

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

**I S S U E S**

for  
Tribes  
and  
States  
Serving  
Indian  
Children

David Simmons and Jack Trope  
The National Indian Child Welfare Association, Inc.

The National Resource Center for Organizational Improvement  
November 1999

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## Introduction

With the passage of the Adoption and Safe Families Act (ASFA) of 1997 Congress re-emphasized the need to focus attention on the safety and well being of children who are placed or at-risk of being placed in foster care. Testimony provided to Congress suggested that in some cases children were in foster care for overly long periods of time or were shuffled from home to home without ever finding a permanent placement. Congress' response was to enact federal policies under ASFA that would bring more attention to finding permanent homes for children placed in substitute care and do this in a shorter amount of time.

While the debate in Congress had a general focus on children in the child welfare system, Indian children received little specific attention regarding the policies under ASFA that were being discussed in spite of their unique circumstances. About half of the Indian children served by child welfare programs in the United States are served by tribal programs and not by states which ASFA targets.<sup>1</sup> In addition, Indian children have a unique political status not afforded other children as members of sovereign tribal governments. This political status, as well as the history of biased treatment of Indian children and families under public and private child welfare systems, is the basis for the Indian Child Welfare Act.<sup>2</sup> However, ASFA did not specifically address how its provisions would interface with the Indian Child Welfare Act, principles of tribal sovereignty, jurisdictional or service delivery issues unique to Indian children. While this document is not a substitute for official guidance provided through legislative history, regulation or the courts, the need for providing additional interpretation and information on these issues is a basis for developing this document. We hope that the issues raised by this document will provide child welfare practitioners and policymakers with a starting place from which to guide their efforts and/or seek additional clarification.

## Legislative History and Overview of the Adoption and Safe Families Act (ASFA)

On November 19, 1997, the Adoption and Safe Families Act of 1997 (ASFA), P. L. 105-89, was signed into law. ASFA is an amendment to Title IV-B and Title IV-E of the Social Security Act.<sup>3</sup> Title IV-B provides for two child welfare grant programs (referred to as Title IV-B Subparts 1 and 2) for states and tribes. The Title IV-E Foster Care and Adoption Assistance program provides federal money for foster care and adoption assistance on an entitlement basis. Title IV-E also provides funding for independent living services for adolescents who are transitioning out of foster care. Title IV-B and Title IV-E are the basis for many of the basic federal statutory requirements of the child welfare system, including the following pre-ASFA requirements:

- case plans providing for children in foster care to be placed in the least restrictive setting which is in close proximity to the home of the child's parents;
- case review systems providing for court or administrative reviews of each child at least once every six months and dispositional court hearings within the first 18 months; and
- reasonable efforts to prevent removal of children from their families and to facilitate the return of children who have been removed.

Congress amended Title IV-B and Title IV-E of the Social Security Act by enacting ASFA because of several widely held beliefs of both Republicans and Democrats:

- The existing system has lost its focus on children and has become too biased in the direction of keeping children with their biological parent(s) regardless of how harmful such environments may be to the children involved.<sup>4</sup>
- Some children are returned to unsafe families or have been shuttled back and forth between their natural families and/or multiple foster homes for extended periods of time, rather than achieving permanent care arrangements.<sup>5</sup>
- The child's health and safety must be paramount.<sup>6</sup>
- Foster care must be temporary and of short duration.<sup>7</sup>
- Quicker permanent placements are necessary;<sup>8</sup> increasing the number of children who are adopted is desirable, provided that is the appropriate plan.<sup>9</sup>

To address these concerns, ASFA makes several changes to Titles IV-B and IV-E. The most significant aspects of ASFA are as follows:

- The health and safety of children must be the paramount concern in all decisions regarding provision of services, placement and permanency planning decisions;<sup>10</sup> states are required and encouraged to establish or utilize various mechanisms to achieve this goal, including criminal background checks of prospective foster and adoptive parents.<sup>11</sup>
- Reasonable efforts to reunify a family are not required where a parent has a pattern of abusive behavior with the child in question, criminal behavior with another child of the parent or the parental rights of a parent to a sibling of the child in question have been previously terminated involuntarily.<sup>12</sup>
- Incentive payments intended to increase the number of foster children placed for adoption are made available.<sup>13</sup>
- Expedited permanent placements for children are sought by:
  1. mandating petitions for termination of parental rights once a child has been in foster care for a period of 15 out of 22 months (subject to certain exceptions);<sup>14</sup>
  2. encouraging the use of concurrent planning — namely, planning for an out-of-home permanent placement, such as adoption, at the same time that efforts are being made to reunify the child with his/her family;<sup>15</sup>
  3. requiring a permanency hearing within 12 months after the initial foster care placement;<sup>16</sup>
  4. removing state and county jurisdictional barriers which delay interstate and intercounty adoptive placements;<sup>17</sup>
  5. extending the reasonable efforts and case plan documentation requirements to also include efforts to find a permanent placement for a child;<sup>18</sup> and
  6. expanding the use of Title IV-B, Subpart 2 funding for “Adoption Promotion and Support Services” and “Time-Limited Family Reunification Services.”<sup>19</sup>

