What Barriers Remain

Areas of Needed Adoption and Foster Care Reform in the 113th Congress
The past decade has been one of great change for the millions of children around the world in need of safe, permanent and loving families. Today there are significantly fewer children in U.S. foster care, and those who come into care are less likely to live out their childhoods as foster youth. More children are being cared for by their relatives, and one out of every two children available for adoption in the United States has that plan fulfilled. Such change has not been brought about by one person or one public law; this change has occurred because of dedicated policymakers and advocates who have worked tirelessly for years and have promised not to rest until every child in the world has the forever family they need and deserve.

At the same time, advancements in data, research and brain science have helped us better understand the problem that lies ahead if we fail to provide our children with what they need to thrive and become successful adults. Despite our success, the number of youth who leave U.S. foster care without the support of families continues to rise. Worldwide, millions of children are growing up on the streets or in institutions—and perhaps the most compelling example of the need for change is that we do not know how many. Current world surveys do not even acknowledge this problem. In our experience, a law or government policy can either be the reason for immeasurable transformation in a child’s life or a barrier to this change.

The Congressional Coalition on Adoption Institute’s (CCAI) mission is to not only identify those instances where a law or policy is standing in the way of children finding their forever homes but also, and more importantly, generate ways that policymakers might act to reduce or eliminate these barriers. What follows is a brief discussion of different issue areas where policymakers can focus their immediate attention. CCAI intends to continue its work to further explore these and other areas, as well as to provide individuals who are experiencing these very issues the opportunity to make their voices heard.

Robert F. Kennedy

Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest walls of oppression and resistance.
A Look Back...

Before looking to the future, it is important to understand how far we have come. There are many reasons to celebrate, among them are the following:

- In 2012, 400,000 children were in foster care—a 29% decline from the 1999 peak of 567,000 (U.S. Department of Health and Human Services, 2013).

- The average length of time a child stays in foster care dropped to 20.4 months in FY 2012—a significant decrease from FY 2001, when the average length of time in foster care was 32.5 months (U.S. Department of Health and Human Services, 2004, 2012).

- More than one in four foster youth are living in homes with their relatives (a placement often referred to as kinship care)—up from 19% in FY 2001 (Child Trends, 2012).

- The number of children waiting to be adopted from foster care is declining—from 135,000 in FY 2006 to 102,000 in FY 2012 (U.S. Department of Health and Human Services, 2013).

- The number of children adopted out of foster care hit an all-time high of 57,000 in FY 2009 (U.S. Department of Health and Human Services, 2012).

- Since 2002, more than a half-million foster children found homes through adoption (U.S. Department of Health and Human Services, 2012).


- U.S. State Department data documents a rising number of older children being placed in families through intercountry adoption. Of the 8,668 total adoptions into the U.S. from all countries in FY2012, just 10 percent were under age one and 58% were ages one to four (U.S. Department of State, 2013).

- Ninety countries have ratified the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption since it was created in 1993 (Hague Conference on Private International Law, 2013).
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What Barriers Remain
113th Congress

Basic Human Right to a Family

ISSUE

The U.S. Government Action Plan on Children in Adversity (APCA), first introduced in December 2012, not only recognizes the critical role a parent plays in the development of a child but also calls on seven U.S. government departments and 30 agencies to act together to accomplish the following goals: increase the number of children meeting their developmental milestones, reduce the number of children living outside of family care and decrease the number of children who are abused and exploited.

FOR CONGRESSIONAL CONSIDERATION

• How can U.S. foreign policy and programs better reflect the goal of reducing the number of children living outside of family care (Objective 2 of the U.S. Government Action Plan on Children in Adversity)?

• What role can Congress play in ensuring that the three objectives of the U.S. Government Action Plan on Children in Adversity are met?

• What can be learned from the U.S. government’s approach to trafficking, the President’s Emergency Plan for AIDS Relief (PEPFAR) and global women’s issues?

Background

Studies examining the influence that affection and attention have on humans have found that children who receive consistent, supportive care from at least one caretaker as they grow up are more likely to do better in school and have healthy relationships and are less likely to abuse substances, commit crimes or become homeless. As researcher Paul Tough details from many of these studies in How Children Succeed, “Parents and other caregivers who are able to form close, nurturing relationships with their children can foster resilience in them that protects them from many of the worst effects of a harsh early environment. This message can sound fuzzy, but it is rooted in cold, hard science. The effect of good parenting is not just emotional or psychological, the neuroscientists say; it is biochemical” (Tough, 2013).

Science tells us that in early childhood a child’s brain is made to tolerate a mild amount of stress—the type of stress that comes from experiencing ordinary life occurrences such as hunger or fatigue. The body is designed to send out signals of this stress, signals such as crying, and the response that comes from a caregiver, the provision of food or affection, for instance, acts as a buffer against the stress. Children whose environment allows for them to both reach out through crying or babbling and receive responses from a caregiver will experience appropriate brain development. Conversely, the brains of children who are exposed to high amounts of toxic stress and lack the protection and support of a consistent caregiver will not develop properly. The exposure to stress will, in essence, destroy the
brain's circuits that are needed for memory, emotion, attachment and other important human functions. Simply put, a parent plays a critical role in the physical and emotional development of a child, and the lack of parental care in a child's life can lead to lifelong developmental challenges.

Given that the biological consequences of toxic stress on early childhood development are no less real than the damaging effects of violence or malnutrition, one would expect there to be a series of policies and programs designed to ensure that a child's right to a family is protected. But, sadly, that is not the case. Article Sixteen of the Universal Declaration of Human Rights (UDHR), the basis of international laws on human rights, reads as follows: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Despite the UDHR's recognition of the family as a basic unit of society, the UDHR never specifically acknowledges that a child has a right to grow up in a family.

Yet the UDHR is a general document, outlining the most basic and fundamental of our human rights. Children's human rights are more specifically addressed in the Convention on the Rights of the Child (CRC). While the U.S. is not a signatory of the CRC, the CRC is an international human rights instrument generally accepted by the majority of the world's governments. The preamble of the CRC recognizes "that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding." However, the CRC does not go so far as to say that a child's right to a family is a human right worthy of international protection.

Until recently, the same could be said about U.S. foreign policy. However, in December of 2012, the U.S. government introduced the U.S. Government Action Plan for Children in Adversity (APCA). The first policy of its kind, APCA not only recognizes the critical role a parent plays in the development of a child, but it also calls on seven U.S. government departments and 30 different agencies to make reducing the number of children living outside of family care a strategic global priority. More specifically, APCA requires that all departments, agencies and offices of the U.S. government work to improve children's well-being through a comprehensive approach that does the following:

1. Ensures a strong beginning for all children through comprehensive programs that promote sound development through the integration of health, nutrition and family support;

2. Enables families to care for their children, prevent unnecessary family-child separation and ensures appropriate, protective and permanent family care; and

3. Prevents, responds to and protects children from violence, exploitation, abuse and neglect.

CCAIC's The Way Forward Project report's definition of Permanent Family Care (PFC) was cited in the U.S. Action Plan on Children in Adversity. That definition describes PFC as "an unconditional, loving and nurturing commitment to a child by an adult or adults with parental roles and responsibilities that provide(s) lifelong support to the child. These family relationships should have an emotional component with intimacy and a sense of belonging, and should also generally involve legal recognition of both parental and child rights and responsibilities." www.thewayforwardproject.org
FEDERAL FINANCING OF CHILD WELFARE

ISSUE

Currently, federal dollars primarily fund foster care and are less available to support states’ efforts around prevention, family reunification and post-adoption support. A related concern is that federal support for child welfare comes from a variety of different programs, each with its own set of complex rules and requirements.

