

Federal Laws & Policies Impacting Adoption Placement: References and Other Resources







Current Through
February 2009

Major Federal Legislation Concerned With Child Protection, Child Welfare, and Adoption

The primary responsibility for child welfare services rests with the States, and each State has its own legal and administrative structures and programs that address the needs of children and families. However, States must comply with specific Federal requirements and guidelines in order to be eligible for Federal funding under certain programs.

Beginning with the passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, the U.S. Congress has implemented a number of laws that have had a significant impact on State

Electronic copies of this publication may be downloaded at
www.childwelfare.gov/pubs/otherpubs/majorfedlegis.cfm

Order a copy of the PDF by calling 800.394.3366 or 703.385.7565, or download it at
www.childwelfare.gov/pubs/otherpubs/majorfedlegis.pdf

U.S. Department of Health and Human Services
Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau



Child Welfare Information Gateway
Children's Bureau/ACYF
1250 Maryland Avenue, SW
Eighth Floor
Washington, DC 20024
703.385.7565 or 800.394.3366
Email: info@childwelfare.gov
www.childwelfare.gov



child protection and child welfare services.¹ Such legislation frequently requires Federal departments and agencies, such as the Children's Bureau within the U.S. Department of Health and Human Services, to issue or amend Federal policy and regulation.² New legislation also prompts responses at the State level, including enactment of State legislation, development or revision of State agency policy and regulations, and implementation of new programs.

The largest federally funded programs that support State and Tribal efforts for child welfare, foster care, and adoption activities are authorized under titles IV-B and IV-E of the Social Security Act (the Act). These programs are administered by the U.S. Department of Health and Human Services and include the title IV-B Child Welfare Services and Promoting Safe and Stable Families (formerly known as Family Preservation) programs, the title IV-E Foster Care Program, the title IV-E Adoption Assistance Program, and the title IV-E Chafee Foster Care Independence Program. The Social Services Block Grant (SSBG) is authorized under title XX of the Act and funds a wide range of programs that support various social policy goals.

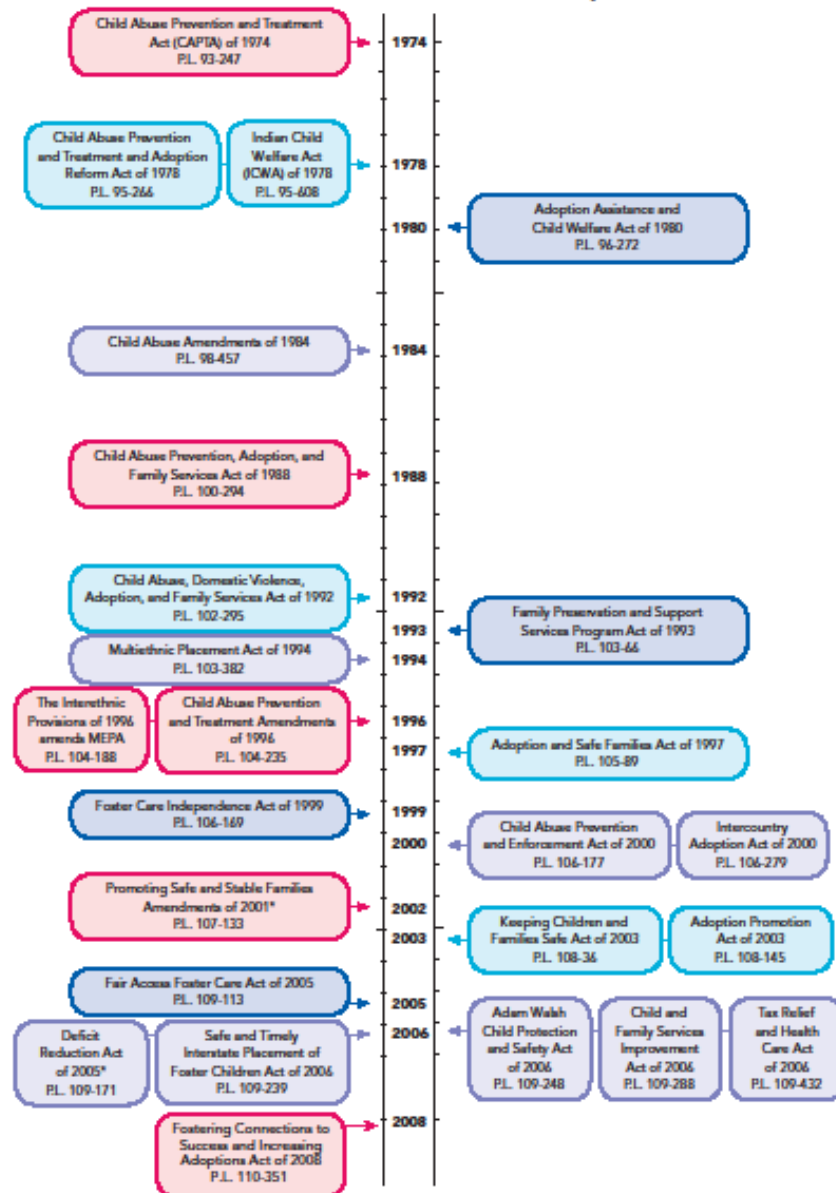
To provide a framework for understanding the Federal legislation that has shaped the delivery of child welfare services, this publication presents a summary of Federal legislation since 1974 that has had a significant impact on the field. It provides an overview of each act and its major provisions. The online version of this publication provides links to the full text of each act.

¹ The Federal Government started providing grants to States for preventive and protective services and foster care payments in 1935 with the Child Welfare Services Program, title IV-B of the Social Security Act. In 1961, legislation provided for foster care maintenance payments under the Aid to Dependent Children Program, title IV-A of the Social Security Act. Both of these programs were amended by the Adoption Assistance and Child Welfare Act of 1980.

² For information on the Children's Bureau policy, visit the website at www.acf.hhs.gov/programs/cb/laws_policies/index.htm



Timeline of Major Federal Legislation Concerned With Child Protection, Child Welfare, and Adoption



*Some acts were enacted the year following their introduction in Congress.

This material may be freely reproduced and distributed. However, when doing so, please credit Child Welfare Information Gateway. Available online at www.childwelfare.gov/pubs/otherpubs/majorfedlegis.cfm

3



P.L. 110-351**Fostering Connections to Success and Increasing Adoptions Act of 2008****Overview**

H.R. 6893

Enacted October 7, 2008

Purpose: To amend parts B and E of title IV of the Social Security Act to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, improve incentives for adoption, and for other purposes.

Note: Children's Bureau offers guidance on the provisions of this legislation in Program Instruction ACYF-CB-PI-08-05, issued October 23, 2008.

Major Provisions of the Act

- Created a new plan option for States and Tribes to provide kinship guardianship assistance payments under title IV-E on behalf of children who have been in foster care of whom a relative is taking legal guardianship
- Extended eligibility for Medicaid to children receiving kinship guardianship assistance payments
- Required fingerprint-based criminal records checks of relative guardians, and child abuse and neglect registry checks of relative guardians and adults living in the guardian's home, before a relative guardian may receive title IV-E kinship guardianship assistance payments on behalf of a child
- Amended the Chafee Foster Care Independence Program to allow services to youth who leave foster care for kinship guardianship or adoption after age 16
- Amended the Education and Training Voucher Program to permit vouchers for youth who enter into kinship guardianship or are adopted from foster care after age 16
- Authorized grants to State, local, or Tribal child welfare agencies and private nonprofit organizations for the purpose of helping children who are in or at-risk of foster care reconnect with family members through:
 - » Kinship navigator programs
 - » Efforts to find biological family and reestablish relationships
 - » Family group decision-making meetings
 - » Residential family treatment programs
- Permitted States to extend title IV-E assistance to otherwise eligible youth remaining in foster care after reaching age 18 and to youth who at age 16 or older exited foster care to either a kinship guardianship or adoption, provided that they have not yet reached age 19, 20, or 21, as the State may elect, and are in school, employed, engaged in another activity designed to remove barriers to employment, or incapable of doing so due to a documented medical condition (effective October 1, 2010)
- Allowed States to claim Federal reimbursement for short-term training for relative guardians; private child welfare agency staff providing services to children receiving title IV-E assistance; child abuse and neglect court personnel; agency, child, or parent attorneys; guardians ad litem; and, court-appointed special advocates.
- Extended the Adoption Incentive Program through FY 2013 and doubled incentive payment amounts for special needs (to \$4,000) and older child adoptions (to \$8,000)
- Revised adoption assistance eligibility criteria to delink the adoption assistance program from the Aid to Families with Dependent Children requirements
- Phased-in, from FY 2010 to FY 2018, the revised adoption assistance eligibility criteria based on whether the child is defined as "an applicable child," primarily related to the age of the child in the year the agreement is entered into
- Allowed federally-recognized Indian Tribes, Tribal organizations, and Tribal consortia to apply to receive title IV-E funds directly for foster care, adoption assistance, and kinship guardianship assistance (effective October 1, 2009)



Major Provisions of the Act continued

- Required HHS to provide technical assistance and implementation services to Tribes seeking to operate title IV-B and IV-E programs
- Authorized one-time grants to Tribes that apply to assist in developing a title IV-E program
- Required title IV-E agencies to identify and notify all adult relatives of a child, within 30 days of the child's removal, of the relatives' options to become a placement resource for the child
- Required each child receiving a title IV-E foster care, adoption, or guardianship payment to be a full-time student unless he or she is incapable of attending school due to a documented medical condition
- Required title IV-E agencies to make reasonable efforts to place siblings removed from their home in the same foster care, adoption, or guardianship placement
- Permitted title IV-E agencies to waive on a case-by-case basis a nonsafety licensing standard for a relative foster family home
- Required States to ensure coordination of health care services, including mental health and dental services, for children in foster care
- Required that, 90 days prior to a youth's emancipation, the caseworker develop a personalized transition plan as directed by the youth
- Required that a case plan include a plan for ensuring the educational stability of the child in foster care

P.L. 109-432**Tax Relief and Health Care Act of 2006****Overview**

H.R. 6111

Enacted December 20, 2006

Purpose: To amend the Internal Revenue Code of 1986 to extend expiring provisions, and for other purposes

Division B, section 405 of the Act amended the Social Security Act to exempt all foster children assisted under title IV-B or IV-E and children receiving title IV-E adoption assistance from the Medicaid citizenship documentation requirements of the Deficit Reduction Act of 2005.