While there was a broad consensus concerning the emphasis on health and safety of children, the undesirability of long-term foster care and the need for quicker permanent placements, there were differences in regard to how some of these goals could best be met. The differences on these issues led to various compromises in the bill. Some of the most important debates involved the following questions:

### **1. Is adoption the preferred permanent placement?**

*Debate:* Some advocacy groups and their supporters in Congress took the position that adoption is the preferred placement. Others argued that all safe, stable permanent placements are acceptable options.<sup>20</sup>

*Solution:* While a number of the provisions in the law clearly seek to promote adoption specifically,<sup>21</sup> reference is also made to legal guardianship or other arrangements where parental rights are not terminated as acceptable permanency outcomes.<sup>22</sup>

### **2. Is kinship care a positive development?**

*Debate:* Most of the social work community has been moving in the direction of increasing placements with relatives when children must be placed away from parents. This is also in accord with long-standing tribal practices. Most advocacy groups and members of Congress took the position that this development has been a positive one. A few organizations and members of Congress argued that the extended families of children at risk are frequently dysfunctional and that kinship care has been overused.<sup>23</sup>

*Solution:* The law recognizes placement with a relative as an exception to the termination of parental rights petition requirement and as a planned permanent placement which does not require the state agency to document a compelling reason for such a placement. However, the law also calls for a study of the effectiveness of kinship care as a permanent placement option.<sup>24</sup>

### **3. Should more effort be made to reunify families once a child has been removed for abuse or neglect? To this end, should additional money be provided for family preservation and reunification services, with a focus upon treating substance abuse problems?**

*Debate:* Many advocates and legislators restated their belief that reunification is a desirable goal in most cases.<sup>25</sup> A number of child welfare advocates further argued that a lack of services, particularly for treatment of substance abuse, is a primary cause of delays in permanent place-

ments for children.<sup>26</sup> Others argued that more money should not be invested in the child welfare system. They expressed the belief that it should not be assumed that reunification is in the best interests of children as a general rule. Rather, they took the view that adoption would be a more desirable outcome in many, if not most, cases. In addition, some legislators opposed additional money for the foster care system simply because of generalized budgetary concerns.<sup>27</sup>

*Solution:* The law re-authorizes Title IV-B, Subpart 2 which is renamed "Promoting Safe and Stable Families." The amount of funding authorized is increased by a small amount each year, but there is no guarantee that the full amount authorized will be appropriated by Congress. Two new categories of eligible services have been added entitled "Time-Limited Family Reunification Services" and "Adoption Promotion and Support Services." These will be added to the existing service categories (Family Preservation and Community-Based Family Support Services). Time-limited reunification services can only be provided with these funds for 15 months from the time a child has entered foster care.<sup>28</sup> The law does not include a proposal initially made in a Senate version of the bill, S. 511, which would have provided that Title IV-E entitlement funds would be made available for reunification services and residential substance abuse treatment programs.<sup>29</sup> Rather, a study of the substance abuse issue in child welfare cases is mandated.<sup>30</sup>

In addition, the law provides for an exception to the requirement that a Termination of Parental Rights petition be filed within a certain time frame when necessary services have not been provided to the birth family.<sup>31</sup> At the same time, however, the law requires permanency hearings within 12 months and does not require reasonable efforts to preserve or reunify in some circumstances.<sup>32</sup>

## Impact of ASFA upon Indian Children and Families in State Systems

### **ASFA and the Indian Child Welfare Act (ICWA): ASFA Does Not Modify ICWA**

For a number of reasons, ASFA should not be viewed as affecting the application of the Indian Child Welfare Act <sup>33</sup> in the case of Indian children involved in state child custody proceedings.

1. The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) was the first reform of federal child welfare law. It created Title IV-E and revised Title IV-B. P.L. 96-272 made no specific reference to ICWA and, in spite of its later date of enactment, has never been interpreted as modifying the provisions of ICWA. Likewise, there is no provision in ASFA that indicates an intent to modify ICWA. Thus, given that Title IV-B and Title IV-E of the Social Security Act have not been interpreted as modifying or affecting the application of ICWA, ASFA should not be interpreted as modifying ICWA.
2. In 1994, an amendment to Title IV-B was passed requiring, for the first time, that state Title IV-B plans “contain a description, developed after consultation with tribal organizations...in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act.”<sup>34</sup> This section was not changed by ASFA.
3. Standard rules of statutory construction provide further support for the proposition that no part of ASFA should be interpreted as modifying ICWA. First, ASFA deals with all children who become involved with the foster care or adoption system, whereas ICWA is a specific enactment dealing with one subsection of children — Indian children involved in child custody proceedings. ICWA is based upon extensive hearings which demonstrated that the specific needs of Indian children are normally best served by maintaining their relationships with their tribes and extended families.<sup>35</sup> It is a standard rule of statutory construction that specific legislative enactments take precedence over general statutory enactments.<sup>36</sup> Moreover, as part of its trust relationship with Native people, Congress routinely enacts Indian-specific legislation which is specifically

targeted toward the particular and special needs of Native Americans.<sup>37</sup> Such Indian-specific statutes are to be liberally interpreted for the benefit of the people on whose behalf they were enacted.<sup>38</sup>