FOR CONGRESSIONAL CONSIDERATION

- How could federal child welfare funding be structured to provide a more flexible funding stream?
- How could any reforms maintain accountability?
- Should Congress allow states to reinvest funds into specific child welfare services that have been “saved” by the reductions in the number of children in out-of-home care?
- How might federal funding be used to produce positive outcomes for youth in their care?

Background

According to a report published by Child Trends in 2012, states spent approximately $29.4 billion in federal, state and local funds for child welfare purposes in FY 2010. Of this total, $13.6 billion came from federal sources, the largest source of which is Title IV-E of the Social Security Act (DeVooght, with Fletcher, Vaughn & Cooper, 2012).

For the past 20 years there has been continued debate as to whether the current federal financing structure appropriately supports states in their efforts to provide for children’s safety, permanency and well-being. While there is general consensus that the current system is broken, there is not yet consensus on what form finance reform should take.

Chief among the concerns about the current structure is the fact that federal funds primarily fund foster care and are less available to fund states’ efforts around prevention, family reunification and post-permanency support. A related concern stems from the fact that federal support for child welfare comes from a variety of different programs, each with its own set of complex rules and requirements.
The system's overemphasis on foster care can be traced to two very specific aspects of the federal financing structure. First, Title IV-E is an open-ended entitlement program—meaning that states receive reimbursement for appropriate foster care placement activities while other non-foster care programs are funded through discretionary appropriations, making them subject to the annual appropriations process and, therefore, seen by states as a less reliable source of funding. Second, the amount of money a state receives under Title IV-E is a result of the number of Title IV-E-eligible children the state maintains in foster care—meaning that a reduction in the number of children in out-of-home care results in the reduction of funds a state receives under Title IV-E.

Over the past decade, several proposals for child welfare reform have been offered, but none have been enacted. A number of these proposals have called for the combining of child welfare funding into a single, more flexible funding stream to allow states to better align resources around the individual needs and challenges faced by children in their systems. Opponents of such an approach raise concerns that removal of the various program requirements associated with the current structure might result in states being held less accountable. Additionally, questions have been raised as to whether such an approach would ultimately lead to the reduction in the amount of overall funding provided to states for child welfare purposes. In 2007, the Pew Commission issued a report on the finance and reinvestment of savings in foster care that suggested several different financing options, including allowing states to reinvest funds “saved” by the appropriate reduction of children in out-of-home care into child welfare services (Pew Commission on Children in Foster Care, 2007).

While none of these proposals have been enacted into law, Congress did pass legislation in 1994 that allows states to apply for a waiver of the Title IV-E funding restrictions. Over the past two decades, these waivers have given states the flexibility needed to test promising alternative practices. The authority to continue these waivers has been extended and revised by Congress several times, most recently in 2011.
What Barriers Remain
113th Congress

Cost of Adoption and Guardianship

ISSUE

The cost to adopt a child ranges from “minimal” to more than $40,000 (Child Welfare Information Gateway, 2011). This can depend on whether the adoption is a domestic infant, foster care or international adoption. The post-adoption costs of adding a child to a family can be significant. At the same time, according to the 2007 National Survey of Adoptive Parents, only one quarter of individuals who adopt children from foster care have incomes greater than $87,000 (U.S. Department of Health and Human Services, 2008). In addition to the obvious emotional and physical benefits of adoption, adoption is also good for the public. Each child who is adopted from foster care saves between $65,000 and $126,000 in public funds (Barth, Lee, Wildfire, & Guo, 2006).

FOR CONGRESSIONAL CONSIDERATION

- Is the current adoption tax credit meeting its goal of helping all children find homes through adoption? If not, how can it be amended to do so?
- Are there specific ways the federal government might help families afford the costs associated with adopting older youth from foster care?
- To what extent is the adoption assistance program helping to meet ongoing cost issues for families?

Background

When Mark and Lenore Schindler became foster parents eight years ago, they had no idea what the future would bring. What they did know was that they wanted to grow their family of six and provide a safe and loving home to a child in need. After fostering for several years, the couple adopted siblings—12-year-old Rylee and 9-year-old Emery—and qualified for the federal adoption tax credit. The refund not only helped them improve their house to better serve Rylee’s and Emery’s unique needs; it also allowed them to open their hearts and homes to another sibling group of four, ages 10 to 14. First on the list of things to do with the refund from their upcoming adoption: purchase a vehicle large enough to fit their family of twelve.

More than ten years ago, Congress had the wisdom to turn to the tax code as a means to support families who stepped up to take an orphaned or foster child into their homes. Like many who adopt, the Schindlers are not wealthy. In fact, according to the 2007 National Survey of Adoptive Parents, only one quarter of individuals who adopt children from foster care have incomes greater than $87,000 (U.S. Department of Health and Human Services, 2008). In lower income homes such as these, a refundable tax credit goes a long way toward helping families make necessary investments in the future of the child they wish to adopt.
For instance, the adoption tax credit might help a family who adopts three teenagers pay for college. It might also help a family afford the specialized therapy their child needs but that is not covered by their insurance. Or, as in the case of the Schindlers, it may help a family cover the cost of adding three new bedrooms to their home so siblings can stay together.

The benefits of the adoption tax credit reach beyond the children who are adopted. A 2006 study cited by the Children’s Bureau found that “approximately $65,422 to $126,825 is saved for every child who is adopted rather than placed in long-term foster care” (Barth et al., 2006). A large part of these savings are achieved because children who are adopted fare better than those who live out their childhood in foster care. An extensive study by Nicholas Zill found that 81% of males in long-term foster care had been arrested compared with 17% of all young males nationally. Incarceration of former foster youth is estimated to cost society $5.1 billion annually (Zill, 2011).

**A 2006 study cited by the Children’s Bureau found that “approximately $65,422 to $126,825 is saved for every child who is adopted rather than placed in long-term foster care.”**

Congress allowed for the tax credit to be refundable for FY 2010 and FY 2011, meaning that taxpayers are allowed to realize the full potential benefit of the credit in the first year they qualify for it. A refundable credit allows taxpayers to reduce their current-year tax liability dollar for dollar against the amount of the credit, and if in doing so there is some credit remaining after their tax liability has reached zero, the government will send them the remainder of the credit in the form of a tax refund (Congressional Coalition on Adoption Institute, 2010). In 2012, the policy was changed, and the adoption tax credit reverted back to a non-refundable credit. When the credit is non-refundable, the benefit cannot exceed a family’s tax liability. Despite the misperception that only wealthy individuals adopt, we know that people at all income levels offer children a permanent, loving home through adoption. One-third of all adopted children live in families with annual household incomes at or below 200% of the poverty level, meaning many do not have a tax liability and cannot qualify for or access a non-refundable adoption tax credit. Children adopted from foster care are even more likely to enter families with lower incomes. Nationally, nearly half (46%) of families adopting from foster care are at or below 200% of the poverty level.

In a law review article on the inequity of the adoption tax credit, author Nathen Hibben stated, “The value of the credit is $0 to a family earning $35k or less, because the family will not have sufficient income to generate any tax liability. This means that approximately 43.4 million American households (or 1/3 of all households) in the U.S. are completely ineligible for the adoption tax credit benefit [when it is not refundable]“ (Hibben, 2009). A recent analysis of IRS data reveals that families with an adjusted gross income (AGI) between $30,000 and $50,000, on average, can use only $1,148 of the credit each year ($6,668 over the six-year carry-forward period) (North American Council on Adoptable Children, 2013). On the other hand, families with AGI between $50,000 and $100,000, on average, can use only $2,381 (they would use only $2,381 each of the first five years and $745 in the final year). This means that families with more resources receive the full benefit of the tax credit to apply toward their expenses.
BACKGROUND

In October of 2010, the Evan B. Donaldson Institute released the first-ever synthesis of knowledge in the field of post-adoption services: *Keeping the Promise: The Critical Need for Post-Adoption Services to Enable Children and Families to Succeed, Policy & Practice Perspective* (Donaldson Adoption Institute, 2010).

