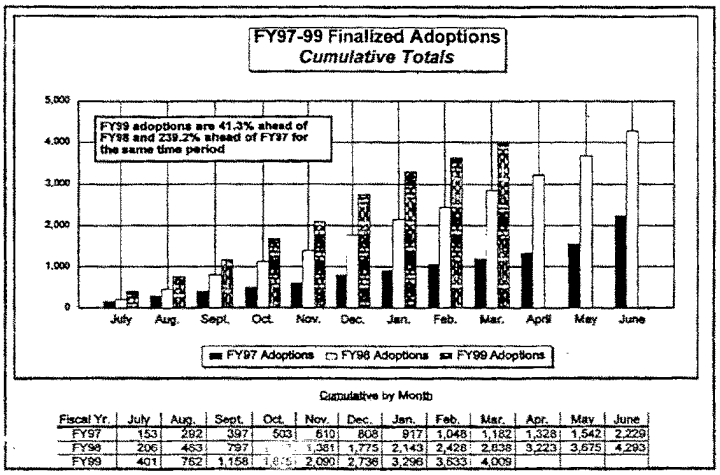
Capacity-building also meant opening up additional pathways to permanency. Because over half of the children in the Illinois foster care system were placed with kin, we learned that adoption did not always fit the needs of relatives wanting to assume long-term responsibility for the children in their care. In response, the Department applied for and received IV–E waiver authority to mirror its adoption-subsidy program, extending subsidies to families assuming private guardianship for children who otherwise would have stayed in long-term foster care. Since the implementation of the demonstration in May of 1997, Illinois has discharged over 2,700 children to the private guardianship of relatives and foster parents. Our experimental design shows convincingly that subsidized guardianship has increased overall permanency by 30 percent over what it would have been without demonstration (26.6 percent v. 20.0 percent).

Reunifications with parents must also increase to achieve our long-term reforms of the system. To enlarge this existing pathway, DCFS increased the investment in family reunification services from $600 to $8,000 per family. Although the state still has a long way to go toward restoring reunification rates back to previous levels, the decline has subsided and return-home rates are rising again for the first time in a decade.

Beyond building a qualified workforce and expanding the pathways out of foster care, we found that permanency efforts require a cadre of specialized staff who are dedicated to the daily tasks of getting the work done. In response, DCFS devoted new resources so that every public and private agency team was supported with a permanency worker who could help identify permanency opportunities, arrange family meetings, and push along the business of the courts.

The results of our investments in capacity-building speak for themselves:

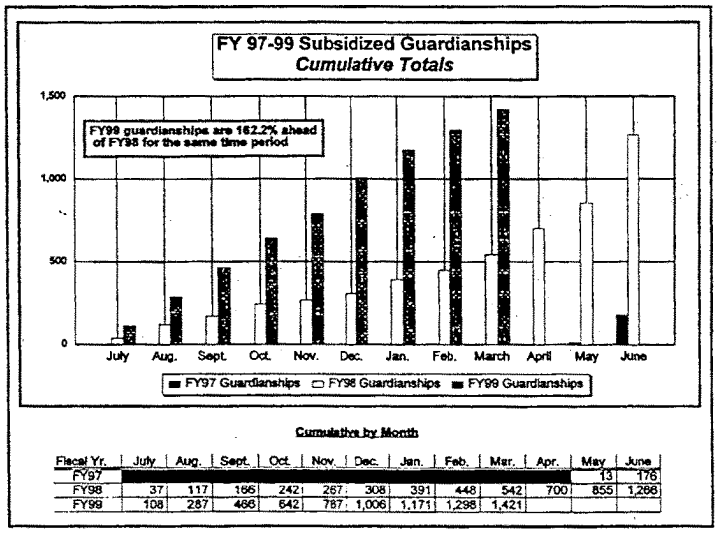
• Finalized adoptions in Illinois rose from 1,961 in FY96 to 2,229 in FY97 to 4,293 in FY98. As of March 30th, FY99 adoptions were already 41 percent ahead of last year's pace for the same time period.



Cumulative by Month

Fiscal Yr.	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
FY97	153	292	397	503	610	808	917	1,048	1,182	1,328	1,542	2,229
FY98	206	483	797	[illegible]	1,381	1,775	2,143	2,428	2,838	3,223	3,675	4,293
FY99	401	762	1,158	[illegible]	2,090	2,736	3,296	3,533	4,009			

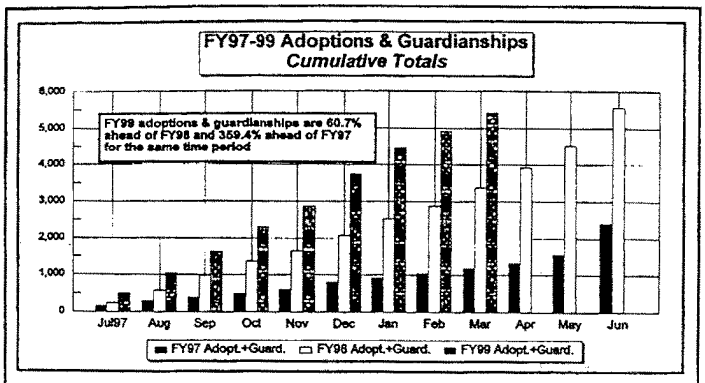
• Subsidized guardianships rose from 176 in FY97 to 1,266 in FY98. As of March 30th, FY99 guardianships are 162 percent ahead of last year's pace for the same time period.



Cumulative by Month

Fiscal Yr.	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
FY97											13	176
FY98	37	117	166	242	267	308	391	448	542	700	855	1,266
FY99	108	287	466	642	787	1,006	1,171	1,298	1,421			

• Total adoptions and guardianships rose from 2,411 in FY97 to 5,559 in FY98. If current trends continue, Illinois will close FY99 with 7,000 new adoptions and guardianships.



Cumulative by Month

Fiscal Yr.	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
FY97	153	292	397	503	610	808	917	1,048	1,182	1,328	1,555	2,411
FY98	243	580	963	1,359	1,648	2,083	2,534	2,876	3,380	3,923	4,530	5,559
FY99	509	1,049	1,624	2,317	2,877	3,742	4,467	4,931	5,430			

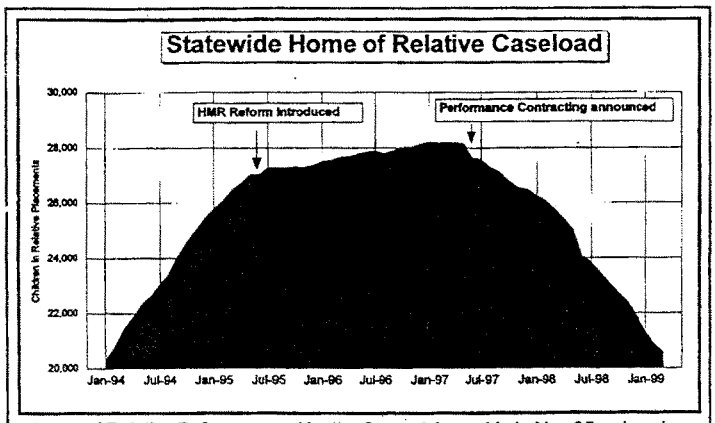
REALIGNING INCENTIVES

Illinois' record illustrates that permanency can be achieved for a far greater percentage of children than many believed possible. Goal-setting and capacity-building was essential to turning around system performance. But another piece of our reform effort involved realigning financial incentives to favor permanency outcomes rather than long-term care.

Eighty percent of our relative foster care and 60 percent of unrelated foster care is provided by private agencies. Starting with the Cook County relative foster care population, we implemented performance contracting in FY98. With performance contracting, we did more than set outcome goals for foster care. We built performance expectations into the contract and payment structure. The heart of this structure is a mechanism guaranteeing results. We contract and pay for child welfare services by building in an expectation that agencies will meet specific permanency outcomes: 6 permanency results for every 33 children served annually. Within this framework, agencies have a clear incentive to perform. They benefit directly from exceeding performance expectations by retaining savings from lowered caseloads. Consequently, they also bear the risk for not meeting their contracted performance level and can suffer financially.

Under performance contracts, agencies must balance entering new cases with those exiting in order to ensure payment and caseload parity. When permanency standards are exceeded, caseloads fall while administrative payments are unchanged. This effectively enhances an agency's payment rate. Conversely, when permanency expectations are not met, an agency's caseload increases (more children enter than leave) while the level of payment is unchanged. This effectively lowers an agency's payment rate. Added to this is the fact that we use annual performance levels to make contracting decisions for subsequent years. Successful agencies continue to receive referrals, maintaining their contracted caseloads.

Applying this concept to kinship care in Cook County has produced results that exceeded our expectations. Still the quality of the care is as important as the quantity of outcomes. Agencies have to meet all contractual obligations with respect to service standards. Their practices must withstand the scrutiny of agency performance monitors and juvenile court oversight. Performance contracting is not only about producing the numbers; it's about doing the job right.



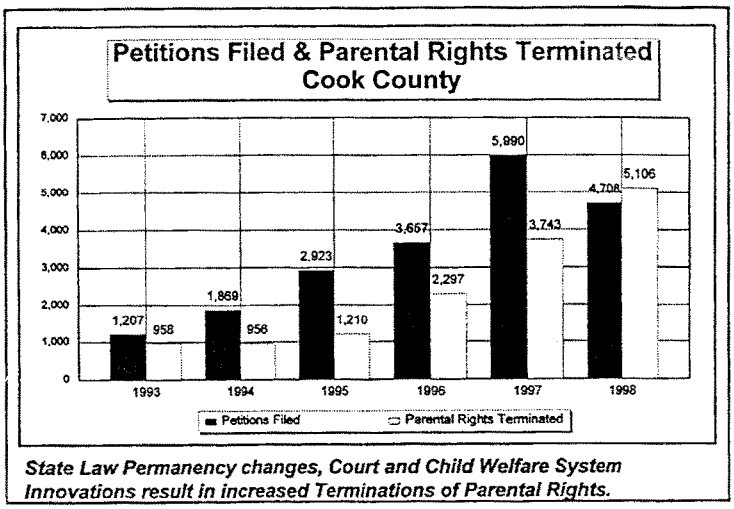
Home of Relative Reform passed by the General Assembly in May 95 reduced Department caseload growth. Performance Contracting, Subsidized Guardianship, extra emphasis on Adoption and the Legislative Permanency Initiative are producing steady caseload reductions.

The application of performance contracting in Illinois re-energized the child welfare system by emphasizing the importance of results rather than activities. By mandating uniform results, we were able to shift resources and attention from maintaining children in care to finding them permanent homes.

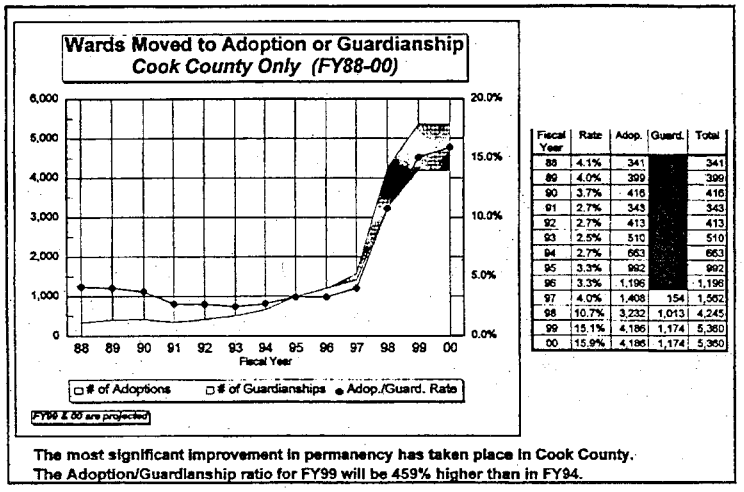
FORGING PARTNERSHIPS

The investments in capacity-building and the realignment of incentives have begun to pay off. In FY1998, the substitute care caseload in Illinois fell for the first time in over two decades. From a peak of 51,550 children, the caseload now stands at 41,500. If current trends continue, we expect to stabilize at a level of approximately 20,000 children in foster care by 2003. This translates into a prevalence rate of 6.4 per 1,000 children in substitute care—slightly below the current nationwide rate.