Major Provisions of the Act

- Amended section 1903(x) of title XIX of the Social Security Act (the Act) (42 U.S.C. § 1386b) by including all foster children assisted by titles IV-B and IV-E of the Act and children receiving title IV-E adoption assistance in the groups exempt from the requirement to present documentary evidence of citizenship or nationality if they declare themselves to be citizens or nationals of the United States
- Added a new provision to title IV-E of the Act to require that State plans include procedures for verifying the citizenship or immigration status of children in foster care under State responsibility under titles IV-B or IV-E
- Amended section 1123A of the Act (42 U.S.C. 1320a-2a) to include review of State conformity with this requirement in the Child and Family Services Reviews (CSFRs)

P.L. 109-288**Child and Family Services Improvement Act of 2006****Overview**

S. 3525

Enacted September 28, 2006

Purpose: To amend part B of title IV of the Social Security Act to reauthorize the Promoting Safe and Stable Families (PSSF) program, and for other purposes

This material may be freely reproduced and distributed. However, when doing so, please credit Child Welfare Information Gateway. Available online at www.childwelfare.gov/pubs/otherpubs/majorfedlegis.cfm

5



Major Provisions of the Act

- Amended title IV-B, subpart 1 (Child Welfare Services Program) to:
 - » Change the program from a permanent authorization to a 5-year authorization, with \$325 million for each of Federal FY 2007 through 2011
 - » Establish a new program purpose that allows a broader array of services and activities and promotes more flexibility for States to design their programs accordingly
- Amended title IV-B, subpart 2 with respect to the Promoting Safe and Stable Families (PSSF) program to:
 - » Reauthorize mandatory grants at \$345 million for each of Federal FY 2007 through 2011
 - » Authorize discretionary grant appropriations of \$200 million for each of Federal FY 2007 through 2011
 - » Appropriate \$40 million for FY 2006 for States to spend through September 30, 2009, to support monthly caseworker visits with children in foster care under the responsibility of the State
 - » Set aside an additional \$40 million for FY 2007 through FY 2011 to be divided between Regional Partnership/ Substance Abuse Grants and support of caseworker visits
- Required each State to submit annually forms that:
 - » Report on planned child and family services expenditures for the immediately succeeding fiscal year
 - » Provide specified information about PSSF and certain other programs, including the numbers of families and of children, as well as the population, served by the State agency
- Reserved specified funds for States to support monthly caseworker visits with children in foster care under State responsibility, with a primary emphasis on activities designed to improve caseworker retention, recruitment, training, and ability to access the benefits of technology
- Required targeted grants to increase the well-being of, and to improve the permanency outcomes for, children affected by methamphetamine or other substance abuse
- Authorized competitive grants to regional partnerships to provide, through Interagency collaboration and integration of programs and services, services and activities designed to increase the well-being of, improve permanency outcomes for, and enhance the safety of children who are in an out-of-home placement or are at risk of being placed in an out-of-home placement as a result of a parent's or caretaker's methamphetamine or other substance abuse
- Increased the set-asides for Indian Tribes from 2 to 3 percent of any discretionary funds appropriated and from 1 to 3 percent of the mandatory funds authorized and remaining after the separate reservation of funds for monthly caseworkers is made
- Required each State plan for child welfare services to describe standards for the content and frequency of caseworker visits for children in foster care that, at a minimum, ensure that:
 - » The children are visited on a monthly basis.
 - » The visits are well-planned and focused on issues pertinent to case planning and service delivery to ensure the children's safety, permanency, and well-being.
- Reauthorized and extended through FY 2011 the program for mentoring children of prisoners (MCOP)
- Required the Secretary to enter into a 3-year, renewable cooperative agreement with an eligible entity for a Service Delivery Demonstration Project to:
 - » Identify children of prisoners in need of mentoring services
 - » Provide their families with a voucher for mentoring services and a list of providers in their residential area
 - » Monitor and oversee the delivery of mentoring services by providers that accept the vouchers
- Reauthorized and extended through FY 2011 the basic Court Improvement Program
- Amended title IV-E to require certain foster care proceedings to include consultation in an age-appropriate manner with the child who is the subject of the proceeding



P.L. 109-248**Adam Walsh Child Protection and Safety Act of 2006****Overview**

H.R. 4472

Enacted July 27, 2006

Purpose: To protect children from sexual exploitation and violent crime; to prevent child abuse and child pornography with an emphasis on comprehensive strategies across Federal/State/local communities to prevent sex offenders access to children; to promote Internet safety; and to honor the memory of Adam Walsh and other child crime victims

Major Provisions of the Act

- Required (1) fingerprint-based checks of the national crime information databases (NCID) for prospective foster or adoptive parents and (2) checks of State child abuse and neglect registries in which the prospective foster or adoptive parents and any other adults living in the home have resided in the preceding 5 years
- Permitted States that prior to September 30, 2005, had opted out of the criminal background checks until October 1, 2008, to comply with the fingerprint-based background check requirement; after October 1, 2008, no State is exempt from those requirements
- Required States to comply with any request for a child abuse registry check that is received from another State
- Required States to have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State and to prevent any such information from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases
- Required the Attorney General, upon the request of a State, to conduct fingerprint-based checks of the national crime information databases to assist:
 - » Child welfare agencies in checking backgrounds of individuals under consideration as prospective foster or adoptive parents or in investigating child abuse or neglect incidents
 - » Private or public schools or educational agencies in checking backgrounds of prospective employees
- Directed the Secretary of Health and Human Services to:
 - » Create a national registry of substantiated cases of child abuse or neglect
 - » Establish standards for the dissemination of information in the registry
 - » Conduct a study on the feasibility of establishing data collection standards for the registry

P.L. 109-239**Safe and Timely Interstate Placement of Foster Children Act of 2006****Overview**

H.R. 5403

Enacted July 3, 2006

Purpose: To improve protections for children and to hold States accountable for the safe and timely placement of children across State lines



Major Provisions of the Act

- Required each title IV-E State plan for foster care and adoption assistance to provide that the State shall:
 - » Have in effect procedures for orderly and timely interstate placement of children
 - » Complete home studies requested by another State within a specified period, which is 60 days in most cases but up to 75 days if specified circumstances warrant an extension
 - » Accept such studies received from another State within 14 days unless reliance on the report would be contrary to the child's welfare
- Authorized grants for timely Interstate home study incentive payments to States that have approved plans and that have completed such studies within 30 days
- Increased the required frequency of State caseworker visits for children in out-of-State foster care placements without imposing restrictions on either State's ability to contract with a private agency to perform those visits
- Amended the definition of "case review system" to:
 - » Require a child's health and education record to be supplied to the foster parent or foster care provider at the time of placement and to provide it to the child at no cost when he/she leaves foster care by reason of having attained the age of majority
 - » Provide for a relative caregiver, foster parent, and preadoptive parent's right to be heard in certain proceedings respecting their foster child
- Included among the purposes of grants to the highest State courts the assessment of the court's role in carrying out State laws requiring proceedings that determine the best strategy to use to expedite the interstate placement of children
- Required State courts to ensure that foster parents, preadoptive parents, and relative caregivers of a child in foster care are notified of certain proceedings held with respect to that child
- Provided for consideration of out-of-State placements in permanency hearings, case plans, and case reviews
- Required each plan for child welfare services to include the assurance that the State will eliminate legal barriers to facilitate timely adoptive or permanent placements for children

P.L. 109-171**Deficit Reduction Act of 2005****Overview**

S. 1932

Enacted February 8, 2006

Purpose: Title VII of this act provides for reauthorization of the TANF program, Healthy Marriage and Family funds, Court Improvement Program, Safe and Stable Families Program, and other child welfare programs.



Major Provisions of the Act

- Prohibited access to Medicaid to an individual who declares he or she is a U.S. citizen unless one type of specified documentary evidence of U.S. citizenship or nationality is presented; certain classes were exempt from this requirement. [Note: Foster children and children receiving title IV-E adoption assistance were later exempted from this requirement by P.L. 109-432.]
- Replaced incentive bonuses to States for a decrease in the illegitimacy rate with healthy marriage promotion and responsible fatherhood grants, and limited the use of funds for:
 - » Demonstration projects designed to test the effectiveness of Tribal governments or consortia in coordinating the provision of child welfare services to Tribal families at risk of child abuse or neglect
 - » Activities promoting responsible fatherhood
- Prescribed the contents of applications for Court Improvement grants, including grants for improved data collection and training, and made appropriations for FY 2006-FY 2010 for grants to:
 - » Ensure that the safety, permanence, and well-being needs of children are met in a timely and complete manner
 - » Provide for the training of judges, attorneys, and other legal personnel in child welfare cases
- Required that courts and agencies demonstrate meaningful collaboration in child welfare services programs
- Permitted States to allow public access to certain State court child welfare proceedings
- Authorized appropriations for FY 2006 for Safe and Stable Families Programs
- Specified criteria under which States may receive Federal matching funds for allowable administrative expenses for children who are candidates for foster care, living in unallowable facilities, or placed with unlicensed relatives
- Clarified the home of removal for AFDC purposes when determining the eligibility of a child for title IV-E foster care maintenance payments and revised adoption assistance eligibility criteria to require AFDC at the time of the child's removal from the specified relative's home only

P.L. 109-113**Fair Access Foster Care Act of 2005****Overview**

S. 1894

Enacted November 22, 2005

Purpose: To amend part E of title IV of the Social Security Act to allow foster care maintenance payments to be paid on behalf of eligible children through a nonprofit or for-profit child-placement or child care agency

Major Provisions of the Act

Amended section 472(b) of the Social Security Act (42 U.S.C. 672(b)) by striking the word "nonprofit" each place it appears

P.L. 108-145**Adoption Promotion Act of 2003****Overview**

H.R. 3182

Enacted December 2, 2003

Purpose: To reauthorize the adoption incentive payments program under part E of title IV of the Social Security Act and for other purposes



Major Provisions of the Act

- Amended title IV-E to revise requirements with respect to States eligible to receive Adoption Incentives payments to provide payments for:
 - » Special needs adoptions that are not older child adoptions
 - » Adoptions of older children (age 9 and older)
- Modified requirements with respect to determination of numbers of special needs adoptions that are not older children as well as adoptions of older children
- Authorized the Secretary to impose specified penalties against a State for failure to provide necessary data to the Adoption and Foster Care Analysis and Reporting System (AFCARS)

P.L. 108-36**Keeping Children and Families Safe Act of 2003****Overview**

S. 342

Enacted June 25, 2003

Purpose: To amend and improve the Child Abuse Prevention and Treatment Act (CAPTA), the Adoption Opportunities Act, the Abandoned Infants Assistance Act, and the Family Violence Prevention and Services Act

Major Provisions of the Act

- Reauthorized CAPTA through FY 2008
- Authorized an expanded continuing interdisciplinary and longitudinal research program; provided for an opportunity for public comment on research priorities
- Emphasized enhanced linkages between child protective service agencies and public health, mental health, and developmental disabilities agencies
- Mandated changes to State plan eligibility requirements for the CAPTA State grant, including:
 - » Policies and procedures to address the needs of infants born and identified as being affected by prenatal drug exposure
 - » Provisions and procedures requiring that a CPS representative at the initial contact advise an individual of complaints and allegations made against him or her
 - » Provisions addressing the training of CPS workers regarding their legal duties in order to protect the legal rights and safety of children and families
 - » Provisions to require a State to disclose confidential information to any Federal, State, or local government entity with a need for such information
 - » Provisions and procedures for referral of a child under age 3 who is involved in a substantiated case of child abuse or neglect to early intervention services funded under part C of the Individuals with Disabilities Education Act
- Directed the Secretary to provide for implementation of programs to increase the number of older foster children placed in adoptive families, including a grants program to eliminate barriers to placing children for adoption across jurisdictional boundaries
- Amended the Abandoned Infants Assistance grants program to prohibit grants unless the applicant agrees to give priority to infants and young children who:
 - » Are infected with or exposed to the human immunodeficiency virus (HIV) or have a life-threatening illness
 - » Have been perinatally exposed to a dangerous drug



P.L. 107-133**Promoting Safe and Stable Families Amendments of 2001****Overview**

H.R. 2873

Enacted January 17, 2002

Purpose: To extend and amend the Promoting Safe and Stable Families program, provide new authority to support programs for mentoring children of incarcerated parents, and amend the Foster Care Independent Living program under title IV-E to provide for educational and training vouchers for youth aging out of foster care

Major Provisions of the Act

- Amended title IV-B, subpart 2 of the Social Security Act
- Added findings to illustrate the need for programs addressing families at risk for abuse and neglect and those adopting children from foster care
- Amended the definition of family preservation services to include infant safe haven programs
- Added strengthening parental relationships and promoting healthy marriages to the list of allowable activities
- Added new focus to the research, evaluation, and technical assistance activities
- Allowed reallocation of unused funds in title IV-B, subpart 2
- Created a matching grant program to support mentoring networks for children of prisoners
- Reauthorized funds for the Court Improvement Program
- Authorized a voucher program as part of the John H. Chafee Foster Care Independence Program to provide for education and training, including postsecondary training and education, to youth who have aged out of foster care

P.L. 106-279**Intercountry Adoption Act of 2000****Overview**

H.R. 2909

Enacted October 6, 2000

Purpose: To provide for implementation by the United States of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption



Major Provisions of the Act

- Established the U.S. Central Authority within the Department of State with general responsibility for U.S. implementation of the Convention and annual reports to Congress
- Allowed the State Department to enter into agreements with one or more qualified accrediting entities to provide for the accreditation of agencies (nonprofit) and approval of persons (for-profit agencies and individuals) who seek to provide adoption services for adoptions covered by the Convention
- Permitted accrediting entities to:
 - » Process applications for accreditation/approval
 - » Be responsible for oversight, enforcement, and compliance by adoption service providers with the Convention, IAA, and implementing regulations
 - » Perform information collection activities
- Authorized U.S. adoption service providers to provide services for Convention adoptions only if they have been Convention-accredited or -approved
- Mandated the Department of State and INS to establish a case registry for all intercountry adoptions incoming, outgoing, Hague Convention cases, and others
- Authorized the State Department to:
 - » Monitor each accrediting entity's performance of its duties and their compliance with the Convention, the Intercountry Adoption Act (IAA), and applicable regulations
 - » Issue certificates to cover Convention adoptions/placements for adoptions made in the U.S. necessary for their recognition so long as the department has received appropriate documentation to establish that the requirements of the Convention, IAA, and regulations have been met
- Established that Convention adoptions finalized in other countries party to the Convention to be recognized throughout the United States
- Provided procedures and requirements to be followed for the adoption of a child residing in the United States by persons resident in other countries party to the Convention
- Outlined certain case-specific duties to be performed by the accredited agency, the approved person, or the prospective adoptive parents acting on their own behalf if permitted by both countries involved
- Prohibited State courts from finalizing Convention adoptions or granting custody for a Convention adoption unless such a court has verified that the required determinations have been made by the country of origin and the receiving country
- Amended the Immigration and Nationality Act to provide for a new category of children adopted, or to be adopted, under the Hague Convention and meeting other requirements to qualify for immigrant visas
- Preserved Convention records on individual adoptions held by the State Department and INS without affecting Federal laws concerning access to identifying information
- Preempted State laws only to the extent that they are inconsistent with the IAA
- Had no effect on the Indian Child Welfare Act

P.L. 106-177**Child Abuse Prevention and Enforcement Act of 2000****Overview**

H.R. 764

Enacted March 10, 2000

Purpose: To reduce the incidence of child abuse and neglect



Major Provisions of the Act

- Authorized the use of Federal law enforcement funds by States to improve the criminal justice system in order to provide timely, accurate, and complete criminal history record information to child welfare agencies, organizations, and programs that are engaged in the assessment of activities related to the protection of children, including protection against child sexual abuse, and placement of children in foster care
- Allowed the use of Federal grants by law enforcement:
 - » To enforce child abuse and neglect laws, including laws protecting against child sexual abuse
 - » To promote programs designed to prevent child abuse and neglect
 - » To establish or support cooperative programs between law enforcement and media organizations to collect, record, retain, and disseminate information useful in the identification and apprehension of suspected criminal offenders
- Increased the amount of federally collected funds available to the States for implementation of State Children's Justice Act reforms

P.L. 106-169**Foster Care Independence Act of 1999****Overview**

H.R. 3443

Enacted December 12, 1999

Purpose: To amend part E of title IV of the Social Security Act to provide States with more funding and greater flexibility in carrying out programs designed to help children make the transition from foster care to self-sufficiency

Major Provisions of the Act

- Revised the program of grants to States and expanded opportunities for independent living programs providing education, training, and employment services, and financial support for foster youth to prepare for living on their own
- Allowed funds to be used to pay for room and board for former foster youth age 18 to 21
- Required:
 - » The Secretary to develop outcome measures to assess State performance in operating independent living programs
 - » National data collection on services, individuals served, and outcomes
- Mandated that State plans for foster care and adoption assistance include certification that prospective parents will be adequately prepared to provide for the needs of the child and that such preparation will continue, as necessary, after placement of the child
- Provided States with the option to extend Medicaid coverage to 18- to 21-year olds who have been emancipated from foster care
- Emphasized permanence by requiring that efforts to find a permanent placement continue concurrently with independent living activities
- Increased funding for adoption incentive payments



P.L. 105-89**Adoption and Safe Families Act of 1997****Overview**

H.R. 897

Enacted November 19, 1997

Purpose: To promote the adoption of children in foster care

This act amended title IV-E of the Social Security Act.

Major Provisions of the Act

- Reauthorized the Family Preservation and Support Services Program:
 - » Renamed it the Safe and Stable Families Program
 - » Extended categories of services to include time-limited reunification services and adoption promotion and support services
- Ensured safety for abused and neglected children:
 - » Ensured health and safety concerns are addressed when a State determines placement for abused and neglected children
 - » Required HHS to report on the scope of substance abuse in the child welfare population, and the outcomes of services provided to that population
 - » Added "safety of the child" to every step of the case plan and review process
 - » Required criminal records checks for foster/adoptive parents who receive Federal funds on behalf of a child, unless a State opted out of this requirement
- Accelerated permanent placement:
 - » Required States to initiate court proceedings to free a child for adoption once that child had been waiting in foster care for at least 15 of the most recent 22 months, unless there was an exception
 - » Allowed children to be freed for adoption more quickly in extreme cases
- Promoted adoptions:
 - » Rewarded States that increased adoptions with incentive funds
 - » Required States to use reasonable efforts to move eligible foster care children towards permanent placements
 - » Promoted adoptions of all special needs children and ensured health coverage for adopted special needs children
 - » Prohibited States from delaying/denying placements of children based on the geographic location of the prospective adoptive families
 - » Required States to document and report child-specific adoption efforts
- Increased accountability:
 - » Required HHS to establish new outcome measures to monitor and improve State performance
 - » Required States to document child-specific efforts to move children into adoptive homes
- Clarified "reasonable efforts":
 - » Emphasized children's health and safety
 - » Required States to specify situations when services to prevent foster placement and reunification of families are not required
- Required shorter time limits for making decisions about permanent placements:
 - » Required permanency hearings to be held no later than 12 months after entering foster care
 - » Required States to initiate termination of parental rights proceedings after the child has been in foster care 15 of the previous 22 months, except if not in the best interest of the child, or if the child is in the care of a relative



P.L. 104-235**Child Abuse Prevention and Treatment Amendments of 1996****Overview**

S. 919

Enacted October 3, 1996

Purpose: To modify and reauthorize the Child Abuse Prevention and Treatment Act (CAPTA)

Major Provisions of the Act

- Reauthorized CAPTA through FY 2001
- Abolished the National Center on Child Abuse and Neglect (NCCAN) and created the Office on Child Abuse and Neglect
- Added new requirements to address the problems of false reports of abuse and neglect, delays in termination of parental rights, and lack of public oversight of child protection
- Required States to institute an expedited termination of parental rights process for abandoned infants or when the parent is responsible for the death or serious bodily injury of a child
- Set the minimum definition of child abuse to include death, serious physical or emotional injury, sexual abuse, or imminent risk of harm
- Recognized the right of parental exercise of religious beliefs concerning medical care
- Continued the Community-Based Family Resource and Support Grants Program, the Adoption Opportunities Act, Abandoned Infants Assistance Act, Victims of Child Abuse Act, Children's Justice Act Grants, and the Missing Children's Assistance Act
- Provided for Federal grants for the establishment of not less than three citizen review panels in each State, such as child fatality panels or foster care review panels, for the purpose of examining the policies and procedures of State and local agencies and where appropriate, specific cases, to evaluate the extent to which the agencies are effectively discharging their child protection responsibilities, including:
 - » A review of the extent to which the State child protective services system is coordinated with the foster care and adoption programs established under title IV-E
 - » A review of child fatalities and near fatalities

P.L. 104-188**The Interethnic Provisions of 1996****Overview**

H.R. 3448

Enacted August 20, 1996

Enacted as title I, subtitle H, section 1808, Removal of Barriers to Interethnic Adoption, of the Small Business Job Protection Act of 1996.



Major Provisions of the Act

- Established the title IV-E State Plan requirement that States and other entities that receive funds from the Federal Government and are involved in foster care or adoption placements may not deny any individual the opportunity to become a foster or adoptive parent based upon the race, color, or national origin of the parent or the child
- Established the title IV-E State Plan requirement that States and other entities that receive funds from the Federal Government and are involved in foster care or adoption placements may not delay or deny a child's foster care or adoptive placement based upon the race, color, or national origin of the parent or the child
- Strengthened MEPA's diligent recruitment requirement by making it a title IV-B State Plan requirement
- Established a system of graduated financial penalties for States that do not comply with the title IV-E State Plan requirement established under this law
- Repealed language in MEPA that allowed States and other entities to consider the cultural, ethnic, or racial background of a child, as well as the capacity of the prospective parent to meet the needs of such a child

P.L. 103-382**Multiethnic Placement Act of 1994****Overview**

H.R. 6

Enacted October 20, 1994

These provisions were enacted as title V, part E, subpart 1, of the Improving America's Schools Act of 1994.

This title amended Title IV-E of the Social Security Act.

Major Provisions of the Act

- Prohibited State agencies and other entities that receive Federal funding and were involved in foster care or adoption placements from delaying, denying, or otherwise discriminating when making a foster care or adoption placement decision on the basis of the parent or child's race, color, or national origin
- Prohibited State agencies and other entities that received Federal funds and were involved in foster care or adoption placements from categorically denying any person the opportunity to become a foster or adoptive parent solely on the basis of race, color, or national origin of the parent or the child
- Required States to develop plans for the recruitment of foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom families are needed
- Allowed an agency or entity to consider the cultural, ethnic, or racial background of a child and the capacity of an adoptive or foster parent to meet the needs of a child with that background when making a placement
- Had no effect on the provisions of the Indian Child Welfare Act of 1978
- Made failure to comply with MEPA a violation of title VI of the Civil Rights Act

P.L. 103-66**Family Preservation and Support Services Program Act of 1993****Overview**

H.R. 2264

Enacted August 10, 1993

Enacted as title XIII, chapter 2, subchapter C, part 1 of the Omnibus Budget Reconciliation Act of 1993

This title amended title IV-B of the Social Security Act.



Major Provisions of the Act

- Encouraged States to use funds to create a continuum of family-focused services for at-risk children and families
- Required States to engage in a comprehensive planning process to develop more responsive family support and preservation strategies
- Encouraged States to:
 - » Use funds to integrate preventive services into treatment-oriented child welfare systems
 - » Improve service coordination within and across State service agencies
 - » Engage broad segments of the community in program planning at State and local levels
- Broadened the definition of "family" to include people needing services regardless of family configuration: biological, adoptive, foster, extended, or self-defined
- Defined services to be provided by the States:
 - » Preservation services include activities designed to assist families in crisis, often where the child is at risk of being placed in out-of-home care because of abuse and/or neglect
 - » Support services include preventive activities, typically provided by community-based organizations, designed to improve nurturing of children and strengthen and enhance stability of families
- Provided grants to the highest court of each State to conduct assessments of the roles, responsibilities, and effectiveness of State courts in handling child welfare cases, and to implement changes deemed necessary as a result of the assessments [Court Improvement Program]

P.L. 102-295**Child Abuse, Domestic Violence, Adoption, and Family Services Act of 1992****Overview**

S. 838

Enacted May 28, 1992

Purpose: To amend the Child Abuse Prevention and Treatment Act (CAPTA) to revise and extend programs under the Act

Major Provisions of the Act

- Revised provisions for research and assistance activities to include:
 - » Cultural distinctions relating to child abuse and neglect
 - » Culturally sensitive procedures with respect to child abuse cases
 - » The relationship of child abuse and neglect to cultural diversity
- Provided for assisting States in supporting child abuse and neglect prevention activities through community-based child abuse and neglect prevention grants
- Required HHS to provide information and service function related to adoption and foster care, including:
 - » Onsite technical assistance
 - » National public awareness efforts to unite children in need of adoption with appropriate adoptive parents
 - » Operation of a National Resource Center for Special Needs Adoption

P.L. 100-294**Child Abuse Prevention, Adoption, and Family Services Act of 1988****Overview**

H.R. 1900

Enacted April 25, 1988



Purpose: To amend the Child Abuse Prevention and Treatment Act (CAPTA), the Child Abuse Prevention and Treatment and Adoption Reform Act, and the Family Violence Prevention and Services Act

Major Provisions of the Act

- Established the Inter-Agency Task Force on Child Abuse and Neglect, with responsibility for programs and activities related to child abuse and neglect
- Broadened the scope of research to include investigative and judicial procedures applicable to child abuse cases and the national incidence of child abuse and neglect
- Established a national data collection system to include standardized data on false, unfounded, or unsubstantiated cases and the number of deaths due to child abuse and neglect
- Expanded the Adoption Opportunities program:
 - » To increase the number of minority children placed in adoptive families, with an emphasis on recruitment of and placement with minority families
 - » To provide for postlegal adoption services for families who have adopted special needs children
 - » To increase the placement of foster care children legally free for adoption

P.L. 98-457**Child Abuse Amendments of 1984****Overview**

H.R. 1904

Enacted October 9, 1984

Purpose: To extend and improve provisions of laws relating to child abuse and neglect and adoption

Major Provisions of the Act

- Required States to have in place procedures with State protective systems to respond to the reporting of medical neglect, including instances of withholding medically indicated treatment from disabled infants with life-threatening conditions
- Directed HHS to develop regulations and to provide training and technical assistance needed by care providers to carry out the provisions of the act
- Required State-level programs to facilitate adoption opportunities for disabled infants with life-threatening conditions
- Provided for the establishment and operation of a Federal adoption and foster care data-gathering and analysis system
- Provided for a national adoption exchange to match special needs children with prospective adoptive families

P.L. 96-272**Adoption Assistance and Child Welfare Act of 1980****Overview**

H.R. 3434

Enacted June 17, 1980

Purpose: To establish a program of adoption assistance, strengthen the program of foster care assistance for needy and dependent children, and improve the child welfare, social services, and aid to families with dependent children programs. This act amended titles IV-B and XX of the Social Security Act.