Among the main findings were the following:

- Some adopted children, particularly those who have spent time in foster care or institutional care, may come to their new families with elevated risks for developmental, physical, psychological, emotional or behavioral challenges (Donaldson Adoption Institute, 2010). This is most often due to pre-adoption circumstances, including prenatal malnutrition and low birth weight, prenatal exposure to toxic substances, older age at adoption, early deprivation, abuse or neglect, multiple placements, and emotional conflicts related to loss and identity issues. Despite this tremendous need, post-adoption services from adoption-competent mental health professionals and physicians are not readily available or adequately funded.

ISSUE

- How can post-adoption services be made available to adoptive families? How can their impact be evaluated?
- In what ways can the federal government ensure that post-adoption support services are adequately funded at the state level?
- How might the federal government better track the rate and causes of adoption disruption and dissolution?
- How can the federal government encourage the existence of an adoption-competent mental health workforce?

FOR CONGRESSIONAL CONSIDERATION

- How can clinical services by adoptive families be utilized at triple the rate reported by birth families?
The layers of issues and dynamics present in complex, chronic adjustment difficulties are often not understood by adoptive parents or the professionals they contact (i.e., teachers, school personnel, pediatricians and others). The type of help parents seek most is adoption-competent therapy, but research indicates that most mental health professionals lack relevant training.

Many exemplary services have been developed, primarily through federally funded demonstration projects and initiatives supported by state child welfare systems, but funding constraints have led some to be terminated, others to be scaled back and yet others to be offered on very limited bases.

Research on post-adoption programs is scarce, and few, if any, studies rise to the level of rigor needed to substantiate empirically based effectiveness.

**Funding**

Studies such as this one clearly show that post-adoption services are a vital part of both domestic and international adoptions and that they are not as widely available to families as they are needed. A major reason for this gap is the lack of a dedicated government funding source to support these needed services. While the federal government financially supports a wide variety of programs to support adoption, only a portion of the funding provided through the Promoting Safe and Stable Families (PSSF) program is specifically dedicated to supporting post-adoption services. States rely on small portions of flexible funding programs to fund their efforts to provide post-adoption support to children and families. A 2009 Voice for Adoption report explains:

> A mix of diverse federal funding sources can currently be used to support an array of post-adoption services, some of which are matched by state dollars: Title IV-E of the Social Security Act administrative funding for case management, administrative support and training, PSSF program (Title IV-B, subpart 2 – 20 percent designated for adoption promotion and support), Adoption Incentive program, Adoption Opportunities program, Social Services Block Grant (SSBG), Medicaid, and Temporary Assistance for Needy Families (TANF).

> Despite the appearance that many programs support post-adoption services, the reality is that these funding streams are intended to cover a much wider range of purposes than post-adoption services; there is no federal mandate or funding directed solely toward post-adoption services. Even within the 20 percent of each state’s Promoting Safe and Stable Families program allocated funding designated for “adoption promotion and support,” the funding is for both adoptive parent recruitment and post-adoption support, meaning that states may need to choose between investing in finding more families for waiting children in foster care or providing support for adoptive families (VFA Board of Directors, 2009).

Advocates have begun to suggest that Congress not only consider increasing the level of federal support for post-adoption services but also better target existing funding (such as adoption incentives or PSSF) for this purpose.

**Tracking Adoption Disruption and Dissolution**

Disruption occurs when an adoption ends before it is finalized, and dissolution occurs when an adoption ends after finalization. While a series of individual private studies report that U.S. adoption disruption rates range from 10-25%, national data are not collected on the number of disruptions and dissolutions or the percentages of adoptive placements that end in disruption or dissolution.
The Intercountry Adoption Act of 2000 requires that the U.S. State Department annually report on the number of Convention placements in the U.S. that were disrupted, but this information is limited only to adoptions between the U.S. and other countries that are party to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention). At the same time, the domestic Adoption and Foster Care Analysis and Reporting System (AFCARS) requires states to report if a child in foster care was ever previously adopted, but such information is only collected for children in foster care and does not include children who do not come to the attention of the child welfare system. Both research and data on the number and causes of adoption disruptions and dissolutions could inform the design and delivery of improved evidence-based post-placement services and ultimately help to prevent future adoptions from dissolving.

Adoption Competency

Adoptive families should have access to mental health professionals trained in understanding the unique challenges adoptive families face and to physicians who understand the developmental and physical concerns specific to children who have lived in an institution. Recent studies have revealed that the vast majority of mental health providers do not have any training in issues commonly experienced by adopted children. As a result, these children’s needs are often overlooked or misdiagnosed, and families are left without the support they need to overcome some of the challenges they may be facing.

The good news is that this is a developing field of practice in both physical and mental health, and professional associations, such as the American Academy of Pediatrics, have initiated forums and trainings on the specific needs of adopted children. The Center for Adoption Support and Education (C.A.S.E.) is successfully building community-based clinical capacity to meet the needs of adoptive families, adopted persons and birth families by implementing its evidence-informed Training for Adoption Competency in eight states across the United States.

C.A.S.E. has educated more than 183 clinicians, deepening community capacity to provide quality mental health services for adoptive families, adopted individuals, and birth families. C.A.S.E. is also actively engaged in study and planning to create a national certification program for adoption-competent mental health professionals, which will provide consumers with critically needed information on prospective therapists’ qualifications to work with them.

In addition, policymakers are looking at ways that they might support the development of this expertise nationwide. In August 2012, the U.S. Department of Health and Human Services’ Substance Abuse and Mental Health Services Administration hosted a conference on “Domestic and International Adoption: Strategies to Improve Behavioral Health Outcomes for Youth and Their Families.” As a result of this meeting, a white paper is being written to summarize outcomes and steps to move forward.
BACKGROUND

Conservative estimates indicate that there are more than 24 million children in the world living outside of family care (EveryChild, 2010). Currently, the number of foreign-born children adopted by U.S. citizens is on the decline. In FY 2004, 22,991 children were adopted from other countries (U.S. Department of State, 2013), down from a peak of 22,991 in 2004. One significant reason for this is the number of countries that have suspended their international adoption programs while working to bring their adoption laws and regulations into compliance with the Hague Treaty on Intercountry Adoption. Unfortunately, many of these countries do not have the resources or ability to improve their child welfare programs in such a way as to also support an efficient international adoptions program free of fraud and abuse.

ISSUE

Despite the great need for parents and families for orphaned and vulnerable children worldwide, the number of U.S. adoptions of foreign-born children is declining. In FY 2012, Americans adopted 8,668 children from other countries (U.S. Department of State, 2013), down from a peak of 22,991 in 2004. One significant reason for this is the number of countries that have suspended their international adoption programs while working to bring their adoption laws and regulations into compliance with the Hague Treaty on Intercountry Adoption. Unfortunately, many of these countries do not have the resources or ability to improve their child welfare programs in such a way as to also support an efficient international adoptions program free of fraud and abuse.

FOR CONGRESSIONAL CONSIDERATION

- How can the U.S. government provide technical assistance and support to governments around the world that will help them incorporate domestic and international adoption and permanent family care into their child welfare programs?
- How might the federal government better support international adoption for children for whom there is no domestic placement?