It is safe to say that these accomplishments would not be possible without the partnerships we have forged with the Court and private child welfare providers. Under the creative leadership of Judge Nancy Salyers, Presiding Judge of the Cook County Child Protection Division, the Cook County Juvenile Court has taken the lead in establishing the legal groundwork for moving Illinois wards into permanent homes.



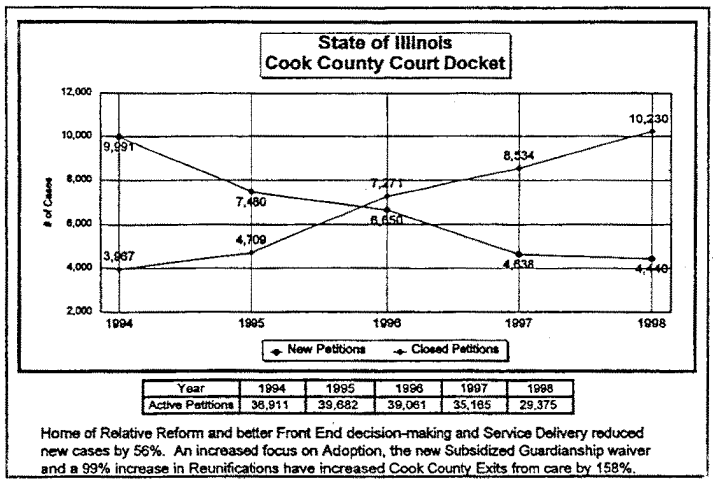
The flip-side of the termination trend is the growth in adoptions out of foster care in Cook County. These results clearly show that state and county governments can achieve the goals promised by the Adoption and Safe Families Act.



Fiscal Year	Rate	Adop.	Guard.	Total
88	4.1%	341		341
89	4.0%	399		399
90	3.7%	416		416
91	2.7%	343		343
92	2.7%	413		413
93	2.5%	510		510
94	2.7%	663		663
95	3.3%	992		992
96	3.3%	1,198		1,198
97	4.0%	1,408	154	1,562
98	10.7%	3,232	1,013	4,245
99	15.1%	4,186	1,174	5,360
00	15.9%	4,186	1,174	5,360

The Cook County Juvenile Court has also cooperated with DCFS efforts at reforming the front-end of the child protective system so that children are served in their home only when their safety can be assured. Our efforts at improving the technology of child safety assessment with the help of the American Humane Association and developing more comprehensive safety plans for children at risk have enabled DCFS to reduce the rate of child removal from intact family cases. From 1993 to 1997, the percentage of children taken into custody while being served by DCFS as an intact family cases was cut in half, falling from 11 percent to 4 percent of children.

The evidence for the decline in placement demands at the front-end and the alleviation of placement pressures at the back-end is clearly conveyed by the changes in the Cook County Court docket.



Year	1994	1995	1996	1997	1998
Active Petitions	36,911	39,682	39,061	35,185	29,375

Home of Relative Reform and better Front End decision-making and Service Delivery reduced new cases by 56%. An increased focus on Adoption, the new Subsidized Guardianship waiver and a 99% increase in Reunifications have increased Cook County Exits from care by 158%.

New petitions for state custody have dropped from 9,991 in 1994 to 4,440 in 1998 while the number of closed petitions due largely to adoptions, guardianships, and reunifications have risen from 3,947 in 1994 to 10,230 in 1998. The net result of these crisscrossing trends is a steadily shrinking system in Cook County from a peak of 39,682 active petitions in 1995 to 29,375 active petitions in 1998.

Safety Is Paramount

The steps Illinois has taken to reduce the size of the foster care system by reducing placement demands and increasing permanency outcomes obviously raises the question: are the children safer? The answer, I am pleased to report, is an unqualified yes.

A report soon to be released by the University of Illinois' Children and Family Research Center finds that there has been a steady decline in the recurrence of abuse and neglect in intact family cases. This rate has declined from 3.6 per 100 in FY95 to 2.7 per 100 in FY97, and the first six months of FY98 shows an annualized rate of 1.8 abuse and neglect findings per 100 intact family cases.

In addition, safety in foster care has improved. This trend is led by kinship care, which registers the best safety record. For every 100 children in kinship care, the annual rate of abuse and neglect declined from 3.3 in FY95 to 1.3 in FY98. The rate of indicated abuse and neglect for children in foster family care was 2.4 per 100 children in FY98.

Lastly, improvements in the technology of child safety assessment have helped to produce a 28 percent decline in the rate of recurrence of abuse and neglect among children investigated by DCFS since 1995.

Future Prospects

Illinois' record of ensuring child safety and pursuing permanency stands among the best in the nation. While we are pleased with this performance, in the back of my mind, I wonder whether the reason we're doing so well now simply reflects the fact that we may not have done as well as we should have in the past. Whatever the case, one thing is clear: tough work remains ahead.

To achieve our projected size of 20,000 children in foster care by 2003, we'll need to tackle the alcohol and other drug (AOD) problem head-on. A 1998 GAO report showed that 74 percent of Cook County, Illinois parents with children in foster care have AOD problems. More troubling is the fact that 76 percent of parents with children in the system for at least one year either failed to complete or never entered drug treatment.

Illinois has submitted a letter of intent to gain IV–E waiver authority to test innovative approaches in serving AOD involved families early enough to prevent children from remaining in foster care beyond the two-year mark. Two clocks are running: the addiction-recovery clock and the permanency clock. With the waiver, we are confident that we will be able to quicken the tempo of recovery so that no chil-

dren are unnecessarily severed from their families because of a lack of AOD resources and treatment.

To meet the AOD challenge, we require a highly skilled workforce that is capable of providing, within the tightened time frames, the AOD services, family group meetings, and concurrent planning that are critical for achieving the permanency goals set by Congress. Enhanced federal support of training (75% federal match) needs to be made available to all sectors of the system, not just public employees. Seventy-four percent of the foster care business is handled by private child welfare agencies in Illinois. Making enhanced federal match dollars available for training caseworkers in the private sector needs to become a top Congressional priority.

Similarly, we need to make sure that no permanency pathway out of the system is closed off. Our first IV–E waiver on subsidized guardianship is scheduled to expire in 2002. We believe that Illinois has gained sufficient experimental evidence to show that subsidized guardianship works and ought to be made a formalized part of the permanency package that the federal government makes available to relative and foster care families.

Lastly, permanency can not be accomplished without making investments in the work of our judicial partners. States need federal support for continuing court improvements in ensuring safe reunifications, handling permanency hearings, and ruling on terminations of parental rights. This year in Illinois, we are celebrating the centennial of the founding of the Cook County Juvenile Court—the first such court in the nation. It would be a fitting tribute to this venerable institution if Congress were to pass legislation that recognizes the critical role that juvenile and family courts play in the achievement of permanency for children.

[An attachment is being retained in the Committee files.]

Chairman JOHNSON of Connecticut. Thank you very much.

Mr. Kroll.

STATEMENT OF JOE KROLL, EXECUTIVE DIRECTOR, NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, ST. PAUL, MINNESOTA

Mr. KROLL. Thank you, Madam Chairwoman, Members of the Subcommittee. I want to say how pleased I am to be here today and thank you for the kind words about our study. We are the voice from the hinterland who discovered early in the fall of 1998 that States had made remarkable achievements in adoption and we decided we better ask them all.

Someone has asked me what happened to my hand, and I have a response, but my son who has joined me today suggested a better one, and that was that someone came up to me and said a 12-year-old that they knew was unadoptable and I overreacted. [Laughter.]

That probably would be closer to the truth as opposed to an old man's sports injury. I represent the North American Council on Adoptable Children. I am also here on behalf of the National Foster Parents Association and Voice for Adoption, two other groups that I am very active with. Eight thousand, five hundred and eleven is the current count on the increase in adoptions over the baseline from the previous 3 years to 1998. I had tried to use my cell phone in the hall to get Ohio's numbers because we are struggling with a couple States that just can't quite get them out of their computers, and we think that may go up to 9,000. That is a phenomenal increase. And if you look at the bar chart in the testimony, which many of you have already done, you will see that there has been a steady increase since 1995, but an even more dramatic increase between 1997 and 1998.

I remember standing here in February, I think it was, of 1997 and Representatives Camp and Kennelly proposed what turned out to be the Adoption and Safe Families Act. And it was just like what NACAC has been working on for 25 years in our organization, became the mission of Congress. And to hear how it has changed and how the States have responded is a great joy to us. But it means even more, I think, to the children who are represented. You have heard me testify before about the dramatic placements of older children, of sibling groups. Unfortunately, when we collected these data, we could only ask for one thing, and that was total numbers of adoption.

When AFCARS says their report is officially done, I think that we will see dramatic increases in sibling groups, with children of color particularly, and something that we should all be proud of because there is a great deal of movement in the system. I just wanted to make a comment about the kids in the picture because they are the ones who really are the story.

The sibling group of four from Indiana, they were placed as a direct result of being on the poster that we do every year for adoption month, and which I think we send to all Members of the Subcommittee. They were placed in the same State, in Indiana. The other two boys, a little bit older, were placed after being in the system for a number of years. And, as matter of fact, Damion, who is 15, was removed from active recruitment. Then a family who had seen him stepped forward and all of a sudden active recruitment occurred and a placement was made.

So someone had stopped doing the work and a family stepped forward and said: Oh no, don't stop. We are still here.

The other part of the story I wanted to share was again from my testimony of a sibling group of three children in Mississippi, 13, 15, and 17, who many folks said were unadoptable. What happened, was one couple said we can take the 15- and 17-year-old, and the worker said you shouldn't have the 13-year-old. So the couple found another family in the same community to adopt the 13-year-old.

The work of families and workers in Mississippi caused a sibling group of three boys with some real tough life experiences to be placed in permanent families. The families still face challenges, and I think that that is one of the messages that we always have from NACAC is that when we make placements, we need to support the families.

In the adoption incentive program, there is mention of how the dollars should be spent. That they should be spent on IV–A and IV–B and that can include postadoption services, which is an editorial that we always put into our press releases. The money has to be targeted back to the families who have stepped forward to take on these tough kids.

It goes for respite care, it goes for counseling, in some cases, it needs to go for residential treatment for kids who have had real tough experiences, whose families are committed to them but need more help.

In my testimony, you will notice that I suggest that figure was $25 million to fully fund the adoption incentive program based on the calculations that we had done. I appreciate the fact that $28 million is a slightly higher number. I think when the situation is

taken care of for this year and the States are able to receive full reimbursement, we need to look at the next 2 years. Does it need to be $30 million? Does it need to be $40 million? Try to get some projections, check with our good colleagues in Illinois, Florida and Texas, where some huge strides are being made. Better make sure that we have the program taken care of so that States are rewarded for the work they have done. Because if States are rewarded for they work they have done, it is another way to provide support directly to the families who created the placements, the families who stepped forward, the children who took the chance and said I will try a permanent family.

Those are the people we are talking about supporting, and providing the full incentive payments will allow that to occur.

Thank you very much

[The prepared statement follows:]

Statement of Joe Kroll, Executive Director, North American Council on Adoptable Children, St. Paul, Minnesota

Madam Chairwoman and Members of the Committee, I thank you for this opportunity to appear before you today.