Major Provisions of the Act

- Required States to make adoption assistance payments, which take into account the circumstances of the adopting parents and the child, to parents who adopt a child who is AFDC-eligible and is a child with special needs
- Defined a child with special needs as a child who:
 - » Cannot be returned to the parent's home
 - » Has a special condition such that the child cannot be placed without providing assistance
 - » Has not been able to be placed without assistance
- Required, as a condition of receiving Federal foster care matching funds, that States make "reasonable efforts" to prevent removal of the child from the home and return those who have been removed as soon as possible
- Required participating States to establish reunification and preventive programs for all in foster care
- Required the State to place a child in the least restrictive setting and, if the child will benefit, one that is close to the parent's home
- Required the court or agency to review the status of a child in any nonpermanent setting every 6 months to determine what is in the best interest of the child, with most emphasis placed on returning the child home as soon as possible
- Required the court or administrative body to determine the child's future status, whether it is a return to parents, adoption, or continued foster care, within 18 months after initial placement into foster care

P.L. 95-608**Indian Child Welfare Act (ICWA) of 1978****Overview**

S. 1214

Enacted November 11, 1978

Purpose: To establish standards for the placement of Indian children in foster and adoptive homes and to prevent the breakup of Indian families

Major Provisions of the Act

- Established minimum Federal standards for the removal of Indian children from their families
- Required Indian children to be placed in foster or adoptive homes that reflect Indian culture
- Provided for assistance to Tribes in the operation of child and family service programs
- Created exclusive Tribal jurisdiction over all Indian child custody proceedings when requested by the Tribe, parent, or Indian "custodian"
- Granted preference to Indian family environments in adoptive or foster care placement
- Provided funds to Tribes or nonprofit off-reservation Indian organizations or multiservice centers for purpose of improving child welfare services to Indian children and families
- Required State and Federal courts to give full faith and credit to Tribal court decrees
- Set standard of proof for terminating Indian parents' parental rights that required the proof to be beyond a reasonable doubt





A Summary of the Indian Child Welfare Act (ICWA)

(REVISED AS OF 10/14/78 – Measure passed House, amended, in lieu of H.R. 12533)

Title I: Child Custody Proceedings

Declares that it is the policy of Congress to establish minimum Federal standards for the removal of Indian children from their families (extended families) and for the placement of such children in foster or adoptive homes which will reflect Indian culture.

Grants an Indian tribe jurisdiction exclusive as to any State over custody proceedings involving an Indian child who resides within the reservation of such tribe or is a ward of a tribal court except where jurisdiction is vested in the State by existing Federal law.

Allows the Indian custodian or the Indian tribe of a child to intervene at any point in a State Court proceeding for the foster care placement of, or termination of parental rights to, an Indian child. Stipulates that, upon application by an Indian individual who has reached age 18 and who was the subject of an adoptive placement, the court which entered the final placement decree shall inform such individual of the tribal affiliation, if any, of his or her biological parents, and provide such other information as may be necessary to protect any rights flowing from his or her tribal relationship.

Allows any Indian tribe which became subject to State jurisdiction pursuant to Federal law to reassume jurisdiction over child custody proceedings upon approval of a petition by the Secretary of the Interior.

Provides for emergency removal of an Indian child, who is a resident of or domiciled on a reservation but temporarily located off the reservation, from the parent or Indian custodian and the emergency placement of such child under applicable State law, in order to prevent harm to such child. Stipulates that such removal or placement must be terminated immediately when no longer necessary to prevent imminent physical harm to such child.

Title II: Indian Child and Family Programs

Authorizes the Secretary of the Interior to make grants to Indian tribes and organizations for the establishment and operation of Indian child and family service programs on or near reservations and for the preparation and implementation of child welfare codes. States that the objective of every Indian child and family service programs shall be to prevent the breakup of Indian families.

Authorizes every Indian tribe to operate and maintain facilities for: (1) the counseling or treatment of Indian families or individuals; (2) the temporary custody of Indian children; and (3) legal representation and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

Authorizes the Secretary to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs.

(continued on next page)



P.L. 95-266**Child Abuse Prevention and Treatment and Adoption Reform Act of 1978****Overview**

H.R. 6693

Enacted April 24, 1978

Purpose: To promote the healthy development of children who would benefit from adoption by facilitating their placement in adoptive homes, and to extend and improve the provisions of the Child Abuse Prevention and Treatment Act (CAPTA)

Major Provisions of the Act

- Required the National Center on Child Abuse and Neglect (NCCAN) to:
 - » Develop a comprehensive plan for facilitating the coordination of activities among agencies
 - » Establish research priorities for making grants
 - » Set aside funds to establish centers for the prevention, identification, and treatment of child sexual abuse
- Established the Adoption Opportunities Program to:
 - » Facilitate placement of children with special needs in permanent adoptive homes
 - » Promote quality standards for adoptive placement and the rights of adopted children
 - » Provide for national adoption information exchange system
- Provided for annual summaries of research on child abuse and neglect

P.L. 93-247**Child Abuse Prevention and Treatment Act (CAPTA) of 1974****Overview**

S. 1191

Enacted January 31, 1974

Purpose: To provide financial assistance for a demonstration program for the prevention, identification, and treatment of child abuse and neglect

Major Provisions of the Act

- Provided assistance to States to develop child abuse and neglect identification and prevention programs
- Authorized limited government research into child abuse prevention and treatment
- Created the National Center on Child Abuse and Neglect (NCCAN) within the Department of Health, Education, and Welfare to:
 - » Administer grant programs
 - » Identify issues and areas needing special focus for new research and demonstration project activities
 - » Serve as the focal point for the collection of information, improvement of programs, dissemination of materials, and information on best practices to States and localities
- Created the National Clearinghouse on Child Abuse and Neglect Information
- Established Basic State Grants and Demonstration Grants for training personnel and to support innovative programs aimed at preventing and treating child maltreatment



Title VI of the 1964 Civil Rights Act

TITLE VI--NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

<http://www.usdoj.gov/crt/cor/coord/titlevi.htm>



Title III: Recordkeeping, Information Availability, and Timetables

Directs the Secretary to collect and maintain records of all Indian child placements which are affected under the date of this Act. Requires the Secretary to insure that the confidentiality of such information be maintained where the court records contain an affidavit that the identity of the biological parents remain confidential.

Directs the Secretary to promulgate, within 180 days of enactment of this Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

Title IV: Miscellaneous

Directs the Secretary to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Senate Select Committee on Indian Affairs and House Committee on Interior and Insular Affairs.

Bill Summary & Status for the 95th Congress



United States Code Title 25, Chapter 21 Indian Child Welfare

Contents

- § 1901. Congressional findings
- § 1902. Congressional declaration of policy
- § 1903. Definitions

SUBCHAPTER I : CHILD CUSTODY PROCEEDINGS

- § 1911. Indian tribe jurisdiction over Indian child custody proceedings
- § 1912. Pending court proceedings
- § 1913. Parental rights; voluntary termination
- § 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations
- § 1915. Placement of Indian children
- § 1916. Return of custody
- § 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court
- § 1918. Reassumption of jurisdiction over child custody proceedings
- § 1919. Agreements between States and Indian tribes
- § 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception.
- § 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child.
- § 1922. Emergency removal or placement of child; termination; appropriate action
- § 1923. Effective date

SUBCHAPTER II: INDIAN CHILD AND FAMILY PROGRAMS

- § 1931. Grants for on or near reservation programs and child welfare codes
- § 1932. Grants for off-reservation programs for additional services
- § 1933. Funds for on and off reservation programs
- § 1934. "Indian" defined for certain purposes

SUBCHAPTER III: RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

- § 1951. Information availability to and disclosure by Secretary
- § 1952. Rules and regulations

SUBCHAPTER IV: MISCELLANEOUS PROVISIONS

- § 1961. Locally convenient day schools
- § 1962. Copies to States
- § 1963. Severability
- § 1901. Congressional findings

(continued on next page)



§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

- (1) that clause 3, section 8, article I of the United States Constitution provides that “The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes ^[1]” and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
- (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
- (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
- (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
- (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

[1] So in original. Probably should be capitalized.

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term:

- (1) “child custody proceeding” shall mean and include—
 - (i) “foster care placement” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
 - (ii) “termination of parental rights” which shall mean any action resulting in the termination of the parent-child relationship;

(continued on next page)



- (iii) “preadoptive placement” which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
 - (iv) “adoptive placement” which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.
- (2) “extended family member” shall be as defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;
 - (3) “Indian” means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;
 - (4) “Indian child” means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;
 - (5) “Indian child’s tribe” means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;
 - (6) “Indian custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;
 - (7) “Indian organization” means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;
 - (8) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602 (c) of title 43;
 - (9) “parent” means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;
 - (10) “reservation” means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;
 - (11) “Secretary” means the Secretary of the Interior; and
 - (12) “tribal court” means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(continued on next page)



Subchapter I: Child Custody Proceedings

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) **Exclusive jurisdiction**

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) **Transfer of proceedings; declination by tribal court**

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: provided that such transfer shall be subject to declination by the tribal court of such tribe.

(c) **State court proceedings; intervention**

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) **Full faith and credit to public acts, records, and judicial proceedings of Indian tribes**

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

§ 1912. Pending court proceedings

(a) **Notice; time for commencement of proceedings; additional time for preparation**

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) **Appointment of counsel**

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment

(continued on next page)



is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) **Examination of reports or other documents**

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) **Remedial services and rehabilitative programs; preventive measures**

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) **Foster care placement orders; evidence; determination of damage to child**

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) **Parental rights termination orders; evidence; determination of damage to child** No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

§ 1913. Parental rights; voluntary termination

(a) **Consent; record; certification matters; invalid consents**

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) **Foster care placement; withdrawal of consent**

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) **Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody**

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(continued on next page)



(d) **Collateral attack; vacation of decree and return of custody; limitations**

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

§ 1915. Placement of Indian children

(a) **Adoptive placements; preferences**

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with

- (1) a member of the child's extended family;
- (2) other members of the Indian child's tribe; or
- (3) other Indian families.