Background

Conservative estimates indicate that there are more than 24 million children in the world living outside of family care (EveryChild, 2010). Currently, the number of foreign-born children adopted by U.S. citizens is on the decline. In FY 2004, 22,991 children were adopted from other countries compared with FY 2012 when only 8,668 foreign-born children were adopted by U.S. citizens (U.S. Department of State, 2013). Some have suggested that this decline in numbers is a direct result of foreign governments increasing opportunities for children to remain in their biological families or of increased efforts to promote domestic adoption and in-country foster care. This is undoubtedly a small part of the reason for this trend, especially in countries that have spent the time and resources needed to promote permanency over institutional care.

However, it is critically important to acknowledge that this decline is also caused by the increasing number of countries that have suspended their intercountry adoption programs, including Russia, Guatemala and Vietnam. For the most part, these countries have reached the decision to reform their programs through the tool of suspension because they believe it is the only way to address concerns of systematic fraud and abuse. While the reason most often cited for these suspensions is “to allow time to become Hague Convention compliant” or “to improve upon international adoption laws and systems,” the reality is that many of these countries do not have the resources and technical assistance needed to use these closures to build an international adoption system that is both ethical and efficient, so little or slow progress is made toward reopening the program.
While the reason most often cited for these suspensions is “to allow time to become Hague Convention compliant” or “to improve upon international adoption laws and systems,” the reality is that many of these countries do not have the resources and technical assistance needed to use these closures to build an international adoption system that is both ethical and efficient, so little or slow progress is made toward reopening the program.

It is also important to note that very few countries actually reopen intercountry adoption after suspending a program. The Romanian government suspended its intercountry adoption program in 2004, and the U.S. stopped processing adoptions from Cambodia in 2001. Before and during these closures, evidence of corruption is used to both support the need for closure and ensure that cases approved post-suspension do not include any fraudulent ones. However, only in rare instances is it used to support criminal prosecution of wrongdoers.

If policymakers hope to address the declining numbers of children available for international adoption they must first address the international debate over what role intercountry adoption should play in the full continuum of care options for children. They must also consider the related question of what constitutes family-based care. A new resource entitled Moving Forward: Implementing the ‘Guidelines for the Alternative Care of Children’ was released on March 7, 2013 (Centre for Excellence for Looked After Children in Scotland). This handbook is a practical tool to help policymakers create national legislation and policies that reflect the provisions included in the United Nation’s General Assembly’s 2009 Guidelines for the Alternative Care of Children.

These policies will work toward strengthening domestic child welfare programs and better protecting the rights of children in need of alternative care. Unfortunately, despite the release of the handbook, many countries are moving forward without clear definitions of critically important terms such as “family care,” “alternative care,” “institution” and “child outside of family care.” It is impossible to implement laws and systems that support family-based care for children if no clear and universally agreed upon definitions of these terms exists. For example, to some in the international community, the definition of family-based care includes a group home or small orphanage. To others, a child is in family-based care when living in a long-term foster home. As discussed above, these options do not meet the statutory definitions of legal permanency in the United States, but this is not always true in other countries. When faced with questions such as these, the principle of subsidiarity is often cited as a founding principle of the Hague Adoption Convention. In essence, this principle states that international adoption should be an option after domestic options have been exhausted. The reality is, however, that this principle is not as definitive as it is often held out to be. For instance, it does not clearly state what appropriate “domestic options” should take precedence over international adoption.

In 2011, CCAI’s The Way Forward Project brought together a group of international experts to discuss opportunities and challenges facing governmental and non-governmental organization leaders in six African nations (Ethiopia, Ghana, Kenya, Malawi, Rwanda, and Uganda) as they work to develop systems of care that serve children in and through their families. The Way Forward Project Report highlights the need for the international child welfare and protection communities to address gaps in definitions of family-based care and bring clarity to the principle of subsidiarity, as well as discusses the role of intercountry adoption in these systems.

www.thewayforwardproject.org
Many adoptees who were legally adopted abroad and brought to the United States by American citizens and raised in America as American citizens are not automatically afforded U.S. citizenship. Despite enactment of the Child Citizenship Act (CCA) of 2000, which was intended to ensure that all foreign-born adoptees going forward would be granted automatic U.S. citizenship upon entry, the law was interpreted to apply only to adopted children entering the country on certain types of visas. Therefore, even after passage of the CCA, not all foreign-born adoptees of American citizens receive automatic citizenship. In addition, as written and enacted, the CCA did not apply to anyone who was previously adopted and over the age of 18 at the time of its enactment.

ISSUE

How can Congress provide automatic U.S. citizenship to all foreign-born adopted children of American citizens upon their arrival in the U.S., thereby achieving the original intent of the Child Citizenship Act?

How can Congress provide retroactive U.S. citizenship to foreign-born adult adoptees of American citizens who were over the age of 18 when the Child Citizenship Act was passed and so did not receive automatic citizenship?

FOR CONGRESSIONAL CONSIDERATION

Background

For the most part, U.S. adoption law provides the same rights to adoptive families that it does to families made up of parents with biological children. As a result, adoptive families believe their adopted children have the same rights as any biological child would have, including automatic U.S. citizenship. However, this is not the case. Many adoptive parents are surprised to learn that adoption of their foreign-born children does not automatically confer U.S. citizenship. In fact, some parents only learn this is the case when their child applies for a passport, seeks to vote or claims in-state tuition at a college. Some adoptees have learned they are not U.S. citizens when they have violated the law and, as a result, faced mandatory deportation to their country of birth—even for minor, first-time offenses.

The enactment of two laws in 1996—the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act—made mandatory deportation of non-U.S. citizens (including adoptees whose adoptive parents had failed to naturalize them prior to their 18th birthday) much more likely.

Congress attempted to rectify the situation for adoptees by passing the Child Citizenship Act in 2000, legislation intended to ensure that all foreign-born adoptees received automatic citizenship and have all the protections provided by citizenship. However, due to the interpretation of the CCA by the U.S.
Department of State, adopted children who enter the country under certain types of visas are not automatically granted U.S. citizenship. Furthermore, the CCA did not apply to adoptees who were 18 years of age or older when the law was enacted.

These shortcomings also suggest that current practice in the U.S. violates the spirit, if not the law, of several international human rights agreements, including the 1986 U.N. Declaration on the Social and Legal Principles Relating to the Protection and Welfare of Children. Article 22 states, “No intercountry adoption should be considered before it has been established that the child is legally free for adoption and . . . that the child will be able to migrate and to join the prospective adoptive parents and may obtain their nationality” (emphasis added). In addition, although not specifically addressing the issue of nationality, the U.N. Convention on the Rights of the Child mentions as a goal ensuring “that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption.” National Council for Adoption notes in their Adoption Advocate, “Children adopted within the United States keep their nationality and enjoy safeguards of being nationals of the country in which they permanently reside. Some internationally adopted children receive different, lesser treatment” (D’Agostino, 2011).

This article thoroughly describes how and why the Child Citizenship Act, passed by Congress in 2000, was unsuccessful in its desire to provide automatic citizenship to all foreign-born children adopted by United States citizens. The unequal treatment under the law is the result of an out-of-date immigration process for admitting orphaned children into the United States as well as an incorrect implementation of the CCA and the age limitation included in the CCA.
Infant Adoption

Of the 1.4 million women and adolescent girls facing pregnancies who have elected not to parent their children, only 14,000 choose adoption.

ISSUE

- How can we learn more about why and how adolescent girls and women are making decisions when they are facing an unintended pregnancy?
- What role might the federal government play in providing women with objective and useful information about adoption?

FOR CONGRESSIONAL CONSIDERATION

Background

According to a 2010 report by the Center for American Progress, there are more than six million pregnancies in the U.S. each year, almost half of which are reported to be unplanned. In 2001, the latest year for which data are available, 44% of the 3.1 million unintended pregnancies that year ended in birth, and of that number, approximately 1.4 million women chose to carry their pregnancy to term and parent their children. Only 14,000 of the 3.1 million women facing unplanned pregnancy chose adoption (Arons, 2010).