I am Joe Kroll, executive director of the North American Council on Adoptable Children (NACAC). I also serve as the adoption chair of the National Foster Parents Association and Vice-President of Voice for Adoption, a coalition of over 50 state, local, and national adoption organizations. More importantly, I am a parent of two adult children, one by birth and one by adoption.

NACAC represents adoptive parents and parent groups, adoption agencies, adopted children, and most importantly the 110,000 "special needs children" waiting for families in the U.S. For nearly twenty-five years we have been involved at the local, state, and national level as advocates for these children.

1998 U.S. ADOPTIONS FROM FOSTER CARE PROJECTED TO EXCEED 36,500

Finalized adoptions of children from the U.S. foster care system rose significantly during the last year. Preliminary reports from 45 states from federal fiscal year 1998 project adoptions of at least 36,500 foster children, which includes increases of 8,511 (see table 1 for details) over the average number of adoptions from the previous three years. The attached bar chart reflects the growth in public agency adoptions between 1995 and 1998. The figures for 1995 to 1997 are drawn from the Department of Health and Human Services AFCARS system and state by state totals are reflected in table 2.

This is the good news and everybody in this room should be proud of the outcome. There is enough praise to go around. Representatives Camp and Kennelly and Senators Rockefeller, DeWine, and Chaffee provided congressional leadership to ensure passage of ASFA. Their staff worked long hours negotiating the final language and should be proud of the outcome. At the state level, you will hear from Jess McDonald, Director of Illinois Department of Family and Children Services on the remarkable progress they have made in doubling the number of adoptions in the past year. Judges have played a key role in making children a priority in their courts and making permanent decisions in one year. Judges Patricia Macias of El Paso and Judge Harold Gaither of Dallas have provided dramatic leadership in Texas resulting in reductions of nearly 5 years in the time children spend in care.

Every waiting child needs an adoptive parent and they are stepping forward in record numbers for children waiting in foster care. Many foster parents (it is estimated at least 2/3 of children adopted from the public child welfare system are adopted by their foster parents) have stepped forward to provide permanency for children in their care. Twenty years ago, social work practice dictated that foster parents should not become emotionally attached to their foster children and if they showed any interest in adoption, the children were removed. Times have changed.

Even children perceived to be difficult to be placed are finding homes. Over 2/3 of the children of color featured on NACAC's 1997 Adoption Month poster have been adopted. I would like to share the story of a sibling group in Mississippi. Three boys ages 13, 15, and 17 needed a permanent family but the social worker determined that they should not be placed together. When one couple offered to adopt the 15 and 17 year old, another family in the same community was found for the 13 year

old. The families agreed to keep the children in contact and schedule regular visits. Many might assume that these children were unadoptable but the creative worker and flexible families allowed a sibling group of teenagers to find permanent homes.

But the real heroes in adoption are the children themselves. I have offered pictures of two older boys and a sibling group of four that were placed as a result of the Adoption Month poster. They were in foster care from 2–6 years and had multiple placements. Yet they were willing to give new families a chance to parent them. They are all part of the dramatic growth in adoptions in 1998.

Following recent changes in public opinion, political support, and law, many states have shortened foster care stays, found more adoptive homes, and designated new resources to support adoptions. As a result, more children than ever before have found permanent families.

In December, NACAC staff began polling states to obtain their data on the number of finalized adoptions completed in fiscal year 1998. Of the 45 states that submitted figures, all but five reported an increase in adoptions. Dramatic changes were seen in several states: Illinois more than doubled the number of adoptions from foster care—the state averaged only 2,200 adoptions from 1995 to 1997, but achieved 4,656 adoptions in 1998. State officials attribute this 111 percent increase to reduced average caseloads (from 75 children to 25 children per worker) and streamlined court processes. In Texas, adoptions from foster care are up 75 percent (to 1,548 in 1998) due to changes in state law that limited the length of time children could remain in foster care and administrative reforms that assigned additional staff to move children to permanence. Iowa's 54 percent increase is the result of the creation of adoption specialist positions, expanded recruitment activity, and the commitment of former Lieutenant Governor Corning to the cause. Wyoming nearly doubled the number of adoptions in one year (from 16 in 1997 to 29 in 1998). The state attributes the dramatic jump in an increased focus on terminating parental rights (TPR), including the assignment of a staff person in the attorney general's office who is dedicated to TPR hearings. Twenty states experienced increases of 20 percent to 55 percent. Several states reported even higher increases, including South Carolina (84.4 percent), Mississippi (64.9 percent), North Dakota (68.1%), and Minnesota (61.2 percent).

The increased adoptions show great promise that the country can meet the goals identified in President Clinton's Adoption 2002 initiative and the Adoption and Safe Families Act (ASFA) of 1997. In addition to legislative guidance that helps states increase the number of foster children who are adopted, ASFA also included an adoption incentive program that will make additional funds available for child welfare services. Beginning with fiscal year 1998, states became eligible to receive incentive payments for all adoptions over a baseline number determined by HHS.[1] Table 1 shows each state's baseline figure, the state reported estimate of finalized adoptions for 1998, and the difference between the two figures. For each adoption over the baseline, HHS will pay the state $4,000, plus an additional $2,000 if the child has a federal Title IV–E Adoption Assistance agreement in effect. States may spend incentive payment funds on child and family services, including post-adoption support.

Adoption Incentive Payment Authorization Level Inadequate

Unfortunately, there will not be enough funds to provide states with their full adoption incentive payments. Congress appropriated $20 million per year for four years for the incentive program.[2]

If we assume that 75 percent of adoptions will qualify for the total payment of $6,000, the appropriation will cover increases of 3,636 adoptions for 1998.[3] If claims exceed the appropriated amount, ASFA requires HHS to reduce the incentive payments proportionately. As NACAC's preliminary estimates show, states have al-

[1] To determine the baseline for each state, HHS averaged the number of finalized adoptions for federal fiscal years 1995, 1996, and 1997. States are eligible to receive incentive payments for federal fiscal year 1998 only if they have an approved Title IVE plan for the year, provide HHS with data to determine the baseline, meet other data requirements, and exceed the baseline number of adoptions.

[2] Pro Rata Adjustment if Insufficient Funds Available.—For any fiscal year, if the total amount of adoption incentive payments otherwise payable under this section for subsection (h) for the fiscal year, the amount of the adoption incentive payment payable to each State under this section for the fiscal year shall be the amount of the adoption incentive payment that would other wise be payable to the State under this section for the fiscal year; multiplied by the percentage represented by the amount so appropriated for the fiscal year, divided by the total amount of adoption incentive payments otherwise payable under this section for the fiscal year.

[3] This assumption is based on the fact that at least 75 percent of children adopted during federal fiscal years 1995, 1996, and 1997 were eligible for Title IV–E Adoption Assistance.

ready achieved increases of 8,511—more than twice the 3,636 mark—with six states not reporting. NACAC expects the final numbers to reflect total increases of nearly 9,000 which would result in dramatically reduced incentive payments.

NACAC is asking Congress to increase the authorization and appropriation for the adoption incentive program by $25,000,000 for fiscal year 1999 for a total of $45,000,000. This would allow states to receive full payments for the excellent work they did in increasing adoptions last year. Congress should also consider increasing the authorization for the next three fiscal years to $30,000,000 in anticipation of annual increases in adoptions of 5,000 per year.

We applaud the work of the committee and encourage Congress to continue providing the states with incentives to increase the adoption of children from the public foster care system.

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TABLE 1

Finalized Adoptions from Foster Care

	Baseline Total*	FY 98 Estimate†	Number Change	Percentage Change
Alabama	139	142	3	2.16%
Alaska	108	95	-13	-12.04%
Arizona	357			
Arkansas	138			
California	3287	4298	1011	30.76%
Colorado	417			
Connecticut	207	314	107	51.69%
Delaware	39	55	16	41.03%
District of Columbia	110	168	58	52.73%
Florida	987	1549	562	56.94%
Georgia	493	664	171	34.69%
Hawaii	85			
Idaho	44	57	13	29.55%
Illinois	2200	4656	2456	111.64%
Indiana	495	825	330	66.67%
Iowa	350	537	187	53.43%
Kansas	349	529	180	51.58%
Kentucky	211	217	6	2.84%
Louisiana	308	221	-87	-28.25%
Maine	108	112	4	3.70%
Maryland	342	444	102	29.82%
Massachusetts	1116	1115	-1	-0.09%
Michigan	1905	2234	329	17.27%
Minnesota	258	416	158	61.24%
Mississippi	114	188	74	64.91%
Missouri	557	727	170	30.52%
Montana	115	145	30	26.09%
Nebraska	185			
Nevada	149	138	-11	-7.38%
New Hampshire‡	45	51	6	13.33%
New Jersey	621	801	180	28.99%
New Mexico	347	201	54	36.73%
New York	4716	4790	74	1.57%
North Carolina	467	576	109	23.34%
North Dakota	47	79	32	68.09%
Ohio	1287			
Oklahoma	338	485	147	43.49%
Oregon	445	662	217	48.76%
Pennsylvania	1224	1522	298	24.35%
Rhode Island	261	217	-44	-16.86%
South Carolina	256	473	217	84.77%
South Dakota	56	58	2	3.57%
Tennesse	328	338	10	3.05%
Texas	880	1548	668	75.91%
Utah	225	328	103	45.78%
Vermont	75	120	45	60.00%
Virginia	298	332	34	11.41%
Washington	607	766	159	26.19%
West Virginia	182	187	5	2.75%
Wisconsin	467	637	170	36.40%
Wyoming	15	29	14	93.33%
Total for States That Have an Increase over Baseline			**8,511**	

*Source: U.S. Department of Health & Human Services as reported to NACAC, December 22, 1998.
†Source: Preliminary reports from states to NACAC, January and February 1999.
‡New Hampshire FY 98 Estimated Total includes IV-E only.

4/19/99

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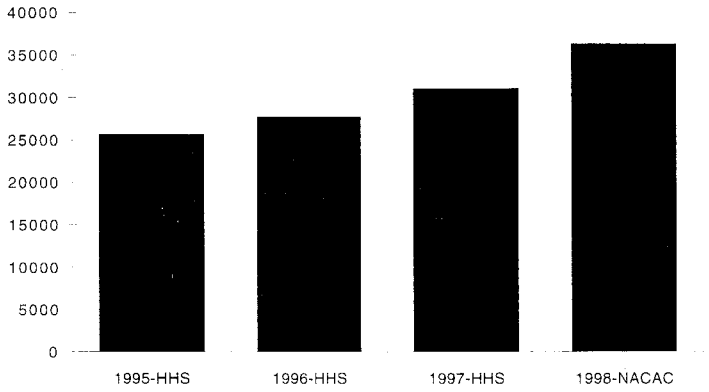

