

A Brief Legislative History of the Child Welfare System

By Kasia O'Neill Murray and Sarah Gesiriech

An Evolution. Throughout the history of the United States, the child welfare system has evolved according to changing beliefs and attitudes about what role government should play in the protection and care of abused and neglected children. Early government interventions on behalf of children needing care were characterized more by practical concerns about meeting the physical needs of children than by concern about the negative impacts of abuse and neglect on children's development. As public awareness about child abuse and the damage it caused grew, the importance of child protection received greater attention by government officials.

An Expanding Federal Role. Historically, states have set their own child welfare policy agendas. Indeed, under the Constitution, the federal role in child welfare is limited. However, the federal government's role in the modern child welfare system has increased as federal funding augmentations are accompanied by new rules and requirements emphasizing greater accountability on the part of states in achieving positive child outcomes.

Ideological Debates. The expansion of the federal government's influence in shaping national child welfare policy has been punctuated by two key ideological debates. The first is a debate about the rights of state and local governments, versus the responsibility of the federal government to ensure adequate protection for all children. The second debate centers around the rights of parents versus the rights and needs of the child. For example, when the pendulum of public opinion swings toward parental rights, the goal of family preservation is viewed as paramount. Conversely, swings toward the rights of the child result in greater emphasis on ensuring child safety and well-being above all else.

Early Movements Toward Establishing Federal Child Welfare Policy

In the 1700s, orphans and children whose parents could not care for them were often simply indentured to work for other families. By the early 1800s, private religious and charitable organizations had established the first orphanages. Half a century later, out of concern about the effects of growing up in orphanages, private agencies began the practice of placing orphans with foster families. However, prospective families were rarely screened, and agencies seldom monitored placements. By the early 1900s, the first state laws to prevent child abuse and neglect were passed, the first national conference on the needs of dependent children was convened, and the first federal children's bureau was established.

The Social Security Act of 1935

The Social Security Act of 1935 authorized the first federal grants for child welfare services, under what later came to be known as Subpart 1 of Title IV-B of the Social Security Act. Though relatively small, these first federal grants served as an impetus for states to establish child welfare agencies and to develop local programs to deliver child welfare services. Over the next several decades, the definition of child welfare services

was expanded to include a broader range of services. Federal funding for child welfare services increased, and states were required to match federal grants with state funds.

Aid to Dependent Children

The original Social Security Act also created the Aid to Dependent Children (ADC) program, in order to help states provide financial assistance to needy dependent children. (In 1962, this program was renamed Aid to Families with Dependent Children, or AFDC. AFDC was in turn replaced by the Temporary Assistance to Needy Families, or TANF, block grant program in 1996.)

During the 1950s, federal policy makers became increasingly aware that many needy children were being denied ADC benefits. Specifically, under “suitable home” or “man-in-the-house” policies, welfare agencies in many states denied aid payments made on behalf of children of unwed mothers and other parents whose behavior was deemed immoral. In most instances, the children received no follow-up services, despite their established need for financial assistance.

The Flemming Rule. In 1960, in what became known as the “Louisiana Incident,” Louisiana expelled 23,000 children from its welfare rolls because it was determined that their mothers had borne a child outside of marriage. Although similar actions had occurred in other states, the Louisiana Incident prompted the Department of Health, Education and Welfare (DHEW), which administered ADC, to implement the Flemming Rule. Named after DHEW Secretary Arthur Flemming, the rule declared that states could not simply ignore the needs of children living in households deemed to be unsuitable. Instead, the ruling required states to either (1) provide appropriate services to make the home suitable, or (2) move the child to a suitable placement while continuing to provide financial support on behalf of the child.

Aid to Dependent Children-Foster Care

The 1961 amendments to the Social Security Act established in statute the Flemming Rule. In order to assist states in complying with the ruling, these amendments created the Foster Care component of Aid to Dependent Children. Under ADC-Foster Care, states received federal matching funds for foster care payments made on behalf of children who were removed from unsuitable homes. However, federal reimbursement was limited only to cases in which the child would have received ADC payments had he remained at home. The present-day link between eligibility for federal foster care reimbursement and eligibility for AFDC has its roots in these amendments.