Key areas where ICWA standards must be met by states include:

- notice to tribes of state child custody proceedings;<sup>39</sup>
- standards for the placement of Indian children in foster homes and termination of parental rights;<sup>40</sup>
- active efforts to provide rehabilitative services to the birth family or Indian custodian;<sup>41</sup>
- transfer of jurisdiction to tribal courts and full faith and credit for tribal judgments;<sup>42</sup>
- preferred placements of Indian children with their extended family or other Indian families;<sup>43</sup> and
- tribal right to intervene in state child custody proceedings.<sup>44</sup>

### **Implementation of ASFA and ICWA**

While the philosophical bases for ASFA and ICWA are different, their provisions are capable of being successfully integrated. This section explores some of ASFA/ICWA integration issues most likely to arise during implementation of ASFA by states.

#### ***1. Reasonable/active efforts***

*ASFA provision:* Reasonable efforts to prevent removal of a child from the child's home or to reunify the child with his or her family after removal are no longer required in certain circumstances. Specifically, ASFA does not require reasonable efforts when one of the following circumstances exists: 1) aggravated circumstances which the law asserts are to be defined by "State law" (examples given are abandonment, torture, chronic abuse or sexual abuse of a child); 2) parent previously had parental rights involuntarily terminated to a sibling of the current child in custody; 3) parent has committed or aided, abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or 4) parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent. Reasonable efforts are required unless the court determines that one of the exceptions applies.<sup>45</sup>

*ICWA provision:* Active efforts must be made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.<sup>46</sup> Guidelines issued by the Bureau of Indian Affairs indicate that such efforts should "involve and use the available resources of the extended family, the tribe, Indian social services agencies and individual Indian care givers."<sup>47</sup>

*Integration of ASFA and ICWA:* While ASFA changes current law so as not to require states to make reasonable efforts to prevent removal of a child from the child's home or to reunify the child with his or her family after removal in certain circumstances, ASFA does not prohibit the state from making such efforts in these circumstances as determined on a case by case basis. Thus, active efforts to provide services as required under ICWA to all families of Indian children would not conflict with ASFA. Indeed, even under ASFA, reasonable efforts will be required unless a judicial determination is obtained that one of ASFA exceptions to the reasonable efforts requirement applies in a given case. In the case of an Indian child, the state should refrain from seeking such a judicial determination. Under ICWA, a state court will consider whether active efforts have been made in support of a petition to terminate parental rights of an Indian parent or custodian. Therefore, it is advisable to consider whether this and other ICWA legal standards for termination of parental rights have been achieved before suspending active efforts to an Indian child and family.

## **2. Termination of parental rights**

*ASFA provision:* A termination of parental rights (TPR) petition must be filed and efforts made to locate an adoptive family: (1) when a child has been in foster care for 15 of the last 22 months; (2) if the child has been abandoned as defined in state law; or (3) if the parent has committed murder, voluntary manslaughter or felony assault that led to serious bodily injury against any of his/her children. There are three exceptions to this requirement: (1) the child is being cared for by a relative; (2) a state agency has a compelling reason for determining that filing the petition would not be in the best interests of the child; or (3) in any case where reasonable efforts are required, the state has not provided to the family of the child those services which the state deems necessary for the safe return of the child.<sup>48</sup>

*ICWA provision:* Parental rights may be terminated only where there is evidence beyond a reasonable doubt, including testimony of 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.<sup>49</sup> Active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family must have been made before a termination of parental rights may be sought.<sup>50</sup>

*Integration of ASFA and ICWA:* Indian children, as determined on a case-by-case basis, will frequently fall within one of the exceptions to the termination of parental rights (TPR) filing requirement for several reasons:

- ICWA provides that placement with the child's extended family is a preferred placement.<sup>51</sup> Thus, many Indian children may fall within the "relative" exception to the TPR requirement. Of note, extended family has a specific definition in ICWA which is based upon tribal law and custom where such law and custom exists.<sup>52</sup>
- ICWA has a specific legal standard applicable to termination of parental rights. Where that standard cannot be met in terms of a specific parent of an Indian child, that could constitute a compelling reason not to file a TPR petition. Any other interpretation of the two laws would lead to an inappropriate result — TPR petitions being filed before related ICWA requirements have been met.
- As is the case for non-Indian children and families, there may be other compelling reasons not to file a TPR petition in any given case. For example, if a parent is making progress in treating a substance abuse problem and continued progress would allow future reunification without endangering the child, this could constitute a compelling reason not to file a TPR petition.
- In evaluating the "failure to provide services" exception to the TPR filing requirement, necessary services to be provided to the family would be circumscribed by ICWA's active efforts requirement. Thus, failure to adequately utilize appropriate tribal, extended family and community resources could trigger this exception in ASFA.