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TABLE 2

Adoption Incentive Program Baseline by State

	1995 IV-E Adoptions	1995 Non IV-E Adoptions	1995 Total Adoptions	1996 IV-E Adoptions	1996 Non IV-E Adoptions	1996 Total Adoptions	1997 IV-E Adoptions	1997 Non IV-E Adoptions	1997 Total Adoptions	Adoption IV-E Baseline	Adoption Non IV-E Baseline	Total Baseline
Alabama	35	93	128	50	103	153	38	98	136	41	98	139
Alaska	68	35	103	94	18	112	93	16	109	85	23	108
Arizona	161	54	215	311	72	383	360	114	474	277	80	357
Arkansas	61	23	84	165	20	185	140	6	146	122	16	138
California	2,157	937	3,094	2,617	536	3,153	2,468	1,146	3,614	2,414	873	3,287
Colorado	286	52	338	378	76	454	266	192	458	310	107	417
Connecticut	164	34	198	121	25	146	230	48	278	172	35	207
Delaware	23	15	38	28	18	46	19	14	33	23	16	39
D. C.	18	68	86	32	81	113	60	72	132	37	73	110
Florida	363	541	904	424	640	1,064	406	586	992	398	589	987
Georgia	172	211	383	263	274	537	306	252	558	247	246	493
Hawaii	31	11	42	47	17	64	110	40	150	63	22	85
Idaho	38	8	46	30	10	40	41	6	47	36	8	44
Illinois	1,647	112	1,759	1,148	998	2,146	1,615	1,080	2,695	1,470	730	2,200
Indiana	333	187	520	248	125	373	385	207	592	322	173	495
Iowa	179	48	227	301	82	383	414	26	440	298	52	350
Kansas	122	211	333	222	70	292	302	119	421	215	134	349
Kentucky	139	58	197	152	62	214	152	70	222	148	63	211
Louisiana	281	11	292	309	12	321	298	12	310	296	12	308
Maine	76	9	85	128	16	144	85	11	96	96	12	108
Maryland	112	212	324	236	177	413	148	142	290	165	177	342
Massachusetts	535	538	1,073	612	501	1,113	657	504	1,161	601	515	1,116
Michigan	1,463	254	1,717	1,695	255	1,950	1,744	303	2,047	1,634	271	1,905
Minnesota	115	117	232	184	55	239	228	74	302	176	82	258
Mississippi	19	90	109	32	69	101	83	48	131	45	69	114
Missouri	417	121	538	421	179	600	408	125	533	415	142	557
Montana	72	32	104	83	15	98	112	31	143	89	26	115
Nebraska	96	112	208	90	78	168	112	68	180	99	86	185
Nevada	98	57	155	86	59	145	97	51	148	94	55	149
New Hampshire	41	10	51	48	11	59	20	4	24	36	9	45
New Jersey	326	290	616	405	273	678	367	203	570	366	255	621
New Mexico	106	35	141	111	37	148	114	38	152	110	37	147
New York	4,295	284	4,579	4,217	373	4,590	4,697	282	4,979	4,403	313	4,716
North Carolina	173	116	289	258	159	417	458	236	694	296	171	467
North Dakota	32	10	42	29	12	41	40	17	57	34	13	47
Ohio	1,110	92	1,202	1,151	107	1,258	1,168	232	1,400	1,143	144	1,287
Oklahoma	163	63	226	298	73	371	264	154	418	242	96	338
Oregon	325	102	427	356	112	468	325	116	441	335	110	445
Pennsylvania	836	182	1,018	983	144	1,127	1,332	194	1,526	1,050	174	1,224
Rhode Island	174	42	216	205	136	341	119	107	226	166	95	261
South Carolina	115	116	231	132	88	220	190	128	318	146	110	256
South Dakota	27	15	42	49	23	72	33	22	55	36	20	56
Tennesse	336	122	458	228	102	330	134	61	195	233	95	328
Texas	443	361	804	412	334	746	676	415	1,091	510	370	880
Utah	130	153	283	87	37	124	174	94	268	130	95	225
Vermont	53	9	62	79	4	83	68	12	80	67	8	75
Virginia	183	137	320	191	107	298	196	80	276	190	108	298
Washington	397	248	645	361	160	521	518	138	656	425	182	607
West Virginia	50	89	139	71	117	188	119	101	220	80	102	182
Wisconsin	285	75	360	421	90	511	432	98	530	379	88	467
Wyoming	6	4	10	5	15	20	3	13	16	5	10	15
TOTAL	18,887	6,806	25,693	20,604	7,157	27,761	22,824	8,206	31,030	20,771	7,390	28,161

Source: U.S. Department of Health and Human Services as reported to the North American Council on Adoptable Children 4/19/99

Chairman JOHNSON of Connecticut. Thank you very much.

First of all, I thank the panelists for all their testimony. It really is exciting to see what's happening. It is just really thrilling. Rarely have I ever seen a law change that concretely affected the lives of so many children and adults in a positive way. Really wonderful. Also, it is wonderful to see the system responding because you are right, without systems change, you can't get the teamwork you need to get complicated situations resolved. So that is very, very encouraging.

Mr. McDonald, you mentioned in terms of the four things you would like to see, that everyone should have a chance to have a waiver. What do you think of the department's comment that the cap on waivers creates competition and puts more thought into their projects.

Mr. MCDONALD. No. This is the kind of situation where you want every State winning. I mean, you want improvement from States that aren't doing well, you want innovation above and beyond from the States that have been doing consistently well. And, it seems to me, it would assist the department in its efforts at quality improvement. You know, if you have an area of improvement that you think a State ought to move in, you ought to be saying why not try something here.

But I think—I cannot imagine why we wouldn't want to encourage as much improvement across the States as possible. Like I said, when the system has been declared by so many people to be broken, then what's wrong with innovation that has decent parameters.

Chairman JOHNSON of Connecticut. Thank you very much. I find that interesting. It seems to me that also many of these waiver projects are focused on just the kind of things that you all are talking about.

Mr. Kroll, I did want to mention to you that the Subcommittee is very interested in the independent living program, and we certainly don't want to divert kids from adoption that could be adopted, the opportunities for adoption do vary tremendously, and we do want to improve the independent living program. Would you have any comment on that?

Mr. KROLL. I guess I am first and foremost an advocate for children, and my concern over the years as the pendulum has swung back and forth on what we think on different issues is that too often we give up on placing in an adoptive home a 14- or 15- or 16-year-old. And that we need to make sure that teenagers in foster care are aware of all their options.

I think any 16-year-old might respond to the question, "Do you want to live with your parents or do you want to live on your own?" Well, they might want to live on their own because there is a little rebellion going on or whatever. I think a child who has been neglected by the system, who doesn't trust adults, if offered the option of independence versus a permanent home would say "I have had enough with adults."

So I think we really need to counsel the children who are older and make sure they are aware of the options because as we have young people speaking out on their own behalf, we hear many voices of teenagers who are saying I still want a family. And we know of young people who have been adopted after 18 because the State did not terminate parental rights prior to their reaching maturity. And when they became an adult, they asked their foster parents if they would be willing to adopt them now since it is their decision.

So I think there is a real range of behaviors there and attitudes by children so that we shouldn't, as we help the older kids who have to leave the system without a family, we shouldn't make kids leave the system without a family.

Chairman JOHNSON of Connecticut. Right. It certainly is true the family provides a lifelong support system that no amount of independent living can provide you.

Ben.

Mr. CARDIN. Thank you, Madam Chair.

Mr. Kroll, I thought that maybe your injury was related to getting in the ring with your Governor in wrestling. [Laughter.]

Mr. KROLL. If you see—I won't go there. [Laughter.]

Mr. CARDIN. I wouldn't advise you going there.

I was really struck by your chart that you attached to your testimony. We all are very pleased by the increased number of adoptions from foster care, but the last column is really remarkable, and that is the variation among States from a high of 111-percent increase to a low of a minus 28 percent and all numbers in between.

I mean, it seems like there is no consistency among the States. Am I reading this right or wrong?

Mr. KROLL. You are absolutely right.

Mr. CARDIN. What accounts for that?

Mr. KROLL. Well, another use of the dollars that the States are going to receive might be to clone Jess McDonald and Judge Kearney. Leadership comes into play in some of these States. There are foundation efforts, like the Kellogg Families for Kids and the Casey Family to Family, where there have been true initiatives in some States and others there haven't.

And so, there is a lot of leadership around the country but it isn't equally spread.

I'm not sure I could address a specific State, why it was low. Some of the States had made dramatic increases in the more recent years. So their numbers have leveled out. I have heard from a couple of States. Some of the numbers, and I think Louisiana particularly, which had the largest decline, they reported the numbers they could but they believe those numbers have improved. So that when the AFCAR's numbers make it official, their number of placements in 1998 will be higher than originally reported.

This was, you know, informal estimates, as best as the States could do in January and February this year.

Mr. CARDIN. Well, I appreciate that observation because obviously we have offered incentives and would be curious whether there is a need to deal with changes in Federal law to make it easier for all States to show more progress. I don't know.

But thank you for that observation. Illinois, of course, has done very well. But I am very interested in your observations, Mr. McDonald, on substance abuse and the challenge that places to us achieving our objectives. What should we be doing? What are you doing? You have got the children's programs; you don't have all the health programs, obviously. How do you coordinate to make sure that you can deal with substance abuse in order to succeed in protecting the child?

Mr. MCDONALD. We have a $25 million initiative with the Department of Human Services, but I will tell you a significant portion of that is assessment and, frankly, reassessment. Someone drops out of treatment, they come back, they get assessed again. The real key is keeping someone in treatment. If you assume the prognosis for recovery is 2 years and that relapse is part of recovery, then you have to figure out what to do to keep a woman who has an interest in her children in treatment.

That is a design issue. In Cook County we put an assessment program in the courts so clients go right from the courtroom right to an assessment program. The next thing we are installing is independent case management so that all substance-exposed births will be case managed independently as well as by the child welfare worker.

We get no Federal reimbursement for this iniative.

We are also intending on trying to figure out how you change and alter the structure of services. Women will stay in treatment if they can stay close to their children. What motivates someone to succeed? You have to provide some incentive for people to crack what I think is a very difficult, difficult issue. So the design of substance-abuse services is the next thing we are going to be looking at, and we are applying for a IV–E waiver to test alternative treatment models in Cook County and several of our larger areas downstate.

The rural issues are even more dramatic because you have so much travel involved in getting to treatment that oftentimes you have more difficult problems structuring service in rural areas.

But it is incredibly important to tackle this issue, and NASADAD, National Association of State Alcohol and Drug Abuse Directors, and APHSA are working together to at least have a dialog on it. But if you don't tackle this, we will continue to have problems in the system.

Mr. CARDIN. Well, let me applaud you for showing initiative. Unfortunately, a lot of people look at their responsibilities with tunnel vision and they don't look at the broader ways of dealing with the problems. So I really do applaud you for taking the initiative to provide the services so you can succeed with children.

Judge Kearney, I want to ask you just one question on—you were at the hearing that we had in Florida. I was not at that hearing, but you were at the hearing that we had in Florida. And one of the issues that came up was the high turnover of social workers and the difficulty that causes in carrying out responsibility. I think we all can relate to that.

Has Florida done anything about the problems of social workers and I guess it is the pay issue.

Ms. KEARNEY. It is a pay issue. It is also a caseload issue, which I think is probably more problematic. Right now we have many of our caseworkers who carry caseloads in excess of 50 cases per worker. We have tried in the area of adoption to lower the caseloads, and that has been effective in increasing our adoption rate. But the problem we have, particularly, is in the protective investigator side, when the cases are coming into the system. We have a tremendous backlog.

Right now in Dade County alone, we have a backlog of over 3,000 open protective services cases that have not been cleared. The Florida legislature in this session under Governor Bush's proposed budget, which they have adopted, have given us a 25-percent increase, most of which will go into the field in order to provide additional workers. I have also totally revamped the training program for our investigators. It originally had been 12 weeks of straight lecture without any field-based training. We were having many of our workers coming out of training totally unprepared for the reality of what they saw in the field.

So we have now revamped the training. We are—at this time they come into the field the very first week. They are there the entire week. We have established a mentor program, and then the rest of the program, which is now shortened to 8 weeks, has 2 days in the classroom but 3 days in the field. So they can truly see what they are getting into.

Mr. CARDIN. That's great. I just want to underscore what Mr. Kroll said: We have good leadership in Florida and Illinois. We could use that model in other States. Congratulations.

Ms. KEARNEY. Thank you.

Chairman JOHNSON of Connecticut. Mr. Camp.

Mr. CAMP. Thank you, Madam Chairman.