These numbers clearly suggest that when women who have an unplanned pregnancy consider their options, they are least likely to choose adoption. What we do not know is why. The little research that has been done in this area suggests that the quality of the counseling offered to pregnant women depends a great deal on who is providing it and where it is given. We also know very little about public attitudes about infant adoption. Testimony from birth mothers indicates that the public does not fully understand the adoption option and may therefore believe it to be the least favorable of the three options. More needs to be done to uncover the answers to these and other complicated questions about adoption as an option for women facing an unplanned pregnancy.

At the same time, federal policymakers could review what, if any, role they might play in the development of systems that provide women with information about infant adoption. For instance, the federal government currently funds a website with information about adoption out of foster care, complete with profiles of waiting children (www.adoptuskids.org). Similarly, federal funding is used to support efforts such as the National Sexual Assault Hotline and the National Marrow Donor Program. These and other programs might serve as models here.
Adopting Across State and County Lines

ISSUE

Only a very small number of foster children eligible for adoption are finding homes in states other than those in which they reside.

FOR CONGRESSIONAL CONSIDERATION

- How can Congress encourage increased cooperation among states in order to achieve the objectives of safety, permanence and well-being for all children?

Background

In a June 2012 Washington Post article, Listening to Parents founder, Jeff Katz, shares data from the National Data Archive on Child Abuse and Neglect that Americans adopted just 527 children from foster care across state lines in FY 2010. This represents merely 1% of the 52,340 children adopted from foster care that same year (U.S. Department of Health and Human Services, 2011).

One reason that adopting from foster care across state lines occurs so infrequently is that it is very difficult to do. The lack of a single child welfare system within the United States is one factor that contributes to the difficulty. Social workers, agency staff and adopting families must become familiar with the Interstate Compact on the Placement of Children (ICPC) as well as with the laws and procedures governing foster care and adoption in their own state and in the state from which they hope to adopt. There are different systems in each state, the District of Columbia and Puerto Rico, and each one has its own eligibility criteria as well as its own process for recruiting, approving and training adoptive families.

The current state and federal financing structure also creates financial disincentives for states to allow out-of-state residents to adopt children in foster care. If, for example, a family from one state adopts a child from another, the first state will have spent thousands of dollars to recruit and prepare a family with no corresponding benefit to any child in that state. Furthermore, a child who may have expensive medical and educational needs will become a new resident, and the receiving state may be required to pay for any post-adoption services that are needed. Meanwhile, the child’s state of origin may well receive a federally funded bonus of up to $8,000 for placing the child in an adoptive family.

Similar consequences are found when it comes to programs serving youth aging out of foster care. John Chafee Independent Living Programs sometimes limit program benefits, such as education and training vouchers, to youth who attend in-state schools. And youth who leave the state for college, work or study abroad opportunities often risk losing access to Medicaid.
INFORMED CONSENT

ISSUE

While almost all states, the District of Columbia, Puerto Rico and the U.S. territories require that older children give their consent to their adoption, the age of consent differs among states and territories. A child’s ability to provide informed consent can be compromised by several factors, including the absence of information, a lack of understanding and/or fear about being part of a new family.

FOR CONGRESSIONAL CONSIDERATION

• What can be done to ensure that state laws regarding consent to adoption consider the need for child consent to be fully informed?

Background

Almost all states, the District of Columbia, Puerto Rico and the U.S. territories require that older children give their consent to their adoption.1 Approximately 25 states, the District of Columbia and the Virgin Islands set the age of consent at 14.2 Eighteen states, American Samoa and Guam require a child’s consent at age 12,3 while six states, the Northern Mariana Islands and Puerto Rico require the consent of children at age 10.4 In 16 states, the court, in its discretion, may dispense with consent if it is in the best interests of the child.5 Only the state of Colorado requires that the child be provided with counseling prior to being asked to give consent (Child Welfare Information Gateway, 2010).

Consent laws, on the surface, appear to be in the best interests of children. Dozens of former foster youth have testified before Congress over the last decade, asking that we acknowledge the critical importance of youth being an active and integral part of the decisions made about their future. The testimonies of youth who have been part of the CCAI Foster Youth Internship (FYI) program have raised some red flags about the current process used by most states when obtaining consent.

i. Louisiana does not.
ii. States requiring consent at age 14 include Alabama, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, Oregon, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington and Wyoming.
iii. States requiring consent at age 12 include Arizona, California, Colorado, Connecticut, Florida, Idaho, Kentucky, Massachusetts, Montana, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, West Virginia and Wisconsin.
iv. States requiring consent at age 10 include Alaska, Arkansas, Hawaii, Maryland, New Jersey and North Dakota.
First, many of the youth CCAI has interviewed stated that they were asked about their interest in being adopted some time during their first year in care. This is consistent with the Adoption and Safe Families Act (ASFA) requirement that states concurrently plan for the child to be safely reunified with their biological family as well as for an alternative placement should reunification not be possible. It is important to note that many of the youth stated that this was the only time they were asked this question, and if they said that they did not want to be adopted, adoption was then permanently removed from the list of future options for them and was not revisited.

Second, many youth reported that they did not know as much as they wish they had about the meaning of the phrases “be adopted” or “live independently.” Youth shared that, at the time and given the circumstances that led them into care, independence sounded much more appealing to them. These youth stated that they wished they had been counseled about what these options would mean in their lives for the long term and that if they had, they might have chosen a different path. A rigorous evaluation of the Dave Thomas Foundation's Wendy’s Wonderful Kids (WWK) adoption recruitment model reports that over one-third of children in the program stated they did not want to be adopted and many also felt conflicted about adoption, but that almost half of these children changed their attitude on adoption and reported feeling open to adoption after discussing adoption with a WWK recruiter (Dave Thomas Foundation for Adoption, 2011).

Finally, many of the youth we have surveyed have said that the circumstances of their childhoods left them with a lot of fear, confusion and anger about being part of any family. These same youth have also stated that had they had access to a mentor or a social worker to help them address these feelings and issues, adoption might have been a more desirable option for them. With this in mind, policymakers might consider how to incentivize states to implement consent policies that both support and inform the child’s right to a voice regarding his or her future.
Despite the enactment of the Indian Child Welfare Act (ICWA) in 1978, there is still cause for concern that a disproportionate number of Native American children are being removed from their families and placed in foster care and/or group homes and that some states may not be complying with the law. On the other hand, some child advocates are concerned that ICWA is being used to support decisions that favor the rights of tribes over the rights of children.

How can Congress ensure that ICWA is adequately protecting the rights of Native American children, their families and tribes?

Are there definitional or procedural gaps that exist and could be clarified or strengthened by legislative action at the federal level?

Background

In response to concern about the high number of Native American children being removed from their families and placed outside of Native American communities, Congress enacted the Indian Child Welfare Act of 1978. Under ICWA, all child welfare court proceedings involving Native American children must be heard in tribal courts, if possible, and tribes have the right to intervene in state court proceedings on the placement of Native American children. ICWA also established specific guidelines for family reunification and placement of Native American children. Further, ICWA established the Indian Child Welfare Act grant program, which provides direct funding to tribes to use for a wide variety of child welfare-related services.