Nonetheless, there are some circumstances where the TPR provision is likely to have an impact upon Indian children and families. The TPR provision is intended to expedite efforts to place children in permanent placements. Consequently, this provision may result in greater hesitance on the part of some agencies to engage in lengthy reunification processes. In those circumstances where ICWA's TPR or other service requirements do not require continued reunification efforts and the child has not been placed with extended family, it can be expected that some agencies will generally be less inclined than in the past to continue rehabilitation efforts for parent(s) after a child has been in foster care for 15 (out of 22) months. Indeed, in some states, legislation implementing ASFA provides for TPR petitions to be filed after a child's stay in foster care of less than 15 months. Such legislation will probably place additional pressure upon agencies to limit the duration of their rehabilitation efforts.

### **3. Permanency hearing**

*ASFA provision:* A permanency hearing (formerly called a dispositional hearing) is required within 12 months after the date the child has entered foster care. A child shall be considered to have entered foster care on the earlier of the following two dates: 1) date of a judicial finding that the child has been subjected to child abuse or neglect; or 2) the date that is 60 days after the date that the child was removed from the home.<sup>53</sup> A permanency hearing is also required within 30 days after a court has determined that reasonable efforts to reunify the family are not required.<sup>54</sup> At any permanency hearing, a permanency plan must be developed which would indicate whether, and if applicable when, the child will be returned to the parent, placed for adoption, referred for legal guardianship or placed permanently with a fit and willing relative. Other permanent living arrangements are permissible only where the state has a compelling reason not to place the child in one of the aforementioned placements.<sup>55</sup>

*ICWA provision:* There is no comparable provision in ICWA. However, ICWA does provide for notice to parents, Indian custodians and Indian tribes all of whom have a right to participate or intervene in child custody proceedings.<sup>56</sup>

*Integration of ASFA and ICWA:* Permanency hearings will take place within the time schedule established by ASFA. However, the deci-

sion concerning the permanency plan for the child will continue to be governed by the substantive requirements of ICWA. Thus, only where the termination of parental rights provision in ICWA can be satisfied would adoption be a potentially appropriate plan for the child. Where ICWA termination standard cannot be met, the plan would need to provide for a different option — for example, a long-term guardianship, a relative placement or continued efforts at reunification. It is worth noting that the twelve-month hearing requirement is not a “cut-off” date for parental rights. Where a parent is making progress toward reunification by the time of the 12-month hearing, it may be appropriate to continue reunification as the permanency goal. As a practical matter, however, if a parent has made no progress in the 12-month period, it is likely that a different permanency plan other than reunification will be presented to the court. Any permanency plan developed for an Indian child which provides for an out-of-home placement, including an adoptive placement, would be subject to the placement preferences in ICWA.<sup>57</sup> Those placement preferences include placement with extended family, other members of the Indian child’s tribe and other Indian families.

#### **4. Cross-jurisdictional placements**

*ASFA Provision:* States may not deny or delay placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case.<sup>58</sup>

*ICWA Provision:* While ICWA has no comparable provision, there are aspects of ICWA that are implicated by this section. ICWA provides that extended families, members of the Indian child’s tribe and other Indian families are preferred adoptive placements.<sup>59</sup> In addition, ICWA provides for the transfer of adoption proceedings to tribal court, absent objection by a parent or good cause to the contrary.<sup>60</sup> Finally, for purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes by an Indian tribe is equivalent to licensing by a state.<sup>61</sup>

*Integration of ASFA and ICWA:* Due to ICWA requirements, there may be several circumstances when a state may not be considered to have violated this ASFA provision, despite seemingly delaying or denying an “approved family” in another jurisdiction. First, ICWA provides for preferred categories of adoptive placements, which must be followed absent good cause to the contrary. If the “ap-

proved family" is not within a preferred placement category, the placement cannot be made unless good cause is present. Rather, an additional search for a preferred placement would be required. Secondly, if a petition were made to transfer the state court proceeding to tribal court, the inherent delay of finding a proper legal forum for the adoption proceeding according to ICWA requirements, may not be considered a violation. It is worth noting that placements "outside of the jurisdiction" of the state would presumably include placements within tribal jurisdiction. Thus, if the child's tribe has identified and approved a preferred adoptive placement, ASFA would seem to prohibit a state placement agency from delaying or denying the child's placement in that home.