I want to thank the three of you, first of all, the people who testified today for your testimony. I very much appreciate it, and my first question is to Judge Kearney. Thank you for your help with the Adoption and Safe Families Act because you were a busy judge getting on the phone and helping us craft that.

Ms. KEARNEY. Thank you.

Mr. CAMP. I wanted to ask you, do you think—I mean, obviously, the message of that legislation was child safety and permanency—do you think States are getting that message clearly? You know, Minnesota, Illinois, and Florida have from the tremendous improvements that you have made. But do you think in general that is occurring?

Ms. KEARNEY. Mr. Camp, again, I am concerned and I can't say in all honesty that Florida has gotten the message because the reality is I did a teleconference last week with over 200 of our child-protection leaders from the Department of Children and Families, particularly on the implementation of the Adoption and Safe Families Act because I am concerned that they are not understanding that the health and safety of the child is the paramount concern.

I have to tell you that I had to enact operations procedures that made it clear that our children that are in foster care that they could not put children who sexually perpetrate in the same home as victims. And I have to tell you that there were workers upset

and angry that I had entered an order that required that because they said they didn't see any problem with that.

They have a problem in being able to assess risk. They have a problem in being able to make the very hard call in the beginning as to whether or not a child should be removed. And they are still holding dear to an outdated model of family preservation at all costs. And it has been very difficult to enact truly the spirit of your legislation. I am concerned that the regulations at this time are giving that same mixed message, that same signal. That is not what this act and Congress intended, and I would strongly encourage that you continue your effort to make certain that the true intent of the act is followed.

I would also ask that Congress would enact legislation to ensure that the States, particularly those like Florida that are moving to a community-based care model, privatization model, if you would, would also ensure that training is held for the private sector taking over the child protection system. It is absolutely imperative that that be done.

We have had great success in Florida with our pilot programs, but we have also had one or two that are not successful and refuse to be trained in the adequate protection of children. So I would strongly encourage that you get oversight there also.

Mr. CAMP. Thank you very much. My next question is regarding the methods of the funding stream to the States and foster care. And obviously our goal is to decrease time spent in foster care where possible. Do you have any, or does the way the money goes to the States for foster care, the streams of funding, is that consistent or inconsistent with the goal of decreasing time in foster care?

Ms. KEARNEY. I have to say from my judicial experience in dependency court improvement as well as coming to the Department of Children and Families at this point is inconsistent. It is very difficult. We have so many different funding streams. Our reporting requirements are so different. We have workers that are in the field spending countless hours doing paperwork that should be providing direct services to children and families so that they can meet that goal.

Florida has shortened its timeframe even further. We are a 12-month State for permanency. And what Mr. McDonald said in Illinois is exactly the situation in Florida, where we actually are looking at a 6-month and a 9-month period. And so I am concerned that given all of the paperwork that we are truly inundated with and the different funding sources that we are not adequately being able to serve the population that we must serve in order to make reasonable efforts and to then have a strong court case for termination of parental rights if a petition is filed.

Mr. CAMP. And last, if you could comment on—obviously we wrote this legislation to take into account needed State flexibility—can you comment on the balance between the need for State flexibility and the need for accountability?

Ms. KEARNEY. I am living that firsthand right now because we are in a district structure of 15 districts in Florida. And having that, allowing them the flexibility to spend the funds as appropriate, taking into consideration local needs but at the same time

being accountable to the State while I, in turn, account to the Federal Government, I think it is imperative that we have the flexibility to do things such as what we are now compelled to do in Florida, which is privatize our child welfare system. We must have the flexibility in order to do that.

But at the same time, I absolutely do believe it is imperative that we account for every taxpayer dollar that is spent on child protection. In the current system I think that is not there at all. I am concerned about the regulations because it does seem to be somewhat confused, and the answers that I heard this morning were not what I would have liked to have heard in order to really determine where we are going and what flexibility will be given to the States.

I have no problem accounting for it, but I also have to be responsible for serving that population, and I need the flexibility to do that.

Mr. CAMP. Well, thank you very much for that testimony, and thank all of you for your efforts to increase the adoptions in your States. And I have completed my questions.

And Madam Chairman, I just want to thank you for holding this hearing and for beginning the discussion on the oversight role, but also to let us get the reporting on how this legislation is being enacted. Thank you very much.

Chairman JOHNSON of Connecticut. I am really struck by the fact that in order to make this work you had to improve systems, and I get the impression that to improve systems you had to get waivers?

For the most part, would you say that improving your systems required waivers?

Mr. MCDONALD. May I?

Chairman JOHNSON of Connecticut. Yes.

Mr. MCDONALD. It's more than one thing. I mean, the waivers definitely help. The IV–E waiver was invaluable in terms of helping turn around the response to the field. We were able to construct performance contracting around the use of the waiver. The subsidized guardianship option actually uncovered more adoptions, and adoptions went up. When you start asking about permanency, when you tie it to incentive-based work, what we found is that you ask relatives, who are a major portion of our caregivers, do you want to adopt? You have to rule out adoption in order to consider guardianship. That is one of our deals with the court. Relatives were very interested. But workers never talked to them about permanency.

What you have to do is to force the system to perform. You have to get to the top of every private agency and every manager because they start to understand that their future business, if you will, depends on performing well today. And we have seen improvements in stability, fewer moves in the system, because we evaluate them on stability in the system as well.

Chairman JOHNSON of Connecticut. But do you think these current regulations adequately get the information we need, not only the number—they clearly don't get the number of kids in foster care. But we do need to know how long they are staying there and how many moves they are making.

Mr. MCDONALD. Yes. For instance, Mr. Cardin, you mentioned that the rate of increase—112-percent rate of increase in Illinois. One good year, one great year, does not make a great child welfare system. I do hope that is not a sound bite that I see in the paper tomorrow, Ben. [Laughter.]

But the fact of the matter is, is that many States have been performing consistently well. If they had a 20-percent increase and they had had on an ongoing basis of a 20-percent permanency rate or something like that, and if they had short lengths of stay in their system, it is not just one measure that you want to look at. It is length of stay. You want to look at median and maximum lengths of stay. You want to look at new populations, old populations.

We are doing well in Illinois. We will get back to where we ought to be. But I, you know—we will have a couple of very good years. But we had a median length of stay of almost 6 years.

When you have that, we should have some adoptions. We should have a lot of adoptions. This system is going to be half the size it is, and we are moving there. In another 3 years we will have around 20,000 kids in the system, and we will look more like the States that have been progressive all the way along.

Child welfare is something that you have to manage for the long haul. It does not respond well to mood swings from any direction. If you have caseloads of 50, you get no results. The investments that have to be made over the long haul are the ones you need to look to. Don't look to a quick fix overnight. It's not the best way to go.

Chairman JOHNSON of Connecticut. When you look at the fact that all of you have to make changes. You have to respond to what you think is going to motivate people and so on and so forth. And then you look at Florida's challenge. And what I hear you saying is that you think you can design a system through which you will be able to hold your community-based, privatized system accountable. Well now, if you can hold them accountable, why can't we hold you accountable? And are these regulations asking for the information that you, as a practitioner, know you need from those you must hold accountable and nothing more.

I mean, are these regulations going to fit into the system as you see it developing from your perspective?

Mr. KEARNEY. As currently framed, no.

Chairman JOHNSON of Connecticut. Well, we really want to get very precise about what changes you would want to make, and because this is a pivotal moment.

Ms. KEARNEY. Yes.

Chairman JOHNSON of Connecticut. And we have enough experience with change in the system so that we really have to do, and this is with no disrespect meant, but, as we try to change Medicare, you know, you have people writing regulations for a system for which it's been many years since they have been involved in it. And, you know, and they are writing regulations for entities that they don't know well. So we then don't succeed in our objectives.

So, you see this in education. We wrote special-ed law reform, and frankly the bureaucrats thought that it was terrible. HHS is far better than this. But I mean they wrote regulations that not

only didn't recognize the reform in law but went back. And it was so bad the groups, everybody were up in arms. That is just too bad. But one of the problems we face is that government, especially in Washington, with all due respect for the many wonderful people that really work with us on these things, is removed.

And they aren't experiencing the pace of change you are experiencing. They aren't experiencing the intensity of the challenge of these very difficult families, and the creativity at the local level that is allowing you to do different things with these families.

So I am really very anxious to be sure that at a very specific level you give us input on why these regulations will or will not work, and how they will help you move forward.

Ms. KEARNEY. Madam Chair, I absolutely agree with—it also is a many-faceted problem, but it is also a question of leadership. And one of the things that we have seen in Florida, in particular, is that the Department of Children and Families did not exercise the leadership in moving forward the Adoption and Safe Families Act. That came from the court, not from a Federal lawsuit, it came from the Supreme Court of Florida through the dependency court improvement program.

And it was absolutely imperative—I think the success in Florida is attributable to a strong executive branch, judicial branch, and legislative branch that now has adequately funded our funds. But we do need the flexibility and we need the ability to draw down more Federal dollars to maximize. Florida right now is 47th in the Nation in social service funding.

And obviously I am very concerned. I am taking over a system that is so broken that it is going to take every ounce of creativity to be able to fix it.

And I appreciate the attention that Congress has paid to this problem because it helps me at the statewide level focus our State on how important this is.

Chairman JOHNSON of Connecticut. Well, we really appreciate your very good input here today, and the input of both panels and the administration. Any final comments? Any final questions?

Mr. KROLL. Could I make a comment since in my testimony I focused on children and parents? I think one group that needs to heard from are the judges who are running model courts throughout this country that make a huge difference. And in my written testimony, I talked about a couple in Texas. In El Paso, where Judge Patricia Macias through many different good ideas working in that community was able to reduce the waiting for children who had been legally free for adoption from 57 to 6 months, I mean, just a phenomenal drop. But it was because everybody got together and there was judicial leadership, and there was a little bit of resources.

It is kind of like the waivers are a tool for good leaders. You know, if you don't have a good leader, the waiver doesn't help. And so we have the Federal Government providing the tools that they have in their toolbox to the good leaders. And I think the waiver program and making it as universal as possible is the way to go.

Chairman JOHNSON of Connecticut. I appreciate your comment about leadership. Obviously, it is just phenomenally true, from magnet schools to nonmagnet schools, to manufacturing basic com-

modities that when you say we aren't competitive and then there they are. It is just extraordinary the difference that leadership makes.

One of the things we are going to do, and Judge Kearney and I were talking about this earlier, and Ben pursued it in his questioning. We really are going to be looking at this issue of substance abuse, both our treatment capability, the flow of people into treatment, the variety of treatment settings that are available, but also, we have a whole system in place to require child support payments because if you bring children into this world, you are obliged to support them.

If you bring a child into this world, you are obliged not to abuse. You just lose that right. And I think that not only do we have to look at the resources available, but I think we have to do some real rethinking about the penalties, about the pressure, about the incentives for parents to take their responsibility very, very seriously, and prenatally.

So I don't know how we do this. But I can tell you, it has got to be done. And we have got to find a way to do it. And we can start by finding a way to at least improve treatment and flow into treatment and management of treatment.

So any thoughts that you have on that, we will be looking into that, probably through an informal breakfast first and then through a hearing. But if there is one thing that has been loud and clear, and I chaired a child guidance task force in my hometown for about—I don't know, but was chair or treasurer for 12 years. And then when I was elected to Congress, the first thing I heard out there in the small towns was 80 percent of our cases had an abuser in the family.

Well, isn't that dumb. And we are still there, and we still aren't focusing on that as aggressively as we need to.

So I am delighted that the Adoption and Safe Families Act has been such a success, and if we really focus now on other aspects of the system, we ought to be able to give you both the flexibility and support that you need.

Thank you.

[Whereupon, at 12:50 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

Statement of Child Welfare League of America, Inc.