While a considerable amount of time has passed since this law took effect, recent reports suggest that there is still cause for concern surrounding both the law and its implementation. In October 2011, a highly-publicized, three-part, year-long investigation by National Public Radio (NPR) alleged that state child welfare agencies were still violating the rights of Native American children. Their main concern: the disproportionate rate at which Native American children are entering foster care in some states. For instance, NPR reported that, in South Dakota, Native American children make up only 15% of the child population, yet they make up more than half of children in foster care. According to NPR, the state was removing 700 Native American children every year, sometimes under questionable circumstances. Once in care, these children often end up in non-Native American group homes where they require increased federal assistance.
Conflicts have arisen regarding the accuracy of the NPR report, but the original and long-term response has been that ICWA has received national attention. Following the report, some tribes responded by presenting their own report to Congress on the validity of the issues raised by the investigation, and concerned members of Congress requested that the Bureau of Indian Affairs (BIA) hold a meeting to explore potential abuses of federal law. In May of 2013, the BIA held a two-day summit of tribal leaders, ICWA experts, lawmakers, BIA officials, and a civil rights attorney from the Department of Justice. The purpose of the summit was to provide structural solutions to some of the long-standing ICWA concerns in South Dakota.

At the same time, members from the child advocacy community have raised concerns that the ICWA is being used to support decisions that favor the rights of the tribe over the rights of the child. Most recently, these tensions were highlighted by the decision of the Supreme Court of the United States in the case of Adoptive Couple v. Baby Girl, which involved a 3-year-old child whose biological father was able to cite the Indian Child Welfare Act to overturn her adoption. On June 25, 2013, the Supreme Court held that ICWA “was designed primarily to counteract the unwarranted removal of Indian children from Indian families. But the ICWA’s primary goal is not implicated when an Indian child’s adoption is voluntary and lawfully initiated by a non-Indian parent with sole custodial rights” (Adoptive Couple v. Baby Girl, 2013).

This and similar cases across the nation have called into question the application of ICWA in cases of voluntary placement of children for adoption and have raised questions regarding the rights of non-Native American birth mothers to place their children for adoption outside the tribe. In addition, some advocates have suggested that the law needs to be revisited post-Adoption and Safe Families Act because it may unintentionally give preference to long-term foster care or institutional care over adoption and legal guardianship. As a result of some of the questions raised by the published opinions of various judges, many lawyers continually request clarification regarding the proper application of the law and procedures in their states.
The Adoption and Safe Families Act of 1997 (ASFA) clearly states that when children cannot safely return to their families, permanency through adoption, guardianship or kinship care is to be the goal for a child unless a court clearly finds a “compelling reason” for determining that such outcomes would not be in the child's best interests. In cases where this finding is made by a judge, ASFA allows for states to place the child in “another planned permanent living arrangement” (APPLA). Unfortunately, APPLA is sometimes used inappropriately as a child’s permanency goal.

**FOR CONGRESSIONAL CONSIDERATION**

- Should the U.S. Government Accountability Office study the states’ use of APPLA?
- Could states report on APPLA use to the U.S. Department of Health and Human Services as part of the Adoption and Foster Care Analysis and Reporting System (AFCARS)?
- How can the Adoption and Safe Families Act be amended to clarify its intent that APPLA be used only in circumstances where other permanency goals are found not to be in the best interest of the child?

**Background**

The word “permanency” is one often used when talking about adoption. In fact, providing all children with a safe and permanent home is one of the central goals of the landmark bill the Adoption and Safe Families Act (ASFA) of 1997. ASFA contained two key provisions that were intended to help states more quickly move children in foster care to safe and permanent homes (Barbell & Freundlich, 2001). One of these provisions, which some refer to as “fast track,” allows states to bypass efforts to reunify families in certain egregious situations. The other provision, informally called “15 of 22,” requires states to file a petition to terminate parental rights (TPR) when a child has been in foster care for 15 of the most recent 22 months.

In addition, ASFA emphasized the importance of adoption when foster children cannot safely return to the care of their families in a timely manner. The law states that permanency through adoption, guardianship or kinship care is to be the goal for a child unless a court clearly finds a “compelling reason” for determining that such outcomes would not be in the best interests of the child. In cases where this finding is made by a judge, ASFA allows for states to place the child in “another planned permanent living arrangement” (APPLA).

Despite federal guidance on this point, states continue to struggle with this amorphous term. Some advocates and policymakers worry that APPLA is becoming a loophole provision for children in circumstances that make them more difficult for states to place, and they point out that its very existence...
What Barriers Remain
113th Congress

gives credence to the false premise that there are children in the world for whom permanency is not needed or who would somehow be harmed by permanency. Similar concerns have been raised about the term “compelling reasons.” Is the statistical reality that there are fewer prospective adoptive parents looking to adopt an older child providing a compelling reason not to recommend adoption? Is a request made by a hurt and scared 12-year-old boy who has experienced years of abuse at the hands of his own parents sufficient evidence to support a case plan of emancipation or long-term foster care? These are the very questions that courts and social workers are often asked to answer.

For this reason, adoption and child welfare advocates have suggested that federal policymakers begin to study the frequency and reasons for recommending APPLA as a permanency plan for a youth in foster care. Some have suggested that if there is evidence to show it is being inappropriately used as an option or if its mere existence as an option is preventing children in need of a permanent family from finding one, it should be removed from the law in its entirety. Others have suggested that an interim step may be to more clearly define APPLA’s basic terms so that it is only used in the most limited of circumstances.

Under current law, states are not required to report how many children in their care have a case plan of APPLA. Yet, according to the Adoption and Foster Care Analysis and Reporting System, of the 400,540 children in foster care in FY 2011, 22,744 children had a permanency goal of long-term foster care; 20,635 are scheduled to age out of the system when they turn 18; and 19,324 are awaiting a permanency goal (U.S. Department of Health and Human Services, 2012)—leaving approximately 60,000 of our nation’s foster children still in need of permanency. An analysis of APCARS numbers conducted by the Congressional Research Service shows that children who are given the goal of APPLA are most often older children, children who have spent prolonged amounts of time in care, and children who are living in group homes (Fernandes, Szymendera & Stoltzfus, 2007).

While permanency means different things to different children, in the end, most children know permanency when they see it. When asked to define the word, three different foster youth stated the following: “a place where you belong,” “when you are at the place you are and there for a really long time until becoming an adult—or longer if you want to be” and “a place you can call home that will still be there in the morning.”
Despite the enactment of the Adoption and Safe Families Act and the resulting increase in the number of children adopted from foster care, older children are still much less likely to be adopted after reaching the age of nine. At the same time, some successful models for finding adoptive placements for older children have been identified. These include the Dave Thomas Foundation for Adoption (DTFA) program, Wendy’s Wonderful Kids (WWK).

**FOR CONGRESSIONAL CONSIDERATION**

- How can federal policy and funding support states’ efforts to recruit families for older children?

**Background**

Passage of the Adoption and Safe Families Act and related changes to federal and state policy are rightly credited for dramatically increasing the number of children adopted out of foster care. Despite this initial success, the percentage of waiting children adopted each year has remained relatively flat in recent years, with approximately 50% of children who have an adoption goal still not having been matched with an adoptive family (U.S. Department of Health and Human Services, 2012).

A 2009 U.S. Department of Health and Human Services study by Penelope Maza argues that a waiting child’s age is the most crucial characteristic affecting his or her likelihood of being adopted and finds little evidence that ASFA has increased adoptions of older children. Maza found that a critical tipping point occurs between 8 and 9 years of age, after which a child is more likely to continue to wait than to be adopted (Maza, 2009). This highlights a troubling trend for older children, with the gap between the percentages of children 9 years old and older awaiting adoption and being adopted increasing since the passage of the law. In 1998, children 9 and older comprised 39% of all waiting children and 28% of all adopted children (a gap of 11 percentage points) (Maza, 2009). In FY 2011, only 26.1% of all adoptions were of children age 9 and older (U.S. Department of Health and Human Services, 2012). This is one of the lowest percentages of older youth adoptions since the enactment of ASFA—the lowest percentage was 25.6% in FY 2009 (U.S. Department of Health and Human Services, 2010). At the same time, 40.5% of children waiting for adoption were age 9 or older in FY 2011 (U.S. Department of Health and Human Services, 2012).