### **Other Issues of Concern for Tribes that Have Children in State Care or Custody.**

States are required to amend their Title IV-B and Title IV-E plans, pass new legislation and develop new regulations or program guidance. Tribes are encouraged to become actively involved with state planning and policy development regarding implementation of this law.<sup>62</sup>

All children in state foster care at the time of enactment of ASFA and beyond will be subject to the new TPR requirements. States can phase in this requirement for children in foster care at date of enactment according to the length of time the child is in care and if their permanent plan calls for adoption. It is important to note that the states must still meet applicable ICWA requirements for Indian children under their care, even if the children have been in foster care for 15 months or longer.<sup>63</sup>

A feasibility study will be conducted regarding the use of outcome measures to evaluate states' progress on protecting children. Outcome measures that have been developed could be used to rate state performance in this area and determine future allocations of federal child welfare funding under Title IV-B and Title IV-E. The measures are based on AFCARS and NCANDS data collected by state child welfare systems, which do not provide measures of ICWA compliance for Indian children. The data establishes outcome measures that would be used with all children and would not measure issues unique to Indian children.

# Impact of ASFA upon Tribal Programs

## **Introduction**

It appears that Congress did not consider tribal programs when it enacted ASFA. Specifically, it did not consider tribal sovereignty, nor the fact that many tribes operate only Title IV-B programs (subparts 1 and 2) and not Title IV-E. It also did not consider that those tribes that operate Title IV-E Foster Care and Adoption Assistance programs currently do so through tribal-state agreements that vary in their form and substance from state to state. Thus, while ASFA provisions may make sense in the context of state programs, their application to tribes is more complex.

The application of ASFA will differ depending upon whether a given tribe operates a Title IV-B program by a direct grant from DHHS, and/or a Title IV-E program through child welfare agreements (foster care or adoption services) with states/counties. Where the tribe does not operate any of these programs, none of ASFA provisions would be applicable. Where the tribe does operate one or more of these programs the following is a summary of those provisions of ASFA which may apply to tribes operating such programs.

Because the Department of Health and Human Services (DHHS) has the authority and responsibility to develop regulations and program guidance on this law, it will be up to them to determine how the provisions in Title IV-B and Title IV-E contained in ASFA interplay with tribal programs. This guidance will hopefully take into consideration historic tribal sovereignty and jurisdiction that tribes have over child welfare matters involving their members when interpreting the options available to tribes operating Title IV-B or Title IV-E programs.

## **ASFA Requirements for Tribes that Operate a Title IV-B, Subpart 1 Child Welfare Services Grant**

Tribes are eligible for direct funding under Title IV-B, subpart 1 through section 428 of the Social Security Act.<sup>64</sup> Section 428 provides that an “Indian tribal organization” may receive Title IV-B

funds directly from the federal government if it “has a plan for child welfare services approved under this subpart.” The section is silent as to the elements that must be included in any such plan.

Section 428 of the Act has been implemented by a tribal-specific regulation which specifies how tribes need to comply with the requirements of Title IV-B.<sup>65</sup> Although NICWA has argued that Section 428 provides DHHS with flexibility to determine how best to implement Title IV-B in the tribal context, DHHS interprets the law as not providing it with the authority to waive the general statutory requirements of Title IV-B, Subpart 1 in implementing Section 428.

Thus, given the DHHS interpretation, it would appear that ASFA changes to Title IV-B would apply to tribes.<sup>66</sup> The only ASFA amendment not currently referenced in the existing regulations is the section on cross-jurisdictional placements, which is new. Under DHHS’ interpretation of their authority under the statute, however, the cross-jurisdictional section would presumably apply to tribes even in the absence of an amendment to the tribal regulation.

The major ASFA changes to the Social Security Act that impact tribes operating Title IV-B, Subpart I programs are as follows:

- The child’s safety must be specifically considered and protected in the provision of all child welfare services.<sup>67</sup>
- A permanency hearing (formerly called a dispositional hearing) is required within 12 months after the date the child has entered foster care. A child shall be considered to have entered foster care on the earlier of the following two dates: 1) date of a judicial finding that the child has been subjected to child abuse or neglect, or 2) the date that is 60 days after the date that the child was removed from the home. It is anticipated that ASFA will require courts and placement agencies to focus greater attention on efforts to secure permanent homes for children than they have in the past. Courts are expected to actively review efforts to reunify children with their birth families and to ensure that child welfare agencies find permanent homes for children in substitute care at these hearings, including whether there is a need to terminate parental rights to legally free a child for an adoptive placement. Good documentation in the case plan regarding efforts to pursue a permanent home will be essential to avoid inappropriate permanency outcomes for children in foster care.<sup>68</sup>