The Child Welfare League of America (CWLA) welcomes this opportunity to submit testimony on the implementation of a federal review system for child protection systems, and on the impact of the Adoption and Safe Families Act (ASFA) on the number of adoptions in the United States.

CWLA is a 79-year-old national association of over 1,000 public and private voluntary agencies that serve more than two million abused and neglected children and their families. CWLA member agencies provide the wide array of services necessary to protect and care for abused and neglected children, including child protective services, family preservation, family foster care, treatment foster care, residential group care, adolescent pregnancy prevention, child day care, emergency shelter care, independent living, youth development, and adoption.

Our brief comments that follow chiefly focus on the impact of ASFA on adoptions. They also suggest ways to improve adoption and other permanency outcomes. With respect to the proposed review system, CWLA strongly supports federal efforts to strengthen the quality of services and the capacity of agencies to deliver them. We applaud DHHS and its focus in the proposed rule on outcomes and program improvements. Our comments on the proposal are available on the CWLA web site at http://www.cwla.org/cwla/publicpolicy/pl105–89.html.

The Adoption and Safe Families Act, which originated in this Subcommittee, made clear our shared national goal of helping more children in foster care become part of permanent, loving families when they cannot safely return home. ASFA authorizes payments to states for increasing the numbers of children with special needs who become part of permanent, adoptive families. Early results indicate that many states have been successful in achieving that goal as adoptions of children with special needs have increased 22 percent according to the North American Council on Adoptable Children.

We are pleased and encouraged by the increases in adoptions. At the same time, we have concerns that we urge you to address to ensure that safety and permanency are achieved and maintained. ASFA demands faster permanency decision making, but few new resourcesincluding the very limited adoption incentive funding and additional funding under Promoting Safe and Stable Families programneeded to build capacity among caseworkers and others in the child welfare agency, the courts, and the wider provider community to make good decisions in a timely fashion. We urge Congress to take the following actions to increase and improve stability and permanency for children:

INCREASE RESOURCES FOR POST-ADOPTION SERVICES

Adoptive families need support after, as well as before, an adoption is made final. Children who have been abused or neglected often have special needs and present special challenges for their adoptive families. Post-adoption services help parents meet the specific needs of their adopted children in order to maintain nurturing and permanent families. Post-adoption services often are key in preventing disruption and dissolution and should be available to all families that adopt a child with special needs from the child welfare system. Federal or state adoption subsidies do not pay for the parent training and education, counseling, respite care and residential treatment that these families need. New resources need to be dedicated to ensure that adoptive families have the support they need to care for these vulnerable children.

MAKE ALL CHILDREN WITH SPECIAL NEEDS ELIGIBLE FOR FEDERAL ADOPTION ASSISTANCE

Under current law, children with special needs awaiting adoption are eligible for federal adoption subsidies under the title IV–E Adoption Assistance Program, only if their biological family from whom they are being separated received SSI or welfare benefits (or would have been eligible to receive welfare benefits under the former AFDC program, given the income and resource standards in place in each state on June 16, 1996). Eliminating AFDC eligibility as a criterion for federal assistance would allow all children with special needs to be eligible for a federal adoption subsidy. This change would help more children with special needs be adopted, would replace a current cost and administrative burden, and would treat all children with special needs more equitably.

SUPPORT COURT IMPROVEMENTS

In order to achieve the goals of ASFA, the already overburdened abuse and neglect courts also need help. CWLA supports legislation, such as the Strengthening Abuse and Neglect Courts Act (S. 708) recently introduced in the Senate to help courts deal with the accelerated timelines for the termination of parental rights and other requirements imposed by ASFA that increase the demands on abuse and neglect courts.

HELP OLDER CHILDREN IN FOSTER CARE TRANSITION TO INDEPENDENCE

We are delighted by the interest expressed by members of this Subcommittee to extend support to young people in foster care who reach their eighteenth birthday and are facing life on their own without the support of a permanent family. The hearing held by this Subcommittee on March 9, highlighted the needs of these young people and documented how the federal government can help them become productive, self-sufficient adults. We thank the Subcommittee for its attention to the serious problems facing emancipating foster youths and urge action to meet critical health and shelter needs, as well as the skills needed to become self-sufficient adults.

We appreciate this opportunity to share our views and look forward to working with the Subcommittee on these issues during the coming months.

Statement of Cory J. Jensen, Legislative Assistant, Men's Health Network

As the Subcommittee on Human Resources examines current child protection laws, they should take note of successful efforts at the state level. While states are accountable for their own guidelines, the federal government should promote those initiatives that have had a positive impact in moving children off the adoption roles and into caring families. We urge the subcommittee to consider the following three improvements to the foster care-adoption system.

FOSTER CARE ALTERNATIVES MUST BE CONSIDERED FIRST

By statute, Child Protective Services in the state of Texas must initially consider placing a child with a fit and willing relative instead of in foster care. The specific statue reads:

The court shall place a child removed from the child's custodial parent with the child's noncustodial parent or with a relative of the child if placement with the noncustodial parent is inappropriate, unless placement with the noncustodial parent or relative is not in the best interest of the child [S.B. 359 (e)].

An example CPS letter documenting child custody is included with written testimony provided at the hearing (Exhibit A). A recent Washington Post article (April 13, 1999) cited Texas as having the fourth highest increase in adoption rates. In 1998, Texas had a 76 percent increase in the number of adoptions (the above statue went into effect September 1997).

Other states should be required to seek placement with relatives before putting a child in foster care. The practice of placing the child with a relative forgoes future long and costly court fights over custody of a child that has unnecessarily been placed on the adoption track. In turn, this accelerates the adoption process for other children and allows resources to be used for foster care and on placing those children who do not have "fit and willing relatives."

REQUIRING PROFESSIONAL STANDARDS

In order to ensure that well trained professionals are handling child protection cases, the federal government should require states to set caseworker standards. For example, Louisiana requires that a person performing social studies have a master's degree in marriage and family therapy or a related field. Texas' requirements are less strict, requiring a college degree and relevant experience. By requiring states to set their own standards, qualified caseworkers will be appointed to protect the best interests of the children.

REPORTING REQUIREMENTS

To better protect abused children, states should be required to report the specific relationship of the perpetrator to the abused. Current guidelines for the National Child Abuse and Neglect Data System only require for data to be accumulated on the number of perpetrators and if the perpetrator was a parent (not which parent), caretaker, day care provider or of another relationship to the victim. Documenting the familial relationship of the perpetrator to the abused would provide policy makers with the information necessary to develop better policy and procedures to address the perplexing problem of child abuse.

[An attachment is being retained in the Committee files.]

Statement of National Association of Foster Care Reviewers, Atlanta, Georgia

WHY DOES THE CHILD WELFARE SYSTEM NEED A SYSTEM OF ACCOUNTABILITY?

More than 500,000 children nationally were in the foster care system in the 1970s. While most of these children had been removed from their families as a result of abuse or neglect, some had been removed as a result of poverty; still thousands of other children were at risk of being removed from their homes. Once placed in care, children often experienced foster care "drift," as they were moved from one placement to another with little prospect of returning home or placement in a permanent family. Many of these children remained in foster care for years.

Few safeguards existed in the child welfare system at that time to regulate the unrelenting stream of children entering foster care, and few practices were in place to move children through and out of the system back to their biological families or to a permanent placement with kin or an adoptive family.

In 1980, Congress passed P.L. 96–272, the first national attempt at instilling accountability into the national child protection system. This legislation called for the review of both state child protection systems (427 reviews/audits) by the federal government and provided for state oversight of child welfare cases through a two-tiered system of individual case review by the courts or administrative body; periodic reviews (every six months) and dispositional hearings (after eighteen months). Though good intentioned, the accountability provisions of P.L. 96–272 were never fully operationalized, never supported.

In many places state review systems focused their activity on monitoring procedural compliance of foster care cases. In addition, potential users of review information such as judges, child welfare administrators, policy and budget developers, had neither the tools nor the relationships to capture and utilize review data in their practice.

In many other places, state review systems have contributed to raising community expectations for good foster care practice by raising critical questions about what works in child welfare practice, questioning the relationship between procedures and improved outcomes for children. They have used aggregate and anecdotal information from reviews to obtain increased resources and alter policy that prevents permanency for large groups of individual children in foster care. The review systems that have demonstrated an impact on outcomes for children have fed back information from reviews to the parties who have the authority to eliminate barriers, change policies and practices, and expand resources. This activity is described in management literature as a "feedback loop," and is an essential element of an effective organization, one that achieves its objectives and can adapt to changing environments and circumstances.

Now again, we are faced with the same problem—a growing crisis in child welfare. A growing number of children in and out of the child protection system are dying each year. The list of well-documented abuses within the management and operation of child welfare systems across the country is also growing, with 22 jurisdictions under consent decree or court oversight. Since 1980 the cost of protecting our nation's children has risen dramatically, while we have seen more children enter the system, stay longer, and eventually "age-out" of the system less prepared for adulthood. We have seen countless audits and sanctions imposed by the federal government on these systems, however, these penalties have had little impact on improving the system or the outcomes of children. Litigation, federal audits and penalties have been unsuccessful in holding state child protection systems accountable.

The Adoption and Safe Families Act of 1997 (P.L. 105–89) has provided for states a clear legislative direction. The Act clarifies that the focus of child welfare systems is ensuring the safety and swift permanency of children in need of protection. P.L. 105–89 reinforces the need to monitor foster care systems in terms of these outcomes. ASFA, like P.L. 96–272, once again holds great promise for bringing accountability to our child protection systems.

We can not repeat the mistakes of our past. The future of our child welfare systems and of the children in care rests on the implementation of ASFA and the construction and implementation of a sound accountability system.

WHAT WOULD AN ADEQUATE SYSTEM OF ACCOUNTABILITY LOOK LIKE?

An adequate system of accountability would build on the system begun in 1980 under P.L. 96–272 and would ensure:

- Only children who are "unsafe" are brought into care.
- Children who do enter the system are kept safe.
- Children in care are either reunified with their parents or found permanent, life-long families quickly.
- Children who spend time in care are provided the same opportunity for success as any other child, the same opportunity as our own children.

1. *Objective Outcome Measures:* The development of an adequate system of accountability for child welfare would start with outcome measures that are objective, and quantifiable.

- Criteria for valid outcome measures would include:
- Can be objectively quantified.
- Able to be tracked over time.
- Validated by independent sources.

• Outcomes that you desire for your own children.

2. *Independent Oversight:* An adequate system of accountability would be developed and administered independent of the child protection system that provides services, allowing for an objective assessment of the work performed and the results of these efforts. It would draw on existing accountability and independent review structures already in place in state and local communities. Such a system would collect management *and* child outcome data, have the capacity to aggregate and analyze this information, to transmit and share it with stakeholders throughout the system who have decision-making authority at the case and policy level, and to facilitate problem-solving and reform where needed.

3. *Accountable to All Stakeholders:* An adequate system would be accountable to the citizens and taxpayers, to Congress and state legislatures, to families and children.

IS THE PROPOSED SYSTEM OF ACCOUNTABILITY "ADEQUATE"?

According to the criteria outlined above the system of accountability proposed by HHS is not adequate to ensure the safety, permanency, and well-being of children in foster care.

1. *An adequate accountability system requires a foundation of child-specific and* system outcomes. The outcome measures proposed by HHS provide important management data for state child welfare systems, however, they are not objective indicators of outcomes for individual children in care. Given the organizations the Department selected to consult with, it is not surprising that the outcome measures selected are highly subjective. These organizations have a vested interest in the measures being subjective, so as to allow for broad interpretations of compliance and success. If the outcome measures had been formulated by former foster children, and natural, foster and adoptive parents, the measures would focus on child outcome indicators, not indicators of system performance and would look quite different:

• Minimal academic truancy
• Academic performance consistent with IQ
• An absence of criminal arrests or convictions
• High school/college graduation
• An absence of out of wedlock pregnancy
• An absence of sexually transmitted disease

Each of these outcomes can be objectively quantified and tracked into adulthood. Each of these outcomes can be validated by reference to independent databases. These are the outcomes which should be linked to eligibility for Federal and State funds. The measures proposed by the Department can be helpful if modified as management tools for the States and service providers, but ultimately what parents and taxpayers want for children in care is what they want for their own children.