(b) **Foster care or preadoptive placements; criteria; preferences**

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) **Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences**

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: provided that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(continued on next page)



(d) **Social and cultural standards applicable**

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) **Record of placement; availability**

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

§ 1916. Return of custody

(a) **Petition; best interests of child Notwithstanding**

State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) **Removal from foster care home; placement procedure**

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

§ 1918. Reassumption of jurisdiction over child custody proceedings

(a) **Petition; suitable plan; approval by Secretary**

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) **Criteria applicable to consideration by Secretary; partial retrocession**

- (1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(continued on next page)



- (i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;
 - (ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;
 - (iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and
 - (iv) the feasibility of the plan in cases of multi-tribal occupation of a single reservation or geographic area.
- (2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911 (a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911 (b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911 (a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.
- (c) **Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval**
 If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.
- (d) **Pending actions or proceedings unaffected Assumption of jurisdiction under this section shall not** affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

§ 1919. Agreements between States and Indian tribes

- (a) **Subject coverage**
 States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.
- (b) **Revocation; notice; actions or proceedings unaffected**
 Such agreements may be revoked by either party upon one hundred and eighty days written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline

(continued on next page)



jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

§ 1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

§ 1923. Effective date

None of the provisions of this subchapter, except sections 1911 (a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

Subchapter II: Indian Child and Family Programs

§ 1931. Grants for on or near reservation programs and child welfare codes

(a) Statement of purpose; scope of programs

The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(continued on next page)



- (1) a system for licensing or otherwise regulating Indian foster and adoptive homes;
- (2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;
- (3) family assistance, including homemaker and home counselors, day care, after school care, and employment, recreational activities, and respite care;
- (4) home improvement programs;
- (5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;
- (6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;
- (7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and
- (8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program

Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV–B and XX of the Social Security Act [42 U.S.C. 620 et seq., 1397 et seq.] or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV–B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

§ 1932. Grants for off-reservation programs for additional services

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to

- (1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;
- (2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;
- (3) family assistance, including homemaker and home counselors, day care, after school care, and employment, recreational activities, and respite care; and
- (4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

(continued on next page)



§ 1933. Funds for on and off reservation programs

(a) **Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments**

In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: provided that authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) **Appropriation authorization under section 13 of this title**

Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title.

§ 1934. “Indian” defined for certain purposes

For the purposes of sections 1932 and 1933 of this title, the term “Indian” shall include persons defined in section 1603 (c) of this title.

Subchapter III: Recordkeeping, Information Availability, and Timetables

§ 1951. Information availability to and disclosure by Secretary

(a) **Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act**

Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

- (1) the name and tribal affiliation of the child;
- (2) the names and addresses of the biological parents;
- (3) the names and addresses of the adoptive parents; and
- (4) the identity of any agency having files or information relating to such adoptive placement. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) **Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment**

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child’s tribe, where the information warrants, that the child’s parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

(continued on next page)



§ 1952. Rules and regulations

- (c) Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

Subchapter IV: Miscellaneous Provisions

§ 1961. Locally convenient day schools

- (a) **Sense of Congress** It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.
- (b) **Report to Congress; contents, etc.**
The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

§ 1962. Copies to the States

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

§ 1963. Severability

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.



Adoption and Safe Families Act

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration for Children, Youth and Families	
1. Log No. ACYF-CB-PI-98-02	2. Issuance Date: January 8, 1998
3. Originating Office: Children's Bureau	
4. Key Words: Adoption and Safe Families Act of 1997; Public Law 105-89; Amendments to Title IV-B Subparts 1 and 2 and Title IV-E of the Social Security Act; State Automated Child Welfare Information System (SACWIS)	

PROGRAM INSTRUCTION

TO: State and Territorial Agencies Administering or Supervising the Administration of Title IV-B and Title IV-E of the Social Security Act, Indian Tribes and Indian Tribal Organizations

SUBJECT: NEW LEGISLATION -- Public Law 105-89, The Adoption and Safe Families Act of 1997

LEGAL AND RELATED REFERENCES The Adoption and Safe Families Act of 1997 (Public Law 105-89), Titles IV-B and IV-E, Section 403(b), Section 453, and Section 1130(a) of the Social Security Act

PURPOSE: The purpose of this Program Instruction (PI) is to inform States of new legislation amending titles IV-B and IV-E of the Social Security Act and provide guidance for implementing the new law. This PI also provides the effective dates for implementing Public Law 105-89 and early notification of the impact of the new law on State Automated Child Welfare Information Systems (SACWIS).

OVERVIEW: This Program Instruction transmits Public Law 105-89 and a compilation of titles IV-B and IV-E, as amended by the Adoption and Safe Families Act of 1997 (ASFA). It also provides guidance for States' early implementation of the law. The PI is divided into three parts: Part I contains principles to assist States in understanding the new provisions and integrating the law into ongoing reforms of the child welfare system; Part II stipulates the effective dates of the new legislation; and Part III discusses how the law may impact States' SACWIS and other information systems.

INFORMATION:

PART I. THE ADOPTION AND SAFE FAMILIES ACT OF 1997

On November 19, 1997, the President signed into law the Adoption and Safe Families Act of 1997. This legislation, passed by the Congress with overwhelming bipartisan support, represents an important landmark in Federal child welfare law. It establishes unequivocally that our national goals for children in the child welfare system are safety, permanency, and well-being. The passage of this new law gives us an unprecedented opportunity to build on the reforms of the child welfare system that have begun in recent years in order to make the system more responsive to the multiple, and often complex, needs of children and families. The law reaffirms the need to forge linkages

(continued on next page)



between the child welfare system and other systems of support for families, as well as between the child welfare system and the courts, to ensure the safety and well-being of children and their families. The law also gives renewed impetus to dismantle the myriad barriers that may exist between children waiting in foster care and permanency. By implementing the new law in the context of an ongoing commitment to strengthening all aspects of the child welfare system, we will make a meaningful difference in the lives of children in foster care and in the lives of children who must come into contact with the child welfare system in the future.

ASFA embodies a number of key principles that must be considered in order to implement the law:

- **The safety of children is the paramount concern that must guide all child welfare services.** The new law requires that child safety be the paramount concern when making service provision, placement and permanency planning decisions. The law reaffirms the importance of making reasonable efforts to preserve and reunify families, but also now exemplifies when States are not required to make efforts to keep children with their parents, when doing so places a child's safety in jeopardy.
- **Foster care is a temporary setting and not a place for children to grow up.** To ensure that the system respects a child's developmental needs and sense of time, the law includes provisions that shorten the timeframe for making permanency planning decisions, and that establish a timeframe for initiating proceedings to terminate parental rights. The law also strongly promotes the timely adoption of children who cannot return safely to their own homes.
- **Permanency planning efforts for children should begin as soon as a child enters foster care and should be expedited by the provision of services to families.** The enactment of a legal framework requiring permanency decisions to be made more promptly heightens the importance of providing quality services as quickly as possible to enable families in crisis to address problems. It is only when timely and intensive services are provided to families, that agencies and courts can make informed decisions about parents' ability to protect and care for their children.
- **The child welfare system must focus on results and accountability.** The law makes it clear that it is no longer enough to ensure that procedural safeguards are met. It is critical that child welfare services lead to positive results. The law requires numerous tools for focusing attention on results, including an annual report on State performance; the creation of an adoption incentive payment for States designed to support the President's goal of doubling the annual number of children who are adopted or permanently placed by the year 2002; and a requirement for the Department to study and make recommendations regarding additional performance-based financial incentives in child welfare.
- **Innovative approaches are needed to achieve the goals of safety, permanency and well-being.** The law recognizes that we do not yet have all of the solutions to achieve our goals. By expanding the authority for child welfare demonstration waivers, the law provides a mechanism to allow States greater flexibility to develop innovative strategies to achieve positive results for children and families.

(continued on next page)



There is much to be done in the coming months as we work together to implement this multi-faceted new law. This Program Instruction is the first of the communications that the Department will send to assist the States in meeting the requirements of ASFA. We will also be consulting with State representatives and other experts in the field to help guide our work in implementing the new law. Working together, we have the opportunity to dramatically improve the lives of children and families.

PART II. EFFECTIVE DATES FOR IMPLEMENTING PUBLIC LAW 105-89:

General Effective Date of Public Law 105-89

The effective date of Public Law 105-89 is November 19, 1997. States are expected to comply with the provisions of the law as of that date, with the exceptions noted below.

Exceptions to Effective Date: Determination of Required State Legislation

A limited period of delay is permitted when the Secretary determines that a State must enact legislation to comply with certain State plan requirements. Section 501(b) of Public Law 105-89 authorizes the Secretary to determine those State plan requirements that will necessitate State legislation.

Delayed Effective Date

A "delayed effective date" will apply only to those requirements that the Secretary has determined require State legislation. The "delayed effective date" is defined in Section 501(b) as the beginning of the calendar quarter following the close of the State's first regular legislative session.

Following is a list of new or amended State plan requirements contained in titles IV-B and IV-E, as amended by ASFA:

Title IV-B, Subparts 1 and 2:

- Including safety in case plan and case review requirements [section 422(b)(10)]
- Developing plans to facilitate adoptions across State and county jurisdictions [section 422(b)(12)]
- Requiring assurances that the safety of children shall be of the paramount concern [section 432(a)(9)]

Title IV-E:

- Clarification of the reasonable efforts requirement [section 471(a)(15)]
- Criminal record checks for prospective foster and adoptive parents [section 471(a)(20)]
- Health insurance coverage for children with special needs [section 471(a)(21)]
- State standards to ensure quality services for children in foster care [section 471(a)(22)]
- State requirement to initiate or join proceedings within a specified time to terminate parental rights for certain children in foster care [section 475(5)(E) and (F)]*

Transition Rule

The requirement in section 475(5)(E) and (F) of the Act to initiate proceedings to terminate parental rights (TPR) is phased in over time according to the transition rule in section 103(c) of ASFA. This transition rule is separate from the "delayed effective date" described above. Separate guidance on implementing this transition will be forthcoming to the Regional Offices and States.

(continued on next page)



Action Required

The Administration for Children and Families (ACF) Regional Offices, on behalf of the Secretary, and based on the State certification will determine where State legislation is necessary to comply with title IV-B and Title IV-E State plan requirements. States that require legislation should submit the attached certification indicating those State plan requirements that will necessitate State legislation. The certification must include the estimated "delayed effective date" in accordance with Section 501(b) of ASFA. States that do not require any legislation must also submit the certification indicating that State legislation is not necessary and that a "delayed effective date" is not applicable. All certifications must be signed by the designated State agency official and submitted to the ACF Regional Office no later than February 13, 1998.

PART III. POTENTIAL IMPACT OF PUBLIC LAW 105-89 ON SACWIS:

The intent of this section is to advise States of potential implications of ASFA on their SACWIS **and not to imply that any action must to be taken by the States at this time.** The SACWIS functional requirements delineated in ACF's Action Transmittal ACF-OISM-001 (2/24/95) remain in effect.

We strongly encourage the State program and system staff to discuss the possible implications for the State's SACWIS as the State implements ASFA.

Listed below are sections of ASFA that may have possible implications for a State's SACWIS. This list may not identify every conceivable consequence of the new law on SACWIS:

1. Section 101: SACWIS may need to be modified to appropriately record and track the "reasonable efforts" requirements identified in subsection (A), the "aggravated" or other circumstances identified in subsection (D) and the timely completion of the permanency hearing identified in subsection (E). [Title IV-E, sections 471(a)(15) and 475(5)(C)]
2. Section 103: SACWIS may need to be modified to track the "total" number of months a child has been in foster care to conform with section 475(5)(E) and determine the beginning of foster care, as defined in section 475(5)(F). Also, SACWIS may need to be modified to assist the State in implementing the transition rule outlined in section 103(c). States should note that the "beginning of foster care" as defined in section 475(5)(F) should not be confused with the AFCARS data element 21, "date of latest removal from the home," which remains the same as defined in 45 CFR 1355.40, Appendix A. [Title IV-E, section 475(5)(E) and (F)]
3. Section 104: The notice generation function of a State's SACWIS may need to be expanded to ensure that the applicable parties "are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child." Considering that SACWIS is currently required to generate notices, we would not expect this to cause a significant change to the design of the system. [Title IV-E, section 475(5)(G)]

(continued on next page)



4. Section 105: If the State child welfare agency elects to use the Federal Parent Locator Service (FPLS) for child welfare services, it may need to modify its current interface with the State's title IV-D Child Support Enforcement system. We would expect that the benefits of pursuing this option would include enhancing a State's capacity to identify other family caretakers with whom the child could be placed, and expediting termination of parental rights when reunification is not an option and a suitable relative placement is not available. [title IV-D, section 453(a)(2),(c)]
5. Section 106: If a State chooses to conduct criminal background checks on foster and adoptive parents, and the State uses its SACWIS to process foster care or adoptive home applications, SACWIS may be modified to record the results of the background check. [Title IV-E, section 471(a)(20)]
6. Section 107: In the case of a child for whom the permanency plan is adoption or placement in another permanent home, SACWIS may need to be modified to appropriately record and track "the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child ... and to finalize the adoption or legal guardianship." [Title IV-E, section 475(1)(E)]
7. Section 307: SACWIS may need to be modified to maintain the prior eligibility information on behalf of children with special needs whose initial adoption has been dissolved or whose adoptive parents have died. [Title IV-E, section 473(a)(2)]

* The requirement to initiate or join proceedings to terminate parental rights is treated as a State plan requirement under section 103(c)(4) of Public Law 105-89.