- Reunification, adoption, guardianship and relative placements are all recognized as acceptable permanency options, but other permanent living arrangements, such as long-term foster care, are discouraged absent compelling reasons.<sup>69</sup>
- Foster parents or relative caregivers and pre-adoptive parents providing care to a child must be provided with notice of, and an opportunity to be heard in, any six-month periodic case review or permanency hearing. This provision does not require, however, that the foster parents, relative caregivers, or pre-adoptive parents become a legal party to any review or hearing.<sup>70</sup>
- Specific circumstances are specified under which a petition to terminate parental rights (TPR) must be filed and specific and limited circumstances are defined where a TPR petition is not required. Circumstances where a TPR petition is required include the following: 1) child has been in foster care for 15 of the most recent 22 months; 2) child has been determined to be abandoned; or 3) parent has committed or aided, abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, or the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent. The tribe/state must also seek to identify, recruit, process and approve a qualified family for adoption at the time of the TPR filing.
- A tribe/state can make a determination not to file a TPR petition in a specific case if one of the exceptions identified below exists: 1) child is being cared for by a relative; 2) the tribe/state has documented in the case plan a compelling reason for determining that filing a petition to TPR would not be in the best interest of a child; or 3) the tribe/state has not provided services to the child's family that it deems necessary for the safe return of the child to their home.

This flexibility is built into the law to allow for case-by-case determinations of when it is appropriate to pursue a TPR and adoptive placement and when it is not. If one of the reasons above exists in a specific case whereby the tribe/state has determined that it is not appropriate to file a petition to TPR, the tribe/state is not required to pursue a TPR. Moreover, the TPR provision should have no effect upon culturally appropriate case planning and service delivery.<sup>71</sup>

New case plan requirements. The case plan for a child where the permanency plan is adoption or placement in another permanent home must now include documentation of the steps the tribe/state is taking to find an adoptive family or other permanent placement for the child. The tribe/state can elect to utilize some other type of permanent placement such as guardianship or relative care when appropriate.<sup>72</sup>

Assurances must be made in Title IV-B, Subpart 1 plans that plans will be developed for the effective use of cross-jurisdictional placements for children waiting in foster care.<sup>73</sup>

### **ASFA Requirements for Tribes that Operate the Title IV-E Foster Care and Adoption Assistance Program**

ASFA extensively amended Title IV-E of the Social Security Act. Subject to any regulations adopted by DHHS, all of ASFA requirements applicable to tribes operating Title IV-B Subpart 1 programs would also be applicable to tribes operating Title IV-E programs. The following is a summary of additional amendments applicable to Title IV-E programs.

- The amendments require that the child's health and safety be the paramount concerns in determining when reasonable efforts need to be made and in the provision of all child welfare services.<sup>74</sup>
- The amendments modify the reasonable efforts requirement for: 1) providing services to prevent the removal of a child from his/her home, 2) reunifying a child with his/her birth family after removal, and 3) finalizing a permanent placement for a child. ASFA allows, but does not require, tribes/states to be exempted from the reasonable efforts requirement when one of the following circumstances exists: 1) aggravated circumstances, which the law asserts are to be defined by "State law" (examples given are abandonment, torture, chronic abuse or sexual abuse of a child); 2) parent previously had parental rights involuntarily terminated to a sibling of the current child in custody; 3) parent has committed or aided, abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or 4) parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent. When reasonable efforts to reunify a

family are no longer required, tribes/states must make reasonable efforts to place the child in a timely manner in accordance with the permanent plan and finalize the permanent placement for the child.<sup>75</sup>

This is another example of a provision where Congress may not have considered tribes. Tribal sovereignty would dictate that those “aggravated circumstances” that would allow reasonable efforts to reunify the family to end would be defined by tribal law when children and families are under tribal jurisdiction. If tribes were operating Title IV-E programs through direct federal grants, it would be simple and routine to interpret ASFA as recognizing the applicability of “tribal law” when tribes are operating the program. However, because tribes are currently operating Title IV-E programs only through agreements with states or counties, the application of this provision is uncertain. This is an issue where DHHS guidance would be helpful to ensure that there is no confusion regarding a tribe’s sovereign authority to make decisions on child welfare matters involving tribal children within their jurisdiction.

In one sense, however, the practical problems created by this ambiguity may be limited. While ASFA changes the current law so as not to require reasonable efforts to prevent removal of a child from the child’s home or to reunify the child with his or her family after removal, ASFA does not prohibit such efforts. Thus, the tribe would always have the option to continue to make efforts to reunify the family in cases for which it deems it appropriate to do so. Indeed, if a tribal child welfare agency believes that efforts to prevent removal or reunify are warranted in a certain case it may simply choose not to seek a court determination (presumably from a tribal court) authorizing them to halt reasonable efforts.