Early Growth in Foster Care Caseloads. The 1962 Public Welfare Amendments to the Social Security Act further emphasized the importance of delivering child welfare services to children whose homes were deemed unsuitable. The amendments also required state agencies to report to the court system families whose children were identified as candidates for removal. Together, these provisions resulted in a growing number of children entering out-of-home placements in the mid- to late-1960s.

Foster Care Becomes Mandatory. In 1967, Congress again amended the Social Security Act. In addition to other AFDC-related changes, these amendments made AFDC-Foster Care mandatory for all states.

The Child Abuse Prevention and Treatment Act (CAPTA)

In 1974, Congress enacted the first major federal legislation addressing child abuse and neglect. In exchange for federal funding for child abuse prevention and treatment, CAPTA (Public Law 93-247) requires states to establish child abuse reporting procedures and investigation systems.

Along with the expansion of the foster care program, states' implementation of mandatory reporting laws in response to CAPTA resulted in rapid growth in the number of children who were removed from their homes and placed in foster care.

The Indian Child Welfare Act (ICWA)

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 (Public Law 95-608). 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. ICWA also established specific guidelines for family reunification and placement of Native American children. Finally, ICWA established the Indian Child Welfare Act grant program. These grants (totaling about \$11 million annually), may be used for a broad array of child welfare services.

The Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272)

During the 1970s, as the number of children entering care significantly increased, so, too, did their length of stay in care. Lawmakers became increasingly concerned that many children were being removed from their homes unnecessarily, and that, once they entered foster care, inadequate efforts were made to either reunify them with their biological families or place them with adoptive families. Concerns were also raised about the lack of oversight within the foster care system.

To address these concerns, Congress enacted the Adoption Assistance and Child Welfare Act of 1980. This legislation created Title IV-E of the Social Security Act, and transferred AFDC-Foster Care to the new title.

The modern child welfare system is founded on this landmark legislation, which for the first time established a major federal role in the administration and oversight of child welfare services. Specifically, the Act:

- Established the first federal procedural rules governing child welfare case management, permanency planning, and foster care placement reviews;
- Required states to develop a state plan detailing how child welfare services will be delivered;

- Required states to make “reasonable efforts” to keep families together, by providing both prevention and family reunification services;
- Created an adoption assistance program (Title IV-E Adoption Assistance); and
- Created the first significant role for the court system, by requiring courts to review child welfare cases on a regular basis.

As a result of this legislation, both the number of children in foster care and their average length of stay decreased for a brief period in the early 1980s.

Independent Living

In 1986, out of concern that adolescents who aged-out of the foster care system were not equipped to live on their own, Congress authorized the Independent Living Program. The new program, which was authorized under the Consolidated Omnibus Budget Reconciliation Act (Public Law 99-272), provided funding for states to help older foster youth make the transition from foster care to independence.

Family Preservation and Family Support Services Program

Despite some improvements in foster care trends in the early 1980s, by the mid-1980s the number of children in foster care began to rise dramatically. For example, between 1986 and 1995, the number of children in foster care increased from 280,000 to nearly 500,000, a 76 percent increase. Researchers pointed to the multiple effects of the economic slowdown, the crack cocaine epidemic, AIDS, and higher incarceration rates among women offenders.

In 1993, out of concern that states were focusing too little attention on efforts to prevent foster care placement and reunify children with their families, Congress established the Family Preservation and Family Support Services Program, as part of the Omnibus Budget Reconciliation Act (Public Law 103-66). This program provided flexible funding for community-based services to (1) prevent child abuse and neglect from occurring and (2) help families whose children were at risk of being removed.

Court Improvement Program. As part of the same legislation, Congress also established the Court Improvement Program (CIP), which gives grants to the highest court in each state to test new approaches to improving juvenile and family court performance. The program was funded through a fixed set-aside of the annual funding for the Family Preservation and Family Support Services Program. This was the first significant source of federal funding for child welfare-related court activities.

Child Welfare Waivers

In 1994, in response to concern among states about the federal child welfare financing structure, Congress authorized a child welfare waiver program (as part of the Social Security Amendments of 1994, Public Law 103-432). The program was designed to enable states to test innovative approaches to delivering and financing child welfare services, with the goal of producing better outcomes for children. The Department of Health and Human Services was given authority to grant waivers to up to 10 states. Each demonstration project could last no longer than five years, had to be rigorously evaluated,

and had to be cost-neutral to the federal government—meaning that costs under the waiver could not exceed what the state would have spent in the absence of the waiver.