ACF

Administration
for Children
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration on Children, Youth and Families

1. Log No: ACYF-CB-PI-08-05

2. Issuance Date: October 23, 2008

3. Originating Office: Children's Bureau

4. Key Words: Title IV-B and IV-E Plans, Indian Tribes, Foster Care, Adoption Assistance, Kinship Guardianship Assistance, Adoption Incentives, Training, Fostering Connections to Success and Increasing Adoptions Act of 2008

PROGRAM INSTRUCTION

- TO:** State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act, Indian Tribes and Indian Tribal Organizations
- SUBJECT:** NEW LEGISLATION — The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law (P.L.) 110-351)
- LEGAL AND RELATED:** Titles IV-B, IV-D and IV-E of the Social Security Act (the Act); P.L. 110-351
- PURPOSE:** This is to inform State, Tribal and Territorial Title IV-B and IV-E agencies and Indian Tribes and Indian Tribal Organizations of the enactment of the Fostering Connections to Success and Increasing Adoptions Act of 2008 and provide basic information about the provisions of this law.
- INFORMATION:** The President signed the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) into law on October 7, 2008. Generally, the law amends the Social Security Act to extend and expand adoption incentives through FY2013; create an option to provide kinship guardianship assistance payments; create an option to extend eligibility for Title IV-E foster care, adoption assistance and kinship guardianship payments to age 21; de-link adoption assistance from Aid to Families with Dependent Children (AFDC) eligibility; and, provide federally-recognized Indian Tribes or consortia with the option to operate a Title IV-E program, among many other provisions. A draft compilation of the revised Social Security Act can be found at. <http://www.acf.hhs.gov/programs/cb/index.htm>. The law is described in greater detail in the summary provided below.

Please note that the following information is a summary of many, but not all provisions in Public Law 110-351. This summary is intended to introduce the enacted provisions rather than provide substantive guidance on implementing the law. Additional guidance will be forthcoming.

(continued on next page)



Option to provide kinship guardianship assistance payments to certain children and related provisions

- The law adds section 471(a)(28) to the Act to create a new plan option for States and Tribes to provide kinship guardianship assistance payments under Title IV-E for relatives taking legal guardianship of children who have been in foster care. The law adds new section 473(d) of the Act to provide requirements for the Title IV-E kinship guardianship assistance program. Federal financial participation (FFP) is available for kinship guardianship assistance payments pursuant to section 474(a)(5) of the Act.
- To be eligible for kinship guardianship assistance payments, a child must have been eligible for Title IV-E foster care maintenance payments while residing for at least six consecutive months in the home of the prospective relative guardian. Further, the State must determine that: 1) being returned home or adopted are not appropriate permanency options for the child; 2) the child has a strong attachment to the prospective relative guardian and the guardian has a strong commitment to caring permanently for the child; and, 3) a child 14 years or older has been consulted regarding the kinship guardianship arrangement (section 473(d)(3)).
- The law requires that a kinship guardianship assistance agreement be negotiated and entered into with the relative guardian, and include specific information such as that the agreement remains in effect without regard to residency and specific information on the payments and additional services for which the child and guardian are eligible. The agreement must also provide for the Title IV-E agency to pay the total amount of nonrecurring expenses associated with obtaining legal guardianship of the child, up to \$2,000 (section 473(d)(1)).
- The amount of a kinship guardianship assistance payment must be no greater than the amount of the foster care maintenance payment which would have been paid on behalf of the child if the child had remained in a foster family home (section 473(d)(2)).
- The State or Tribe may make kinship guardianship assistance payments on behalf of siblings of an eligible child who are placed together with the same relative under the same kinship guardianship arrangement (section 473(d)(3)(B)).
- The law amends section 473(b)(3)(C) of the Act to extend categorical eligibility for Medicaid to children receiving kinship guardianship assistance payments.

(continued on next page)



- The law modifies the Title IV-E plan requirement at section 471(a)(20) to require procedures for fingerprint-based criminal records checks of relative guardians and child abuse and neglect registry checks of relative guardians and adults living in the guardian's home before a relative guardian may receive Title IV-E kinship guardianship assistance payments on behalf of a child.
- The law amends the case plan provisions by adding section 475(1)(F), which requires descriptions regarding the appropriateness of guardianship as a permanent plan, among other items, for a child whose plan is to receive kinship guardianship assistance.
- The law amends the Chafee Foster Care Independence Program (CFCIP) at section 477(a)(7) to add the purpose of providing services to youth who after age 16 leave foster care for kinship guardianship or adoption. The law also amends the Education and Training Voucher (ETV) Program at section 477(i)(2) to permit vouchers for youth who after attaining age 16 enter into kinship guardianship or are adopted from foster care.
- The law adds new section 474(g) to permit States to claim Title IV-E for continued assistance or services for children who were receiving assistance or services under a Title IV-E guardianship demonstration project as of September 30, 2008, when that demonstration project is terminated (section 474(g)).
- Effective Date: Upon enactment (October 7, 2008).

Family Connection Grants

- The law amends the Act to create a new section 427 which authorizes the Secretary to award competitive, matching grants to State, local, or Tribal child welfare agencies, and private non-profit organizations for the purpose of helping children who are in or are at-risk of entering into foster care reconnect with family members through: (1) kinship navigator programs; (2) efforts to find biological family and reestablish relationships; (3) family group decision-making meetings; or, (4) residential family treatment programs.
- The law appropriates \$15 million each year for the family connection grants for FY 2009 through FY 2013. \$5 million of the appropriated funds are reserved for grants to implement kinship navigator programs. There is also funding set-aside for evaluation (3 percent of funds) and technical assistance (2 percent of funds).
- Effective Date: Upon enactment (October 7, 2008).

(continued on next page)



Option to Extend Title IV-E Foster Care, Adoption & Guardianship Up to 21

- The law adds a new definition of “child” to section 475 of the Act. As defined, a “child” is: (1) an individual who has not yet turned 18 years old; or, (2) at State/Tribal option, an individual in foster care, or an individual adopted or in kinship guardianship (if a Title IV-E assistance agreement became effective after the child turned age 16) who has not attained 19, 20, or 21 years old when the youth meets prescribed conditions for continued payments. The conditions for continued Title IV-E payments apply to youth over age 18 and require the youth to be completing secondary school (or equivalent), enrolled in post-secondary or vocational school, participating in a program or activity that promotes or removes barriers to employment, employed 80 hours a month, or to be incapable of any of these due to a documented medical condition (section 475(8)(B)(iv)).
- The law amends the existing definition of a child care institution in section 472(c)(2) of the Act to include a supervised setting in which an individual who has attained 18 years of age is living independently, consistent with conditions the Secretary establishes in regulations.
- Effective date: October 1, 2010.

Short-Term Training

- The law amends section 474(a)(3)(B) of the Act to permit Title IV-E agencies to claim the costs of short-term training of: relative guardians; private child welfare agency staff providing services to children receiving Title IV-E assistance; child abuse and neglect court personnel; agency, child or parent attorneys; guardians ad litem; and, court appointed special advocates. The Federal financial participation (FFP) rate of Federal reimbursement for such training costs changes each year over a five-year period.
- Effective date: Upon enactment (October 7, 2008), subject to an increasing FFP rate for these additional trainee groups as follows: 55 percent in FY 2009; 60 percent in FY 2010; 65 percent in FY 2011; 70 percent in FY 2012; 75 percent in FY 2013 and thereafter (section 203(b) of P.L. 110-351).

Reauthorization of Adoption Incentives Program

- The law amends section 473A of the Act to extend the Adoption Incentive Program through FY 2013, update the “base year” used to measure increases to FY 2007 (section 473A(g)), and double incentive payment amounts for special needs (from \$2,000 to \$4,000) and older child adoptions (from \$4,000 to \$8,000) (section 473A(d)(1)).

(continued on next page)



- The law also creates a “highest ever” foster child adoption rate payment for exceeding the highest foster child adoption rate since 2002. This incentive is available only if there are any remaining funds after awarding foster child, special needs and older child adoption incentive payments (section 473A(d)(3)).
- Effective date: Upon enactment (October 7, 2008).

Adoption Assistance Program

- The law makes changes to the adoption assistance program in section 473 by delinking adoption assistance program from the Aid to Families with Dependent Children (AFDC) requirements and by changing other program requirements, with most changes taking effect beginning in FY 2010.
- Beginning in FY 2010, a child with special needs who is “an applicable child” (defined below) is eligible under the following revised eligibility criteria if the child: 1) at the time of the initiation of adoption proceedings the child was in the care of a public or private child placement agency by way of a voluntary placement, voluntary relinquishment or a court-ordered removal with a judicial determination that remaining at home would be contrary to the child’s welfare; 2) meets the disability or medical requirements of the Supplemental Security Income (SSI) program; 3) was residing with a minor parent in foster care (who was placed in foster care by way of a voluntary placement, voluntary relinquishment or court-ordered removal); or, 4) was eligible for adoption assistance in a previous adoption in which the adoptive parents have died or had their parental rights terminated (section 473(a)(2)(A)(ii) and 473(a)(2)(C)(ii)).
- The revised adoption assistance eligibility criteria are phased-in from FY 2010 to FY 2018 based on whether the child is defined as “an applicable child,” which primarily relates to the age of the child in the year the agreement is entered into. The revised program rules apply for children who turn 16 or older in FY 2010 and for whom an adoption assistance agreement is entered into that same year; then each subsequent year the age to apply the revised program rules decreases by two years (e.g., children who turn 14 or older in FY 2011 and children who turn 12 or older in FY 2012) until children of any age may be eligible according to the revised criteria in FY 2018 (section 473(e)(1)(B)).
- Beginning in FY 2010, the revised eligibility criteria also apply to a child who has been in foster care for 60 consecutive months (5 years) or is a sibling to a child who is eligible due to his age or length in foster care (section 473(e)(2) and (3)).

(continued on next page)



- A State is required to spend an amount equal to any savings in State expenditures under Title IV-E as a result of applying the new program rules to applicable children for a fiscal year for services permitted under title IV-B or IV-E (section 473(a)(8)).
- Children who have special needs but who are not citizens or residents of the U.S. and were either adopted in another country or brought to this country for the purposes of adoption are categorically ineligible for adoption assistance, except if the child meets the eligibility criteria after the disruption of the international adoption (section 473(a)(7)(A)).
- Effective date: Upon enactment (October 7, 2008), subject to the phase-in described above for certain provisions.

Direct Title IV-E Funding to Indian Tribes & Related Provisions

- The law creates a new section 479B of the Act, which allows federally-recognized Indian Tribes, Indian Tribal organizations and Tribal consortia (hereafter “Tribes”) to apply to the Secretary to receive Title IV-E funds directly for foster care, adoption assistance and, at Tribal option, kinship guardianship assistance. The Title IV-E requirements apply equally to Tribes and States, except as otherwise described in the law (section 479B(b)).
- A Tribal plan for Title IV-E must demonstrate that the Tribe has not had any uncorrected significant or material audit exceptions under Federal grants or contracts relating to the administration of social services for three years prior to the date of plan submission (section 479B(c)(1)(A)).
- A Tribal plan must also describe the Tribe’s Title IV-E service area and population (section 479B(c)(1)(B)).
- For the first 12 months that a Tribe’s Title IV-E plan is in effect, the Tribe may use nunc pro tunc orders and affidavits to verify reasonable efforts and contrary to the welfare judicial determinations for Title IV-E foster care eligibility (section 479B(c)(1)(C)(ii)(I)).
- For the purposes of determining AFDC eligibility for Title IV-E, Tribes must use the title IV-A State plan (as in effect as of July 16, 1996) of the State in which the child resided at the time of removal (section 479B(c)(1)(C)(ii)(II)).
- The law allows Tribes receiving Title IV-E to use in-kind funds from third-party sources as match for administrative and training costs, but places limits in statute on the amount of in-kind expenditures and types of third-party sources and authorizes the Secretary to set future limits in regulation (section 479B(c)(1)(D)).