- A permanency hearing must be held within 30 days when it is determined by a court of competent jurisdiction that reasonable efforts are not required.<sup>76</sup>
- Background checks for prospective foster or adoptive parents are required, unless a state elects to opt out of this provision. Unless a state opts out by a letter from the governor or a statute passed by the legislature, no foster parent or adoptive parent can be approved when a background check reveals any of the following: 1) felony conviction for child abuse or neglect; 2) felony conviction for spousal abuse; 3) felony conviction for crimes against children, including child pornography; 4) felony

conviction of a crime involving violence, including rape, sexual abuse or homicide; or 5) felony conviction of physical assault, battery, or drug-related offense within the last five years. If a state opts out of these requirements (background checks), DHHS has proposed regulations which require documentation of measures taken by the state to address safety considerations.<sup>77</sup>

Principles of tribal sovereignty would dictate that tribes would have the authority to determine whether to opt out of background checks. It would be useful for DHHS to clarify this issue so that states and tribes will be able to enter into agreements that recognize tribal decisions in this sensitive area.

- Financial incentives are available for states that increase the number of children in foster care who are adopted. The incentives will be based on increased adoptive placements of children who are in foster care over base-year data. The payments will be \$4,000 for each foster child adoption over the base year, plus an additional \$2,000 for any foster child adopted who is deemed to have special needs. Under a tribal-state Title IV-E agreement, the state could pass through adoption incentive payments to tribes which meet the prescribed criteria. There are no financial incentives for increasing other types of permanent placements, such as relative care or guardianships.<sup>78</sup>
- A state's Title IV-E funding can be reduced if it delays or denies placement with an approved adoptive family outside of its jurisdiction. This provision was designed to reduce barriers to placing children in permanent homes that occurred primarily because of state or county jurisdictional conflicts. Circumstances where a state can have its Title IV-E funding reduced include: 1) the state delays or denies the placement of a child for adoption when an approved family is available outside of its jurisdiction, or 2) the state fails to grant an opportunity for a fair hearing to an individual who alleges a violation under #1.<sup>79</sup> Tribal application will hinge on the DHHS interpretation of this provision for children placed by tribes. At the very least, tribes clearly have the sovereign authority to define placement preferences for their children. This authority is recognized under the law even for off-reservation children.<sup>80</sup> If a prospective adoptive family in another jurisdiction is not within the tribe's definition of approved family, this could provide justification for delaying or denying a placement while the tribe searches for a preferred placement.

**ASFA Requirements for Tribes that Operate a Title IV-B, Subpart 2 Promoting Safe and Stable Families Grant (formerly the Family Preservation and Support Services program)**

Title IV-B, Subpart 2 Family Preservation and Support Services has a new name and new categories of service. The new name is "Promoting Safe and Stable Families." Two new categories of eligible services have been added entitled "Time-Limited Family Reunification Services" and "Adoption Promotion and Support Services." These will be added to the existing service categories (Family Preservation and Community-Based Family Support Services). Time-limited reunification services can only be provided with these funds for 15 months from the time a child has entered foster care. Under the existing regulations, tribes have the option of targeting their funds in any of the eligible service categories.<sup>81</sup>

An amendment to Title IV-B, Subpart 2, requires that the child's safety be the paramount concern in the provision of services under this Subpart.<sup>82</sup>

## Possible Tribal Responses to ASFA

### **State Systems**

It will be important for tribes to become proactive in state court proceedings if they want to maximize their impact on decisions pertaining to their children and families. State systems will be under enhanced pressure to achieve permanent placements quickly. If tribes take a 'wait and see' stance toward state court cases, they may find that crucial decisions have been made without their involvement that will be difficult to reverse.

### **Tribal Systems**

Case planning is a key component of any response to ASFA requirements. Detailed documentation in the case plan and early identification of community resources and desirable permanency outcomes for the child can improve the possibility for a positive, culturally-appropriate outcome for a child under tribal jurisdiction.

### **Development of Tribal Codes to Implement ASFA**

There are several implementation issues in regard to ASFA that might be dealt with, in part, through revision to the tribe's applicable code. These issues are as follows:

#### *Tribes Operating Title IV-B, Subpart 1 Programs*

A tribe could specify in its code a definition of TPR. In some cases, a tribe's definition may differ from that of a state or county. For example, some tribes may want to define TPR in a way that does not completely cut off a child from his/her birth parent by defining TPR as a loss of legal and physical custodial rights only. Under this definition the parent could still have contact with the child, but would not have authority to make important life decisions affecting the child nor the responsibility or right to provide day-to-day care for the child. In this way, any cultural beliefs that the tribe has about TPR can more easily be incorporated into casework.

The compelling reason exception to the TPR requirement could be addressed in a code. A tribe could specify in its code the types of reasons under ASFA that would justify not filing a TPR, notwithstanding that the statutory standards for filing would otherwise be

met. Any code revisions or additions should make it clear that the use of any compelling reason exception is done on a case-by-case basis. ASFA does not allow across-the-board exceptions to this requirement.

A tribe might choose to codify the meaning of “abandonment” — which is one of the grounds for filing a TPR. In some cases, tribal ideas about what constitutes abandonment may be different than those of non-Indian society.

A tribe might want to adopt or modify provisions in its tribal code to conform to the permanency hearing requirements under ASFA (timelines, notice of and opportunity to be heard at hearings).