The good news is that such trends have come to the attention of state child welfare agencies, as well as private non-profit organizations such as the Dave Thomas Foundation for Adoption. DTFA’s Wendy’s Wonderful Kids program is just one of several privately funded efforts to provide a successful model for recruiting adoptive families for older youth. According to a study of the WWK model by Child Trends, children referred to WWK at age 8 are one-and-one-half times more likely to be adopted; for children referred at age 11, the likelihood was two times higher; and for children referred at age 15, the likelihood of adoption was three times higher (Malm et al., 2011). This evidence refutes a commonly held belief that older children are less likely to be adopted.
Education for Foster Youth

The research suggests that barriers remain for foster youth to receive an education that will prepare them to be successful adults.

For Congressional Consideration

- How might Congress directly address some of the critically important educational challenges faced by foster youth?
- In what ways might programs funded by the Elementary and Secondary Education Act and the Higher Education Act be amended to better serve the needs of foster youth?
- To what degree is the current federal investment in programming for youth who transition out of foster care focused on higher education?
- In what ways might the John Chafee Independent Living Program be amended to better serve youth's need for educational support?

Background

The research suggests that far too many youth in foster care are not achieving their academic potentials. Fifty percent of youth in care drop out before completing high school, and only 3% go on to receive a college degree (Courtney, M. E. et al, 2011). And while there is no national data on the overall performance of youth in care, we know that a large percentage of foster youth are not performing well in school. A recent Stuart Foundation study has shown that youth in care in California are half as likely as the general student population to be proficient in English and five times less likely to be proficient in math (Stuart Foundation, 2011). Federal Child and Family Service reviews reveal that California is not alone in its struggle to meet the academic needs of the children in its care. More than 30 other states were assessed as “not sufficiently meeting the educational goals” of youth in care (U.S. Department of Health and Human Services, 2011).

For these reasons, improving the educational outcomes of youth in foster care has remained at the top of the agenda for federal policymakers for the past several years. In 2008, as part of the Fostering Connections to Success Act, Congress required that state child welfare agencies include actions in case plans that increase educational stability and success. In November 2011, the U.S. Department of Education and the U.S. Department of Health and Human Services brought together teams representing states’ education and child welfare agencies, along with the judicial branch, to discuss how best to promote educational stability and improve educational outcomes for children in foster care. Most recently, in 2012, Congress passed the Uninterrupted Scholars Act, which amended school privacy laws to allow social workers to gain access to student records for the purpose of monitoring their educational progress.
Looking ahead, federal policymakers could provide the following for youth in care:

- **A Strong Start:** Due to their frequent histories of abuse and neglect, children in foster care have often been deprived of the stable family environment known to foster brain development. It is, therefore, essential that youth under five who are in care have access to early intervention and early education services.

- **Stability:** Research shows that youth in care are frequently forced to change schools multiple times—often within the same school year. Not surprisingly, studies indicate that this instability has a major deleterious effect on a child’s ability to perform well in school. While it is already a requirement of the 2008 Fostering Connections law for state foster care agencies to support efforts such as transportation to ensure that youth in care are able to stay in the same school, there is not a corresponding requirement that state educational agencies support these efforts.

- **Quality Special Education Services:** Research shows that youth in foster care are twice as likely as their peers to be labeled “in need of special education services” but half as likely to receive them. This is due in part to the fact that the Individuals with Disabilities Act (IDEA) is premised on a parent-driven Individual Education Plan (IEP) process. Efforts could be made to ensure that youth in foster care are able to access the full benefits of this program.

- **A College Education:** In a time when a college degree is becoming a prerequisite of economic stability, only 3% of foster youth achieve this goal. More needs to be done to encourage youth to go to college and to provide them with the financial, educational and emotional support necessary for them to succeed while there.

Reauthorization of the Elementary and Secondary Education Act as well as the Higher Education Act present unique opportunities for policymakers to address some of these critically important issues.
Independent Living Programs

Background

In 1999, Congress created the John Chafee Foster Care Independence Program. Named for its lead sponsor, the late U.S. Senator John Chafee, the CFCIP program was designed to provide current and former foster youth with the programs and support needed to achieve self-sufficiency. Activities funded include, but are not limited to, help with education, obtaining employment, financial management, housing, emotional support and programs to help older youth in foster care establish connections to caring adults. Despite the existence of this program, outcomes are bleak for the more than 25,000 youth who “age out” of foster care each year (U.S. Department of Health and Human Services, 2007, 2008, 2009, 2010, 2011 & 2012), causing advocates to consider ways that the federal government might better support the needs of older youth in care.

One criticism of the current approach taken by most CFCIP programs is that they are not offered in a way that is consistent with what we know to be the way adolescent youth best learn the skills necessary to become successful adults. A 2011 report by the Annie E. Casey Foundation and the Jim Casey Youth Opportunities Initiative (JCYOI) suggests an approach that is informed by new brain science. The report suggests that adolescent youth in care would benefit more from services that do the following:

- Intentionally create opportunities for involvement in extracurricular and community groups;
- Provide young people with the resources to pursue a passion that may lead to a sense of purpose in their lives; and
- Provide interdependent living services (emphasis added) that aim to connect young people with family and caring adults.

At the same time, the Children’s Bureau in the Administration for Children and Families at HHS recently released evaluations of programs funded by CFCIP and found that such programs are failing to meet their goal of achieving key outcomes for participating youth as related to increased educational attainment, higher employment rates and stability, greater interpersonal and relationship skills, reduced non-marital pregnancy and births and reduced delinquency and crime rates.
Immigration and Child Welfare

ISSUE

Each year, a significant percentage of children of immigrants—many themselves U.S. citizens—are taken into foster care. Some of these children are in care as a result of a finding that they were at risk of abuse and neglect; others are in care because their parents are detained or deported by immigration authorities. Due to the growth in this trend and awareness of these issues, the child welfare field faces many new issues of practice, policy and research specific to children from immigrant families.

FOR CONGRESSIONAL CONSIDERATION

- How might Congress ensure that detained parents’ rights and their children’s rights are protected?
- How might federally funded data and reporting systems better collect uniform data on the welfare of children of immigrants?

Background

Children of immigrants now comprise 25% of the under-age-18 population in the United States. According to the National Survey of Child and Adolescent Well Being (NSCAW), 8.6% of all children involved with the child welfare system have a foreign-born parent. Four out of five of these children are United States citizens. Given these figures, it is critical that any efforts to reform immigration or child welfare at the federal level should take into account any specialized needs of children from immigrant families.

Looking forward, Congress should consider how best to ensure that immigrant parents and their children are afforded appropriate protections and support from federal and state child welfare systems. At present, there is not a lot of national information available on the characteristics, risk factors or incidence of immigrant children being taken into foster care as a result of maltreatment. Research from NSCAW indicates that immigrant children are at higher risk of experiencing emotional abuse than their counterparts and are eight times less likely than non-immigrant youth to experience physical neglect. The same data suggest that
immigrant children are more likely to be living in two-parent families and less likely to experience risks associated with substance abuse. With access to such data, federal policymakers could better assess ways in which the child welfare system might serve the needs of immigrant children and their families.