2. *An adequate accountability system must be truly independent of state and local child welfare agencies.* The proposed system is not independent; it allows states in partnership with the Children's Bureau to hold themselves accountable for their own work and practice. States and HHS will remain under suspicion by the media and public as long as they are reviewing their own work —much like the fox guarding the hen house. The only way to ensure real accountability and convince stakeholders that the data and information collected through federal oversight is accurate it to design an independent accountability system, one free of political and financial interest.

Opponents to independence will claim that State child welfare agencies must be critical participants in the accountability system if systemic improvements will be successful. While we agree that State input into the design is valuable and that States will need to be engaged in problem-solving and implementing reform and corrective action plans, there is no justification for why representatives of the state child welfare agency should be members of the team which is assessing their own work and performance. Imagine if students graded their own papers—everyone would get an "A+."

The proposed HHS framework does focus accountability efforts on continuous improvement, however, the structures and mechanisms are not in place nor identified for ensuring that improvements are made or are effective in resolving systems issues. In addition, these improvement schedules are far from timely.

Effective accountability systems need to have uninterrupted access to every stakeholder in the system including the citizenry who pay for these services. There is no mechanism for reporting or being accountable to local communities.

WHAT NEEDS TO BE DONE?

Our child welfare systems are managed by headlines. Administrators are forced to make rapid, often ill-considered policy and practice responses to isolated cases of severe abuse or child death. We need an accountability system that is focused on the outcomes we want to achieve, not the situations we want to avoid.

Experience demonstrates that litigation and class action suits have not been effective oversight mechanisms. Where they have occurred, outcomes for children and systems have not improved, but in fact have gotten worse. Litigation has proven to be a blunt accountability tool, focused more on process than outcome. The result, a continued deterioration of outcome measures.

A solid accountability system needs to be constructed now.

1. *HHS' recommended outcome measures need to be expanded to include child-specific, objective indicators as described above.*

2. *The assessment phase of the child and family review system needs to exclude representatives from state and local child welfare agencies.* This team should be convened by federal representatives and composed of representatives from local independent review programs as well as other stakeholders in the system who are independent of practice. This team should also be part of the problem-solving conferences where the findings are presented and discussed and should also be the entity to monitor timely compliance with corrective action agreements.

3. *State and local independent review programs need to become an integral part of the accountability framework for child welfare.* Since being mandated as part of P.L. 96–272 in 1980, foster care review has been found to be an invaluable accountability tool. Many state and local independent review programs around the country have the capacity to serve in this role. In fact, many already do, except their efforts are not tied to the federal accountability structure and they lack the authority needed to require corrective action by the child welfare agency. We need to expand the capacity of these independent review programs to be the accountability tool they were intended to be.

With their inception in 1980, Congress gave states discretion in the design of their independent review systems, allowing reviews to be conducted by either a court or administrative body. Congress intended that that there be an independent review of cases that would result in agency improvements, greater levels of accountability, and enhanced community awareness of foster care issues.

We learned from these early efforts that foster care review helps focus casework activity on the achievement of permanency goals and on the improvement of conditions for children in care. Periodic review serves two critical purposes; a timely reminder of a child's needs and a monitor of the child welfare systems' efforts to meet these needs.

After nearly twenty years Congress saw insufficient progress and again became dissatisfied with the number of children in foster care and the length of time they spent there. Fueled by the public's anger over the failure of child protection systems' efforts to prevent the severe abuse and sometimes murder of children in their custody, Congress legislated new priorities for system accountability: safety, permanency and well-being. The Adoption and Safe Families Act (ASFA) reflects the intent of Congress to achieve accountability and improved outcomes for children in foster care. ASFA mandates shorter timelines, more focused permanency decision-making, and emphasizes making reasonable efforts to prevent placement, reunify families, or secure an alternative, permanent home.

The review of cases is a valuable tool for improving the safety, permanency and well-being of children in foster care. Congress has recognized the importance of focusing child welfare systems on these outcomes for children and through the implementation of the Adoption and Safe Families Act of 1997 (ASFA), has initiated a transition in child welfare policy from a system focused on procedure to one focused on positive outcomes and greater levels of accountability.

Recent research suggests that increased accountability and more positive outcomes for children in care are more likely to occur when a competent, independent case review program is in place. One of the reasons case review programs are linked to better outcomes for children is that these programs serve as a catalyst for both case and systemic improvements, essential processes if we are going to meet the requirements and intent of this new federal policy. Linked to a revised HHS' child and family review process, independent review could provide a powerful accountability system for our country's child welfare system and for our children in care.

Statement of Hon. Fortney Pete Stark, a Representative in Congress from the State of California

Madame Chairwoman, thank you for holding a hearing on an issue that often gets swept aside in the debate over welfare reform. The critical issue of adoption for children in the child welfare system must remain a priority as we search for the best way to assist families in successfully caring for their children. I'd like to begin by saying that I believe that all children deserve a single, stable family environment.

Today we are reviewing a system created with the passage of the Adoption and Safe Families Act of 1997 that provides financial incentives to states that increase the number of adoptions out of foster care. When this Subcommittee addressed this legislation in the last Congress, I expressed my reservations with a system that provides financial incentives to States that swiftly move children through the foster care system. My concern then, as it is now, was that a per-child bonus would encourage states to jump at the chance to cash-in at the expense of cases that need a longer review. With this carrot dangling overhead, I suspected Governors would not do what they should to encourage the public child welfare system to work intensively with the child and family to meet their individual needs.

My fear that we would see a rush to get children adopted regardless of whether it is in the best interest of the child and family is being confirmed. An article published in the Tuesday, April 13, 1999 edition of the Washington Post reports that the push to place children is raising the fears about the appropriateness of many State placement decisions.

The Post reports that the encouragement of financial incentives has driven up the number of foster children adopted in virtually every state, and in many cases has increased the number of adoptions by fifty percent.

Child advocacy groups such as the Child Welfare League of America share my fear that States are getting lazy, that caseworkers are giving up on trying to reunite children and parents because of federal laws forcing agencies to decide sooner on a child's fate, and that children are quickly being placed with adoptive parents who may not have access to the services necessary to prepare them to care for a child with special needs.

I am all for providing technical assistance to States so that they can identify barriers to permanency and develop strategies for ensuring that children have a permanent home. I am all for providing increased funding for the training of public child welfare workers so that they have the skills needed to address the individual needs of children and their families and to make appropriate decisions about permanency. And I am all for providing additional funding to states in order to reduce the ratio of children in foster care to case workers. But I remain fearful of any strategy that provides a funding incentive that our States can use to halt efforts to strengthen and reunify families.

Adoption is a worthy and important option for many children, but there shouldn't have to be financial incentives for the States to do right by their children. Only if adoption is the chosen option by way of thorough permanency planning efforts that adequately provide services to children and families, then adoption it should be.

THE WASHINGTON POST NATIONAL

Revamping of Foster Care Brings Surge in Adoptions

Push to Place Children Raises Fears About Rushed Decisions

By BARBARA VOBEJDA
Washington Post Staff Writer

The nation's troubled foster care system is in the midst of a striking transformation that has driven up the number of foster children adopted in virtually every state, in many cases rising by 50 percent or more in less than two years.

Across the country, adoptions of foster children last year were roughly 40 percent higher than in 1995, increasing to more than 36,000, according to state figures collected by the North American Council on Adoptable Children (NACAC) and reviewed by the federal Department of Health and Human Services.

The rapid increase is the result of recent federal and state efforts to revamp a system that has trapped tens of thousands of children in foster care, often shuffling them between homes and institutions for years.

Those efforts represent a fundamental change in thinking, a shift away from doing everything possible to return abused and neglected children to their birth parents and instead working much faster to find them a permanent, safe home.

That has led states to retrain social workers, follow strict timetables, hire more family court judges and push harder to find adoptive families for children stuck in foster care.

The results have been dramatic: In Illinois, adoptions in fiscal 1998 were double the average of the three previous years; the increase was 76 percent in Texas and 57 percent in Florida.

In the District, adoptions rose by 53 percent; in Maryland, by 30 percent; and in Virginia, by about 11 percent.

"For the first time, states are focusing on really putting their attention on permanent placement for kids," said Michael Kharfen, spokesman for HHS. "This is the first real increase in kids being adopted out of the foster care system in the entire history of the program."

Experts caution, however, that the surge in placements could have dangerous side effects. With pressure building for increased adoptions, some fear this may lead to more cases of ill-prepared families taking on emotionally troubled children.

Agencies historically have had a harder time placing minority children and those who are older or disabled.

The new survey did not collect information about the age and race of the children, but state officials and experts say the recent surge in numbers reflects adoptions of the children easiest to place, and it is likely to take much longer to find homes for those who remain in foster care.

The federal foster care program was created in 1980 to help states deal with abused and neglected children, and the system has grown to about 500,000 children. States began efforts several years ago to move children through that system faster, and a federal law with the same goal was enacted in 1997. Among other things, the federal law promised to pay states $4,000 to $6,000 for every child adopted over a baseline.

That created a substantial financial incentive—one that could amount to more than $9 million this year for Illinois, for example. But the number of adoptions has increased so rapidly that the $20 million set aside in that bonus pool now appears insufficient, and the government may be forced to pay less than it promised, Kharfen said.

The intense focus on finding a permanent home for children also may have other unintended consequences, child advocates warn.

Karabelle Pizzigati, director of public policy at the Child Welfare League of America, said she feared that caseworkers may err on the side of taking children from birth parents because of new state and federal laws forcing agencies to decide sooner on a child's fate. In many states, she said, inadequate treatment services could make it difficult for drug-abusing parents to get help in time to keep their children.

Also, caseworkers may be pressuring foster families to adopt before they are ready or placing children with inappropriate families, she warned. While it is too early to know if the most recent adoptions will lead to problems, in the past some families complained that they were not told the extent of the abuse their adoptive children previously suffered. And when that abuse led to serious behavior problems in adolescents, some of the adoptive families said they were not able to cope with the children.

"The message to [caseworkers] is: 'You've got to place these kids,'" Pizzigati said. But having young, often inexperienced caseworkers face shorter deadlines "is not a good mix for considering fully and deliberately all the options that may be in the best interest of children," she added.

But advocates also are pleased that many more children who had been stuck in foster care are being adopted.

In the District, the numbers have increased at least partially because the D.C. Superior Court has held the Child and Family Services Agency to tighter time frames to keep children from getting stuck in foster care.

In some cases, the court has waived the rights of biological parents who stood in the way of adoption when a judge had determined that it was the best option for a child, according to Toni Oliver, program manager for adoption in the agency.

Illinois slashed the number of families each caseworker was assigned, added courtrooms dedicated to hearing these cases, began disciplining caseworkers who failed to show up at the hearings and offered financial incentives to the agencies handling adoptions to move children out of the system.

In Texas, the state adopted legislation in 1997 that gave caseworkers just 12 months from the time they took custody of children to secure court orders determining whether the children would be returned home or placed for adoption.

"You have to create a sense of

FILE PHOTO/BY JUANA ARIAS—THE WASHINGTON POST

A NEW FAMILY: *Denise Thompson hugs her newly adopted son, Nicholas, in 1997, the year a bill passed calling for bonuses to states that increase adoptions.*

THE LOCAL IMPACT: *D.C. Mayor Anthony A. Williams holds a newly adopted child last year. The District raised its adoptions by 53 percent in fiscal 1998.*

FILE PHOTO/BY SUSAN BIDDLE—THE WASHINGTON POST

Incentives for Placements

States will receive additional federal funds for each child adopted above the baseline, which is the average yearly number of children adopted between 1995 and 1997.