The Multi-Ethnic Placement Act (MEPA)

Enacted in 1994, MEPA (Public Law 103-382) prohibited states from delaying or denying adoption and foster care placements on the basis of race or ethnicity. However, MEPA did allow *consideration* of race and ethnicity in making placement decisions. MEPA also required states to recruit prospective adoptive and foster care families from different racial and ethnic backgrounds to reflect the diversity of children needing placement.

Inter-Ethnic Placement Provisions

In 1996, MEPA was amended by the Inter-Ethnic Placement Provisions (Public Law 104-188). Among other things, these amendments repealed the MEPA provision that permitted *routine* consideration of race and ethnicity.

The Adoption and Safe Families Act (ASFA)

The Adoption and Safe Families Act of 1997 (Public Law 105-89) made the most significant changes to the child welfare provisions since they had been established in their current form in 1980. ASFA principally addressed three general perceptions about the current child welfare system:

- Children continued to remain too long in foster care;
- The child welfare system was biased toward family preservation at the expense of children's safety and well-being; and
- Inadequate attention and resources were devoted to adoption as a permanent placement option for abused and neglected children.

Key provisions of ASFA were designed to:

- Ensure that child safety, permanency, and well-being are of paramount concern in any child welfare decision;
- Encourage states to expedite permanency decisions for children in foster care;
- Promote and increase the number of adoptions, particularly through a new adoption incentive payment program;
- Establish performance standards and a state accountability system, whereby states face financial penalties for failure to demonstrate improvements in child outcomes; and
- Encourage states to test innovative approaches to delivering child welfare services, by expanding the existing waiver program (discussed above).

Promoting Safe and Stable Families

As part of the Adoption and Safe Families Act, Congress reauthorized the Family Preservation and Family Support Services Program (discussed above). The program was renamed Promoting Safe and Stable Families (PSSF), and was expanded to include funding for (1) time-limited family reunification services and (2) adoption promotion and support activities.

Foster Care Independence

The Foster Care Independence Act of 1999 (Public Law 106-169) replaced the Independent Living Program with the John H. Chafee Foster Care Independence Program (CFCIP). In addition to increasing funding, CFCIP expanded the existing independent living program to include services for both adolescents making the transition from foster care to self-sufficiency *and* former foster youth up to age 21. Authorized services included:

- Financial and housing assistance, and
- Counseling and other support services needed to help foster youth successfully transition to independence.

In addition, CFCIP gave states the option to provide continuing Medicaid coverage to certain former foster youth. Although the program targeted emancipated and emancipating foster youth, CFCIP was specifically designed as a *service* option for states, rather than a permanency option for foster youth.

Court Reform

The Strengthening Abuse and Neglect Courts Act of 2000 (SANCA, Public Law 106-314) was enacted to help courts to achieve two primary goals:

- Reduce the backlog of abuse and neglect cases; and
- Expedite the flow of individual cases through the court system by automating case-tracking and data-collection systems.

SANCA provides relatively small grants to courts to fund projects that target these goals. (In FY 2003, Congress appropriated \$2 million for the program.)

Promoting Safe and Stable Families Amendments of 2001

Promoting Safe and Stable Families. In 2001, Congress reauthorized and made amendments to the Promoting Safe and Stable Families program (Public Law 107-133). Specifically, Congress increased the authorization level from \$305 million to \$505 million. (The mandatory funding level remained at \$305 million. Any funding amount above that floor—and below the new \$505 million ceiling—is discretionary, or subject to the annual appropriations process.) The amendments also emphasized the importance of providing post-adoption services and substance abuse treatment.

Foster Care Independence Program. The legislation also amended CFCIP, authorizing a new educational and vocational training program for older youth leaving foster care.

Court Improvement Program. Finally, the amendments reauthorized the set-aside of PSSF mandatory funds for the Court Improvement Program, and expanded the scope of authorized activities. The amendments also authorized a new set-aside, which is 3.3 percent of all discretionary funding appropriated for PSSF (that is, funding above the \$305 million mandatory funding floor.)