**MORE THAN 5,000 CHILDREN OF IMMIGRANTS ARE IN FOSTER CARE NATIONWIDE BECAUSE THEIR PARENTS WERE LIVING IN THE UNITED STATES ILLEGALLY AND WERE DETAINED OR DEPORTED.**

One known cause of entering foster care by children of immigrants is our nation’s immigration enforcement policy. According to a November 2011 report by the Applied Research Center (ARC), more than 5,000 children of immigrants are in foster care nationwide because their parents were living in the United States illegally and were detained or deported by federal immigration authorities (Wessler, 2011). ARC’s report goes on to warn that if the current rate of enforcement continues, an additional 15,000 children of detained or deported immigrants will enter state foster care over the next five years.

Once children of immigrants enter the child welfare system, there may be barriers to providing needed services. In a May 2010 report, First Focus outlined some of the challenges for child welfare workers charged with protecting children of undocumented immigrants and persons in the U.S. on temporary visas. For example, these individuals have been prevented from securing assistance from the major federal public benefits programs such as Supplement Security Income (SSI) and Temporary Assistance for Needy Families (TANF) (Lincroft & Borelli, 2010). Similarly, an April 2010 First Focus report highlighted how current child welfare systems may not be structured or resourced in such a way as to allow them to respond to the needs of immigrant children and their families, including “providing linguistically and culturally appropriate services and understanding immigration relief options” (Lincroft & Cervantes, 2010).
Open Access to Children’s Courts

Background

In January 2012, the Honorable Michael Nash, Presiding Judge of the Superior Court of California, County of Los Angeles and 2009 CCAI National Angel in Adoption, made headlines when he issued an order that Los Angeles’ Juvenile Dependency Court open its court proceedings to members of the media who have a legitimate interest in reporting on the proceedings. Judge Nash’s move reignited a debate on a question that has been posed many times to juvenile and family courts throughout the United States: To what degree should matters that take place in dependency court be open to the public and/or the press?

Those in favor of maintaining policies that prevent dependency hearings from being open to the public argue that the nature of the issues covered in these hearings (child abuse and neglect, substance abuse, domestic violence and mental illness) are all so intensely private that they must be protected from public scrutiny, especially for the sake of the child, who is most often the victim. Others argue that the level of confidentiality that is maintained in dependency court is too high and in many cases does not protect the child but instead could protect failures in the child welfare system.

At present, states are split almost down the middle on whether or not to open their dependency hearings to the public and press, with 28

FOR CONGRESSIONAL CONSIDERATION

- How can federal policy and funding encourage the protection of children’s confidentiality while also allowing for public scrutiny of the processes and handling of individual cases, thus leading to improvements in child welfare practices and outcomes?
states and the District of Columbia presumptively closed and 24 presumptively open.* In November of 2012, Fostering Media Connections hosted a National Conversation on the complicated questions that arise when trying to strike the proper balance between protecting a child’s right to privacy and ensuring that the child welfare system is properly focused on promoting safety, permanence and well-being for all children in its care.

Daniel Heimpel, Executive Director of Fostering Media Connections, wrote in a Chronicle of Social Change blog post, “Confidentiality laws often become a shield against the news media’s scrutiny of the system’s handling of particular cases or flaws in general policy. This lack of transparency invariably stymies reform and arguably impinges on systemic improvements that would better the lives of individual foster children” (Heimpel, 2012).

While rules and procedure govern the way state courts conduct dependency hearings, the federal government has made the improvement of court procedures a priority in the past. Since 1993, state courts participating in the Court Improvement Program have received federal funds to complete a detailed self-assessment and develop and implement recommendations to enhance the court’s role in achieving stable, permanent homes for children in foster care. Strategies include improving the timeliness and quality of hearings, enhancing the quality of legal representation, reducing attorney and judicial caseloads and using computer technology and management information systems.

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*Nevada is counted in both groups because the determination is made at the county level.*
TRAFFICKING OF CHILDREN IN FOSTER CARE

ISSUE

Certain children, such as foster youth, are at increased risk of being trafficked and make up a key target population for human traffickers. However, the child welfare reporting system is not currently collecting information about trafficking specifically. In addition, specially trained foster parents are a critical need for the treatment and welfare of trafficking victims in the child welfare system.

FOR CONGRESSIONAL CONSIDERATION

- In order to further the nation’s ability to protect children from traffickers and to adequately respond to their victims among children, how could Congress assist states and policymakers in collecting important data on this crime and children who are victimized?

- How could Congress help states meet the need for special training for foster parents and other caregivers who take in former victims of child trafficking?

Background

According to the Center for Human Rights for Children, 293,000 children in the United States are at risk of becoming victims of domestic trafficking, specifically for the sex trade (Loyola University Chicago, 2011). Factors that make children at increased risk of being trafficked include, but are not limited to, a history of physical abuse, family instability and dislocation, running away from home or foster care placements and being poor, female and of color. Not surprisingly, youth in foster care, many of whom have had these experiences, are a key target population for human traffickers.

Despite this reality, studies show that the child welfare system is not equipped to appropriately prevent and respond to trafficking. For the most part, this is because human trafficking is an emerging area of knowledge for most social service and law enforcement professionals. In an effort to begin to address identified gaps in the response to trafficking, in April 2012 the National Center for Victims of Crime convened a roundtable of national, state and local advocates, practitioners and officials to consider areas in need of improvement. Among the 26 recommended strategies for improvement that were ultimately made, several addressed the need for the child welfare system to be better prepared to understand the unique needs of child trafficking victims and the resources to appropriately serve them (National Center for Victims of Crime, 2013).

One of the barriers raised by the group was the fact that “human trafficking” is not among the list of abuses that trigger and are chronicled by the current child welfare reporting system, leaving state and federal governments without the information necessary to ensure appropriate levels of services are being provided and to. In addition, the group stressed the importance of having specially trained foster parents who are able to meet the unique needs of the child who has been a victim of trafficking. Federal policymakers have rightly understood the need to better address this critically important issue. Legislation has already been introduced to address some of the most immediate barriers, and caucuses have been formed in both the House and the Senate to help ensure that reform in this area continues.
Teen Pregnancy and Foster Youth

Background

In 2011, more than 400,000 children in the United States were living in foster care, and nearly one-third were over the age of 14. By age 19, nearly half (48%) of teen girls in foster care have been pregnant. Teen girls in foster care are 2.5 times more likely to become pregnant by the age of 19 than their peers not in foster care. By age 21, nearly half of young men in foster care reported that a girl they had slept with was pregnant, compared to 19% of their peers.

At the same time, children born to teen mothers are more likely than children born to adults to enter foster care, costing the child welfare system at least $2.8 billion annually (The National Campaign to Prevent Teen and Unplanned Pregnancy, 2013).

In July 2009, CCAI co-hosted a roundtable discussion on the alarming rate in which teens in foster care were becoming parents and the reasons behind the trend. Not surprisingly, youth reported that they lacked a stable relationship with an adult whom they felt comfortable talking to about sex. While talking about sex is uncomfortable for most youth, youth in care pointed out that the nature of their relationship with foster parents and social workers is such that these conversations feel even more strained. Roundtable panelists also cited the lack of access to after-school and college-preparatory activities, which can reinforce foster youths’ feelings that the options for their futures are more limited than their peers’. And finally, roundtable panelists called on policymakers to provide better mental health support to youth in care so that they might be better prepared to engage in healthy relationships as adults.

The President’s budget proposal for 2014 includes creating a new discretionary grant program providing competitive funds to state and local child welfare agencies to reduce pregnancy among youth in foster care using a range of approaches. The program would expand evidence about what works to prevent pregnancy among youth in foster care, including adapting proven programs and evaluating approaches that are unique to this population.
REFERENCES


What Barriers Remain
113th Congress


The Congressional Coalition on Adoption Institute is a non-profit, non-partisan organization dedicated to raising awareness about the millions of children around the world in need of permanent, safe and loving homes and to eliminating the barriers that hinder children from realizing their basic right to a family.

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