(continued on next page)



- The law outlines the formulation of a Tribal Federal Medical Assistance Percentage (FMAP) to be used for direct Title IV-E funding to Tribes which takes into consideration the Tribe's service area and population (section 479B(d)). The law also requires the application of the Tribal FMAP, if higher than the State FMAP, for certain payments under Title IV-E agreements and contracts between States and Tribes (section 301(c)(2) of P.L. 110-351).
- The law creates an option for Tribes with an approved Title IV-E plan or a Title IV-E Tribal/State agreement to receive directly from the Secretary a portion of the State's CFCIP and ETV allotments to provide services to Tribal youth (section 477(j)).
- The law adds a new Title IV-E plan requirement at section 471(a)(32) for the State to negotiate in good faith with any Tribe that requests the development of a Title IV-E agreement with the State to administer all or part of the Title IV-E program on behalf of Indian children and access to Title IV-E administration, training and data collection resources.
- The law also adds a new CFCIP plan requirement at section 477(b)(3)(G) for a State to negotiate in good faith with any Tribe that does not receive a CFCIP or ETV allotment directly from the Secretary for a fiscal year and requests to develop an agreement to administer or supervise the CFCIP or ETV program with respect to eligible Indian children and receive an appropriate portion of the State's allotment for such administration or supervision.
- Effective date: October 1, 2009

Tribal Technical Assistance and Grants to Support Title IV-E Plan Development

- The law amends section 476 of the Act to require HHS to provide technical assistance and implementation services to Tribes seeking to operate title IV-B and IV-E programs or enter into cooperative agreements with States under new section 476(c). HHS is also authorized to make one-time grants of up to \$300,000 to Tribes that apply for funding to assist in developing a Title IV-E plan to implement a Title IV-E program directly. If HHS awards funding to a Tribe but the Tribe does not submit a Title IV-E plan within 24 months of receiving the grant, the Tribe must repay the grant funds to HHS unless the Secretary waives the requirement because the failure to apply was due to circumstances beyond the Tribe's control.
- \$3 million is directly appropriated by the law for FY 2009 and each fiscal year thereafter for the technical assistance and grants.
- Effective date: upon enactment (October 7, 2008).

(continued on next page)



Other Provisions

The law also contains the following provisions:

- *Title IV-E plan requirement for notice to relatives of removal:* The law adds a new plan requirement at section 471(a)(29) to require that title IV-E agencies exercise due diligence to identify and notify all adult relatives of a child within 30 days of the child's removal, of the relatives' options to become a placement resource for the child.
- *Title IV-E plan requirement for school attendance assurance:* The law adds a new plan requirement at section 471(a)(30), requiring assurances that each child receiving a Title IV-E foster care, adoption or guardianship payment is a full-time elementary or secondary school student, or is incapable of attending school due to a documented medical condition.
- *Title IV-E plan requirements for sibling placement:* The law adds a new plan requirement at section 471(a)(31) of the Act to require Title IV-E agencies to make reasonable efforts to place siblings removed from their home in the same foster care, adoption or guardianship placement, or facilitate visitation or ongoing contacts with those that cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings to do so.
- *Title IV-E plan requirement to inform parents of adoption tax credit:* The law adds a new plan requirement at section 471(a)(33) for Title IV-E agencies to inform prospective adoptive parents of the adoption tax credit.
- *Title IV-E plan case-by-case licensing waivers for relatives and Report to Congress:* The law amends section 471(a)(10) to explicitly permit the Title IV-E agency to waive on a case-by-case basis a non-safety licensing standard for a relative foster family home. In addition, HHS must submit a Report to Congress, two years after enactment, on children placed in relative foster family homes and the use of licensing waivers.
- *Educational stability case plan requirement:* The law amends the case plan provisions by adding section 475(1)(G) to require a plan for ensuring the educational stability of the child in foster care.
- *Travel to school added to foster care maintenance payment definition:* The law amends the definition of a "foster care maintenance payment" in section 475(4) of the Act to include the cost of reasonable travel for the child to remain in the same school he or she was attending prior to placement in foster care.

(continued on next page)



- *Travel to school added to foster care maintenance payment definition:* The law amends the definition of a “foster care maintenance payment” in section 475(4) of the Act to include the cost of reasonable travel for the child to remain in the same school he or she was attending prior to placement in foster care.
- *Title IV-B plan health oversight and coordination plan requirements:* The law amends the existing title IV-B plan requirement at section 422(b)(15) of the Act to require States and Tribes, in coordination with the State Medicaid agency, to develop a plan for ongoing oversight and coordination of health care services for children in foster care, including mental health and dental health needs.
- *Transition plan for emancipating youth:* The law amends the case review system at section 475(5) of the Act to create a new requirement that during the 90-day period prior to the youth’s emancipation, the caseworker must develop a personalized transition plan as directed by the youth.
- *Access to Federal Parent Locator Service:* The law amends section 453(j)(3) of title IV-D of the Act to grant authority to the Secretary to conduct comparisons and make disclosures to States of information for the purposes of the title IV-B and IV-E programs using the Federal Parent Locator Service.
- *Effective dates:* Upon enactment (October 7, 2008), with delays permitted when certain State legislative action is required (see instructions below).

INSTRUCTIONS: For States:

- Many of the law’s provisions have specific effective dates that are cited above. States are required to comply with the requirements imposed by the amendments to titles IV-B and IV-E of the Act as of the effective date of the enactment of a new or modified statutory provision, unless otherwise indicated (section 601(a) of P.L. 110-351). A revised Title IV-E plan pre-print is forthcoming.
- A limited period of delay is permitted when the Secretary of the U.S. Department of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required for a State to comply with the additional plan requirements under titles IV-B or IV-E of the Act imposed by P.L. 110-351. A "delayed effective date" for implementation applies only to those plan requirements listed in Attachment A. The "delayed effective date" is defined as the beginning

(continued on next page)



of the first day of the first calendar quarter following the close of the first regular session of the State legislature that ends after October 7, 2009. If the State has a two-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature (section 601(b) of P.L. 110-351).

- States that require legislation to comply with the new title IV-B or Title IV-E plan requirements should submit the attached certification (Attachment A) to the applicable Children's Bureau Regional Program Manager indicating those plan requirements that will necessitate State legislation. The certification must include the "delayed effective date" in accordance with the above definition of such date. States that do not require any legislation must also submit the certification indicating that State legislation is not necessary and that a "delayed effective date" is not applicable.
- All certifications must be signed by the designated State agency official and submitted to the Children's Bureau Regional Program Manager for approval no later than 30 days from the date of this program instruction. Attachment A signed by the Associate Commissioner of the Children's Bureau will be sent to the State to authorize the delayed effective date and certify that the Secretary has determined that State legislation is necessary.

For Indian Tribes:

Additional information and guidance about the opportunity to operate a Title IV-E program for Indian Tribes is forthcoming.

INQUIRIES:

Children's Bureau Regional Program Managers

/s/

Joan E. Ohl
Commissioner

Attachment A – Certification of Required State Legislation

Attachment B – H.R. 6983

Attachment C - Children's Bureau Regional Program Managers

(continued on next page)



ATTACHMENT A - CERTIFICATION OF REQUIRED STATE LEGISLATION

TITLE IV-E STATE PLAN - STATE OF _____

I hereby certify that State legislation is necessary to comply with the plan requirements under title IV-B and Title IV-E of the Social Security Act as amended by Public Law 110-351, the Fostering Connections to Success and Increasing Adoptions Act of 2008, which **have** been checked off below. I hereby further certify that State legislation is not necessary to comply with those plan requirements which have **not** been checked off below:

- ☐ Development of health care oversight and coordination plans for children in foster care in consultation with the Medicaid agency and health care experts [section 422(b)(15)]
- ☐ Due diligence to identify and notify adult relatives within 30 days of a child's placement in foster care [section 471(a)(29)]
- ☐ Assurances that school-age Title IV-E recipients are full-time students [section 471(a)(30)]
- ☐ Reasonable efforts to place siblings together or provide ongoing interaction [section 471(a)(31)]
- ☐ Good faith negotiation with Indian Tribes requesting the development of a Title IV-E agreement [section 471(a)(32)]
- ☐ Notification of prospective adoptive parents of Federal adoption tax credit [section 471(a)(33)]
- ☐ Case plan inclusion of a plan for educational stability of the child while in foster care [section 475(1)(G)]
- ☐ Case plan inclusion of a transition plan for youth emancipating from foster care [section 475(5)(H)]

Therefore, I do request a delay of the effective date for implementing the above requirements that are checked and do not request a delay of the effective date for implementing the above requirements that are not checked. The delayed effective date for the checked requirements will be _____ (*indicate N/A or the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that ends after October 7, 2009*).

(Date)

(Signature of Designated State Agency Official)

(Title)

(Date)

(Signature, Associate Commissioner, Children's Bureau)

(continued on next page)



ATTACHMENT C – Regional Program Managers

Region I - Boston

Bob Cavanaugh
bob.cavanaugh@acf.hhs.gov
JFK Federal Building
15 New Sudbury Street, Room 2000
Boston, MA 02203
P: (617) 565-1020

States

Connecticut, Maine, Massachusetts,
New Hampshire, Rhode Island, Vermont

Region II - New York City

Junius Scott
junius.scott@acf.hhs.gov
26 Federal Plaza, Room 4114
New York, NY 10278
P: (212) 264-2890

States and Territories

New Jersey; New York and Tribal Nations;
Puerto Rico; Virgin Islands

Region III - Philadelphia

Lisa Pearson
lisa.pearson@acf.hhs.gov
Public Ledger Building
150 S. Independence
Mall West—Suite 864
Philadelphia, PA 19106-3499
P: (215) 861-4000

States

Delaware, District of Columbia, Maryland,
Pennsylvania, Virginia, West Virginia

Region IV - Atlanta

Ruth Walker
ruth.walker@acf.hhs.gov
Atlanta Federal Center
61 Forsyth Street, SW, Suite 4M60
Atlanta, GA 30303
P: (404) 562-2900

States

Alabama, Mississippi, Florida, North Carolina,
Georgia, South Carolina, Kentucky, Tennessee

Region V - Chicago

Angela Green
angela.green@acf.hhs.gov
233 N. Michigan Avenue
Suite 400
Chicago, IL 60601
P: (312) 353-9672

States

Illinois, Indiana, Michigan, Minnesota, Ohio,
Wisconsin and Tribal

Region VI - Dallas

Janis Brown
janis.brown@acf.hhs.gov
West-Central Regional Hub
1301 Young Street Suite 945
Dallas, TX 75202-5433
P: (214) 767-8466

States

Arkansas, Louisiana, New Mexico,
Oklahoma, Texas

Region VII - Kansas City

Rosalyn Wilson
rosalyn.wilson@acf.hhs.gov
Federal Office Building
601 E 12th Street, Room 276
Kansas City, MO 64106
P: (816) 426-3981

States

Iowa, Kansas, Missouri, Nebraska

Region VIII - Denver

Marilyn Kennerson
marilyn.kennerson@acf.hhs.gov
Federal Office Building
1961 Stout Street, 9th Floor
Denver, CO 80294-3538
P: (303) 844-3100

States

Colorado, South Dakota, Utah, Montana,
Wyoming and Tribes; North Dakota

(continued on next page)



Region IX - San Francisco

Paul Kirtisitz (acting)

Paul.kirisitz@acf.hhs.gov

Dept. of Health & Human Services

1250 Maryland Avenue, SW

San Francisco, CA 94103-6710

P: (202) 205-6733

States and Territories

Arizona, California, Nevada and Tribes; Navajo,

Tohono O'odham, Washoe, IV-B Tribes;