States ranked by percentage increase

State	Baseline	1998*	No. change	Percent change
Ill.	2,200	4,656	2,456	112.0%
Wyo.	15	29	14	93.3
S.C.	256	473	217	84.8
Tex.	880	1,548	668	75.9
N.D.	47	79	32	68.1
Miss.	114	188	74	64.9
Minn.	258	416	158	61.2
Vt.	75	120	45	60.0
Fla.	987	1,549	562	56.9
Iowa	350	537	187	53.4
D.C.	**110**	**168**	**58**	**53.0**
Conn.	207	314	107	51.7
Kan.	349	529	180	51.6
Ore.	445	662	217	48.8
Utah	225	328	103	45.8
Okla.	338	485	147	43.5
Del.	39	55	16	41.0
Wis.	467	640	173	37.0
N.M.	147	201	54	36.7
Ga.	493	664	171	34.7
Calif.	3,287	4,298	1,011	30.8
Mo.	557	727	170	30.5
Md.	**342**	**444**	**102**	**29.8**
Idaho	44	57	13	29.5
N.J.	621	801	180	29.0
Wash.	607	766	159	26.2
Mont.	115	145	30	26.1
Pa.	1,224	1,522	298	24.3
N.C.	467	576	109	23.3
Mich.	1,905	2,234	329	17.3
N.H.	45	**51	6	13.3
Va.	**298**	**332**	**34**	**11.0**

NOTE: In all other states the increase was less than 10% or 1998 estimates were not available.
*Estimate based on preliminary reports. **Includes only children receiving federal assistance.
SOURCES: Health and Human Services Department, North American Council on Adoptable Children

THE WASHINGTON POST

urgency," said Patsy Buida, adoption policy specialist in the Texas Department of Protective and Regulatory Services. "Six months is nothing to an adult, but it's an eternity to a child."

In El Paso County, the average wait from the time children were legally freed for adoption until they were adopted dropped from 56 months in 1995 to seven months in 1997. Children's Court Judge Patricia Macias said "it has shrunk to almost nothing" because the children are placed with potentially adoptive families as soon as they are removed from their homes, even if they may eventually return to their birth parents.

In Texas and much of the country, roughly two-thirds of the adoptions are by foster families with whom the children are already living. In many cases, officials said, the foster families simply hadn't been encouraged to adopt in the past.

Richard Richardson, president of Children's Services of Roxbury, a private social service agency in Boston, said he was given a quota—the number of children the state expected his agency to place for adoption. His quota was 23, double the number his agency usually would place for adoption.

"We kind of bit the bullet and we found out, once you concentrate on it, you can do it," he said. The agency didn't give up on reunifying children with their birth families, but in many cases, he said, "you could go on talking about reunification forever and it's not realistic."

Joe Kroll, executive director of NACAC, an advocacy group based in St. Paul, Minn., said the steep rise in adoptions heightens the need for states to help the newly created families, ensuring that they have counseling, Medicaid for the children and other services to keep them together.

Still, he said, the adoption numbers show "we are finally paying attention to the kids. There have been voices crying in the wilderness for years about these issues."

Statement of Voice for Adoption

Voice for Adoption is a coalition of over 50 state, local, and national adoption organizations that is committed every day to working on behalf of children who are waiting for adoptive families. Following are a few examples of children who have been adopted over the past year as a result of the increased emphasis on adoption of special needs children.

Daron, a handsome 15 year old African American youth, had been in 20 foster care placements in Nevada since birth. He had one failed adoption but he never gave up hope on having a family of his own.A family from Salt Lake City got on the internet, found the FACES of adoption site and read about Daron. Several months later the Daron became their son. In Daron's words, "Knowing that you're not waking up the next morning and not having to move to a new family to have a permanent home is great."

Stephanie, a 12 year old Latino girl from Arizona wants to be an actress. She appeared on the Maury Povich show that was devoted to children waiting for adoptive families in January 1999. Stephanie said, "I'm jealous of my friends. They get to go home to a family and I just can't do that." A family from Alabama called about Stephanie after seeing her on the TV show. By March she was with her new adoptive family.

Michael, 9; Antoine, 7; James, 4; and Shawn, 3 are four spirited, active brothers. Their recent adoption assured that they will grow up together. The boys all entered foster care when Shawn was born with a positive toxicology screening for cocaine. Their birth mother has not been able to recover from her drug addiction. Antoine has some learning disabilities and needs special tutoring at school. Shawn evidenced tremors and other signs of drug exposure as an infant, but has since developed into a typical preschooler. The older boys are very healthy and doing well in school, but they worry about their birth mother and younger brothers. They were afraid that adoption might mean separation from their brothers, and were relieved when a family was found for all four of them. Their adoptive parents are adapting well to the permanent addition to their home of four little boys. They note that they would not have been able to commit to the care of all four brothers without the availability of title IV–E Adoption Assistance.

The children above represent many of the children that Congress sought to help with the implementation of the Adoption and Safe Families Act. Many children like Daron age out of foster care without ever having the opportunity to be part of an adoptive family. Daron's dream was realized because he was listed on the internet. Stephanie moved from Arizona to Alabama to realize her dream and the state of Arizona had the courage to include Stephanie on the Maury Povich show. Michael, Antoine, James and Shawn represent the thousands of children in foster care because of their parent (s)'s substance abuse problems. Access to title IV–E Adoption Assistance assisted with their placement with an adoptive family.

Children who leave the foster care system through adoption often have special needs and the families who step forward to adopt these children need to be prepared to address the special needs of these children. Resources are needed to develop and maintain a comprehensive system of adoption supports and post adoption services that recognizes and addresses the challenges these children present and the support that the families who adopt them will require. In addition, we need the legislative changes to provide the necessary structure. The waiting children need your continued support. This support is critical to assuring waiting children have the opportunity to be part of an adoptive family.

Voice for Adoption (VFA) is pleased to have the opportunity to submit testimony to the Committee on Ways and Means, Subcommittee on Human Resources discussing the increase in the number of special needs adoption. VFA has been a consistent partner in development of strategies to move the thousands of children who have been trapped in the foster care system to safe, stable, permanent adoptive homes. Early results indicate marked improvement in state efforts to recruit adoptive families with permanent safe homes. We believe that these results are directly tied to Congressional efforts to focus on permanency and safety for children in the foster care system. Passage of the Adoption and Safe Families Act with the inclusion of Adoption Incentive Payments has sent a clear message to the states that children must not be allowed to languish in foster care.

National attention on the need for states to move children who can not return home to permanent adoptive placements has focused state work on finding adoptive families for children in the foster care system. Adoption 2002, the Adoption and Safe

Families Act, and Congressional hearings send a clear message that there is strong interest in children moving to adoptive families when they can not return home. States' performance has exceeded the expectations of the Congress and many advocacy groups. Voice for Adoption calls on Congress to continue to support efforts to move foster children who can not return home to adoptive families. Full funding for the Adoption Incentive Program will continue to send the message to states that Congress recognizes and supports the work done in the first year. VFA estimates that the additional cost will be close to $25million dollars.

Voice for Adoption feels strongly that the incentive dollars to states must continue to support additional adoption related work. As states fully implement the Adoption and Safe Families Act, the number of children who will require adoption services will increase. While many of these children will be adopted by their foster parents, others will require recruitment of adoptive families. Adoption professionals and State officials agree that as time goes on the children requiring adoptive placement will be more challenging and require more time and energy to place in adoptive families.

Voice for Adoption has developed a Public Policy Agenda that addresses the various components that must be in place to achieve our goal of adoption for children who cannot return home.

VFA supports the following funding and legislative initiatives.

FUNDING ISSUES

• Increased funding for adoption incentive payments. We believe that the strong performance by the states in the first year should be matched with full funding for the adoption incentive program. VFA asks Congress to increase the authorization and appropriation levels to assure full funding. We estimate the need for an additional $25million to bring total funding to $45 million. Congress recognized the need to direct the incentive payments back to the states to support additional adoption related activities. VFA supports continuation of that requirement.

• Full funding for the Adoption Opportunities Act. Voice for Adoption calls on Congress to re-establish an authorization level and fully fund the Adoption Opportunities Act at $50 million.

This level of funding is needed as the numbers of children double or even triple in the next few years.

Model programs must be developed and supported which

1. Recruit and prepare adoptive families
2. Match waiting children with approved families on the state, regional and national levels
3. Apply the latest technology such as the internet and video conferencing to the adoption process in order to streamline the process
4. Office training and technical assistance to states on all aspects of adoption
5. Measure the cost effectiveness of adoption services.

Public and private agencies, adoption exchanges and adoptive parent organizations must be eligible for these funds as they all play key roles in permanency for children.

• Support development and funding of a national purchase of service system. There is broad recognition that as the easiest to place children move to adoptive families, the recruitment of adoptive families for the remaining children will be more challenging. The inclusion of interjurisdictional placement language in AFSA challenges states to look throughout the country to find families for children in need of adoptive homes. One barrier to full implementation of this provision is the lack of funding to support adoptive family preparation and post adoption services in locations outside of the "home" jurisdiction and fully utilize the resources of the private sector. It is unlikely that this provision of AFSA will reach full implementation until the funding issues are addressed through a national purchase of service system.

• Support for funding for increased court and legal costs associated with the increased number of special needs adoptions. VFA congratulates Senators DeWine, Rockefeller, Landrieu, Chaffee and others for their recently introduced legislation and calls on the House of Representatives to support this issue.

• Support increased funding for post adoption services either through existing funding streams or through creation of new funding.All the good work that has been done, and will be done, to secure safe permanent adoptive families for children will be for naught if we do not support the families who have adopted these special needs children. Children who have been abused, neglected or abandoned present special challenges for their adoptive families. If the families and children are not supported these adoptions may not last and the children will wind up back in the state child welfare systems.

LEGISLATIVE INITIATIVES

• Support equal access to title IV–E Adoption Assistance for all foster care children who need a permanent loving home. Voice for Adoption calls on Congress to "level the field" for all children who would benefit from a safe permanent adoptive family. The financial background of a child's birth family should have nothing to do with whether or not their adoptive family has access to adoption assistance. title IV–E Adoption Assistance must be extended to all special needs children.

Assure legislation related to the implementation of the Hague Convention on Intercountry Adoption is consistent with current adoption requirements under AFSA with regard to geographic boundaries. Legislation has been introduced in the Senate related to the Hague Convention. VFA will be following that legislation carefully to assure that the process created for intercounty adoptions is not in conflict with adoption requirements set forth in the Adoption and Safe Families Act.

What has happened to create the increased number of adoptions throughout the country? The increase is a result of national attention focused on foster children who have grown up in foster homes that were created as temporary solutions for children who had been abused or neglected. Too often foster children who can not safely return to their homes "age out" of foster care never having been a member of a loving family. Congressional interest and attention has focused state and local officials on the need to do more for foster children.

The first year has been a success, but the work has only begun. Congressional support is needed to establish and fund a comprehensive system of adoption supports and post adoption services. That system should include, but not be limited to,

1. Assurance that staffing in the state and local offices is in place to focus on securing permanency through adoption for waiting children,
2. Strengthening recruitment of adoptive families,
3. Providing thorough preparation of adoptive families,
4. Allowing all adoptive families of special needs children access to title IV–E Adoption Assistance
5. And continuing to provide support for the adoptive families post adoption.

Voice for Adoption thanks the committee for the opportunity to submit testimony and looks forward to continuing to work with Congress on these important issues.