Hawaii; American Samoa; Commonwealth of

the Northern Marianas; Federated States of

Micronesia; Guam; Marshall Islands; Palau

Region X - Seattle

Tina Minor

tina.minor@acf.hhs.gov

2201 Sixth Avenue

Suite 300, MS-70

Seattle, WA 98121

P: (206) 615-3657

States

Alaska, Washington, Idaho and Tribes; Oregon





Federal Laws & Policies Impacting Adoption Placement

References and Other Resources

Relevant ACYF Policies: Program Instructions (PI), Information Memorandums (IM), and Child Welfare Policy Manual Information (CWP), and Federal Register:

Statutes

- Multi Ethnic Placement Act (MEPA), ACYF-CB-IM-94-22, December 1, 1994.
http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/1994/im9422.htm
- Planning for the Adoption of Children with Developmental Disabilities, ACYF-CB-IM-97-03, March 20, 1997.
http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/1997/im9703.htm
- Information on Implementation of Section 471(a)(18) of Title IV-E of the Social Security Act, ACYF-CB-IM-98-03, May 8, 1998.
http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/1998/im9803.htm
- Safe and Timely Interstate Placement of Foster Children Act of 2006, ACYF-CB-IM-06-03, August 11, 2006.
http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/2006/im0603.htm
- Adam Walsh Child Protection and Safety Act of 2006, ACYF-CB-IM-06-04, September 1, 2006. http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/2006/im0604.htm
- Creation of an Adoption Tax Credit and Changes in Title IV-E State Plan Requirements (note: also references PRWORA and IEP), ACYF-CB-IM-96-24, November 14, 1996.
http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/1996/im9624.htm
- Child and Family Services Improvement Act of 2006, ACYF-CB-IM-06-05, December 7, 2006. http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/2006/im0605.htm

Program Instructions

- Adoption and Safe Families Act of 1997, ACYF-CB-PI-98-02, January 8, 1998.
http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/pi9802.htm
- Interjurisdictional Adoption Violations, ACYF-CB-PI-02-09, October 7, 2002.
http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2002/pi0209.htm
- Title IV-E State Plan Amendments – New Legislation, ACYF-CB-PI-07-02, January 27, 2007. http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2007/pi0702.htm
- Fostering Connections to Success and Increasing Adoptions Act of 2008.
<http://www.acf.hhs.gov/programs/cb/index.htm>



Children's Bureaus' Child Welfare Policy Manual

- http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/index.jsp

Child and Family Services Reviews National Standards (*Federal Register*, June 7, 2006, Vol. 71, Number 109)

- <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/06-5193>.

Corrected Federal Register Announcement on Child and Family Services Reviews National Standards

- http://www.acf.hhs.gov/programs/cb/cwmonitoring/legislation/fed_reg.htm

Other

Adoption and Foster Care Analysis and Reporting System (AFCARS), latest reports available at www.acf.hhs.gov/programs/cb/stats_research/afcars.

Anderson, G. & Whalen, P. (2004). *Permanency planning mediation pilot program: Evaluation final report*. Michigan State Courts Administrative Office.

Cahn, K. (2003). Luther Community Services evaluation report. Seattle, WA: University of Washington School of Social Work.

Child Welfare Information Gateway. (September 2003). *State statute series: Permanency planning: Concurrent planning*. Washington, DC.
<http://www.childwelfare.gov/catalog/index.cfm?event=catalog.viewSeriesDetail&series=12>

Child Information Gateway. (2005). *What does the literature say about concurrent planning?* Washington, DC: National Clearinghouse on Child Abuse and Neglect Information.
http://www.childwelfare.gov/pubs/issue_briefs/concurrent_evidence/literature.cfm

Child Welfare Research Center (2003). *Promising practices in concurrent planning*. Berkley, CA. Center for Social Services Research University of California at Berkeley Schools of Social Welfare. <http://cssr.berkeley.edu/childwelfare>

Children's Bureau, 2005 CFSR: *Findings from the 50 states*. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families.
www.acf.hhs.gov/programs/cb

Children's Bureau. (2006b). *Promising practices in child welfare services*. Washington, DC.
<http://www.acf.hhs.gov/programs/cb>



- Gatowski, S., Dobbin, S., Litchfield, M., & Oetjen, J. (2005). *Mediation in child protection cases: an evaluation of the Washington, D.C. Family Court Child Protection Mediation Program*. Reno: National Council of Juvenile and Family Court Judges.
- Glover, L. *Michigan Court Improvement Program annual program report*. Lansing: Michigan Supreme Court.
- Hollinger, Joan Heifetz (1998). A guide to the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996. The ABA Center on Children and the Law, the National Resource Center on Legal and Judicial Issues.
- Katz, L. (1994). Concurrent planning: from permanency planning to permanency action.
- Katz, L. (1999). Concurrent planning: Benefits and pitfalls. *Child Welfare*, 78(1), 71-88.
- Landsman, M. & Thompson, K. (2000). *The Iowa mediation for permanency project*. Davenport: Family Resources, Inc.
- Laver, M. (1988). Advice for agency attorneys: Implementing ASFA: A challenge for agency attorneys. *Child Law Practice: Helping Lawyers Help Kids*. Washington, DC: American Bar Association Center on Children and the Law.
- Lutheran Social Services of New England. (2000). *Lutheran Social Services of New England Cooperative Permanency Mediation Program*. Worcester: Lutheran Social Services of New England.
- Marquardt, S.M. (2000). *Implementing non-adversarial direct consent adoptions in Michigan*. Lansing, MI: Michigan Family Independence Agency.
- Martin, M.H., Barbee, A.P., Antle, B.F., & Sar, B. (2002). Expedited permanency planning: Evaluation of the Kentucky adoptions opportunities project. *Child Welfare* 81(2), 203-224.
- Maza, P. (2003). National Resource Center for Family Centered Practice and Permanency Planning. *Concurrent Planning Curriculum*. New York, NY.
- National Foster Care Awareness Project (2000). *Frequently asked questions about the foster care independence act of 1999 and the John H. Chafee foster care independence program*. Washington, DC.
- National Resource Center on Foster Care and Permanency Planning (2002). *Concurrent Planning Curriculum*. Retrieved September 2005, from [www.hunter.cuny.edu/social work/nrcfcpp](http://www.hunter.cuny.edu/social%20work/nrcfcpp)
- National Resource Center on Foster Care and Permanency Planning (2003). Concurrent planning: strategies for implementation. Web conference February 12, 2003.
- Neff, Michael A. (2002). Permanency planning, ASFA and best practices: A handbook for caseworkers. New York, NY: Council of Family and Child Caring Agencies.



- Oetjen, J. (2003). *Improving parents' representation in dependency cases: A Washington State Pilot Program Evaluation*. Reno: National Council of Juvenile and Family Court Judges.
- Promising practices in concurrent planning. (2003). Child Welfare Research Center: Berkley, CA. Center for Social Services Research University of California at Berkeley Schools of Social Welfare. <http://cssr.berkeley.edu/childwelfare>
- Pruett, E. & Savage, C. (2004). Statewide initiatives to encourage alternative dispute resolution and enhance collaborative approaches to resolving family issues. *Family Court Review*, 42(2), /232-245.
- Schene, P. (2001). Implementing concurrent planning: A handbook for child welfare administrators. Portland, ME: University of Southern Maine, National Resource Center for Organizational Improvement.
- Schene, P. (2005, May). *Comprehensive family assessment guidelines for child welfare*. New York, NY: National Resource Center for Family Centered Practice and Permanency Planning.
- Sibbison, Virginia Hayes. (2000). *Evaluation of the families together project*. Washington, DC: St Christopher-Ottillie Services for Children and Families Welfare Research, Inc.
- Thoennes, N. (2001). Dependency Mediation in Colorado's Fourth Judicial District. *Colorado Lawyer*.
- Trosch, L., Sanders, L., & Kugelmass, S. (2002). Child Abuse, Neglect, and Dependency Mediation Pilot Project. *Juvenile and Family Court Journal*, 67-77.
- U.S. Census Bureau, Population Division (2000, April 12). Racial and ethnic classifications used in Census 2000 and beyond. Special Population Staff. <http://www.census.gov/population/www/socdemo/race/racefactcb.html>
- U.S. Department of Health & Human Services. *Rethinking child welfare practice under the adoption and safe families act of 1997: A resource guide*. Washington, DC: U.S. Government Printing Office 2000.
- U.S. Department of Health & Human Services, Administration for Children & Families (2006, September). The AFCARS Report. Preliminary FY 2005 Estimates as of September 2006 (13). http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report13.htm.
- U.S. Department of Health and Human Services, AFCARS Data Elements, 45 CFR 1355, Appendices A and B.
- U.S. Department of Justice, Civil Rights Division, Federal Protections Against National Origin Discrimination, www.usdoj.gov/crt/legalinfo/nat/org-eng.htm
- U.S. Office of Management and Budget, Standards for Classifications of Federal Data on Race and Ethnicity. 45 CFR 1355, Appendix A.



U.S. Office of Management and Budget, OMB Bulletin No. 00-02 March 9, 2000. Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement.

Weinberg, A. & Katz, L. (1998). Law and social work in partnership for permanency. The Adoption and Safe Families Act and the role of concurrent. www.muskie.usm.maine.edu/helpkids/rcpdfs/concurrent.pdf

Web Sites

AdoptUsKids. The Collaboration to AdoptUsKids is a project of the Children's Bureau, part of the Federal Department of Health and Human Services. In October 2002, The Children's Bureau contracted with The Adoption Exchange Association and its partners (The Collaboration to AdoptUsKids) to devise and implement a national adoptive family recruitment and retention strategy, operate the AdoptUsKids.org website, encourage and enhance adoptive family support organizations and conduct a variety of adoption research projects. www.AdoptUsKids.org

Child Welfare Information Gateway. Established by the U.S. Children's Bureau to provide access, information, and resources on all areas of child welfare to help protect children and strengthen families. www.childwelfare.gov

Children's Bureau. The Children's Bureau is one of six bureaus within the Administration on Children, Youth and Families, Administration for Children and Families of the Department of Health and Human Services. As the oldest Federal agency for children has primary responsibility for administering Federal child welfare programs. The Children's Bureau was created by President Taft in 1912 to investigate and report on infant mortality, birth rates, orphanages, juvenile courts, and other social issues of that time. The Children's Bureau works with State and local agencies to develop programs that focus on preventing the abuse of children in troubled families, protecting children from abuse, and finding permanent placements for those who cannot safely return to their homes. It seeks to provide for the safety, permanency and well being of children through leadership, support for necessary services, and productive partnerships with States, Tribes, and communities. www.acf.hhs.gov/programs/cb/

National Resource Center for Adoption. Established by the U.S. Children's Bureau to assist States, Tribes, and other federally funded entities increase capacity in adoption. Also assists in improving the effectiveness and quality of adoption and post adoption services provided to children and their families. www.nrcadoption.org

National Child Welfare Resource Center on Legal and Judicial Issues is dedicated to achieving safety, permanence and well-being for abused and neglected children through improved laws and judicial decision-making. The Resource Center provides training, technical assistance and consultation to agencies and courts on all legal and judicial aspects of the child welfare system, including court improvement, agency and court collaboration, court process, reasonable efforts requirements, legal representation of children and their families, guardianship, confidentiality and other emerging child welfare issues. The Resource Center also works to broaden the knowledge of agencies, courts, bar organizations, and other professional on issues involving child maltreatment, foster care, permanency planning, and adoption. It organizes and assists



with training, produces and disseminates publications on law related child welfare topics, develops training materials, and helps others to improve laws, regulations, court rules, and policies. The National Child Welfare Resource Center on Legal and Judicial Issues, funded by the Children's Bureau, is a part of the American Bar Association Center on Children and the Law. <http://www.abanet.org/child/rcnji/aboutus.html>

National Data Analysis System. Integrates national child welfare data from many sources.
<http://ndas.cwla.org>

National Resource Center for Permanency and Family Connections focuses on increasing the capacity and resources of State, Tribal, and other publicly supported child welfare agencies to promote family-centered practices that contribute to the safety, permanency, and well-being of children while meeting the needs of their families. The Resource Center helps States and Tribes to implement strategies to expand knowledge, increase competencies, and change attitudes of child welfare professionals at all levels, with the goal of infusing family-centered principles and practices in their work with children, youth and families who enter the child welfare system.
<http://www.hunter.cuny.edu/socwork/nrcfcpp/>