#### *Tribes Operating Title IV-E Programs*

The code revisions discussed above would be relevant to such tribes, as well as the following:

It may be useful for tribes operating Title IV-E programs, if they have not already done so, to develop their own policies and codes on background checks or other measures for ensuring the safety of a child placed in a foster or adoptive home.

If a tribe is so inclined, it may adopt provisions in its code specifying circumstances in which reasonable efforts to reunify a family would not be required, including a definition of ‘aggravated circumstances’ as provided for by ASFA. Again, as noted earlier, this is an issue that will have to be clarified by DHHS.

Title IV-E now includes a section that requires that a placement may not be delayed or denied when there is an “approved” adoptive family outside of the jurisdiction that is making the placement. Thus, a tribe may want to define what constitutes an “approved” family. Obviously, the tribe’s opinion about what is an acceptable family may differ from that of non-tribal jurisdictions. For example, tribes may want to (and often do) define placement preferences for their children, preferences which would be applicable to both on-reservation and off-reservation children.<sup>83</sup> A tribe will be in a stronger legal position to refuse to place a child in an off-reservation placement that it considers inappropriate if it has defined its criteria in its code.

A tribe may want to codify its view of adoption, particularly, where tribal cultural values are different than those of the mainstream culture. For example, some tribes recognize adoption without termination of parental rights or may have a culturally-based definition of TPR (see #1 under Tribes Operating Title IV-B, Subpart 1 Programs section above). Codification of such principles increases the likelihood that adoptions under tribal custom will be recognized as adoptions within the meaning of ASFA (Title IV-E).

### **ASFA Studies on Child Welfare Practice and Policy**

There are a number of studies that are required by ASFA where tribal input could be important.

The Department of Health and Human Services convened an advisory panel that reviewed and made comments on a report on kinship care. Tribal representation was included on the advisory panel (tribal governments and courts). The report provides policy recommendations that could be important to the future use of kinship care services.<sup>84</sup>

The Department of Health and Human Services submitted a report that describes the extent and scope of the problem of substance abuse in the child welfare client population.<sup>85</sup> The report also examined the types of services provided to this population and the outcomes (i.e., success or failure of services to resolve substance abuse problem, impact on child) resulting from these services. The report also provided legislative recommendations.<sup>85</sup>

The U.S. General Accounting Office is required to conduct a study looking at how to improve timely and permanent adoptions of children across state and county jurisdictions. The study will also look at recruitment of adoptive homes across jurisdictions and implementation of the Interstate Compact on the Placement of Children.<sup>86</sup> The report is due out in November of 1999.

## **Technical Assistance**

The Department of Health and Human Services is authorized to provide technical assistance to states and local communities to help them achieve increased numbers of adoptions and other forms of permanent placements. The law provides that technical assistance be provided directly by HHS or through grant or contract. However, to date Congress has not appropriated funds for this activity. Tribes may request technical assistance for their communities.<sup>87</sup>

## Conclusion

ASFA creates both challenges and opportunities for Indian children, families and tribes. Unfortunately, ASFA does not consider the unique circumstances of Indian children, families and tribes, which complicates the implementation of ASFA with this population. With careful consideration of the requirements of ASFA and a focus on protecting culturally appropriate practice, ASFA provisions can be implemented successfully with Indian children and families. One key issue will be training. Potential trainers for both state and tribal systems will need to have clear and concise information that focuses on the issues from both a service provider and court system perspective. Cross-training is encouraged whenever possible to reduce the chance for inconsistent messages and interpretations that may lead to inappropriate outcomes for Indian children and families. The list of who should receive training includes, but is not limited to, court judges, prosecutors, court appointed special advocates or guardians ad litem, child placement agencies, child protection services, family preservation and support services and law enforcement.

Another key issue will be the process for policy development at the state and local level regarding implementation of ASFA. Already, there is considerable confusion regarding the impact of ASFA on Indian children and families. Processes for interpreting ASFA at the state and local level that do not actively involve tribal and urban Indian child welfare agency representatives will only add to this confusion and the potential for inappropriate outcomes for Indian children and families. A number of good models exist for collaboration between tribes, urban Indian child welfare agencies, courts and state / county child welfare agencies regarding policy development.

While this document provides basic information on ASFA and its impact on Indian tribes, children and families, it is certainly not a substitute for the discussion and work needed to implement this law successfully. A sound framework of planning, policy development and training that invites collaboration from all the affected parties is the foundation on which all good practice stands and one that is particularly important to successfully implement the considerable changes made by ASFA.

## Notes

- 1 Indian Child Welfare: A Status Report, Final Report of the Survey of Indian Child Welfare and Implementaion of the Indian Child Welfare Act and Section 428 of the Adoption Assistance and Child Welfare Act of 1980, prepared by CSR, Inc., in Washington, D.C. and Three Feathers Associates in Norman, Oklahoma, April 18, 1988, pp. ES/3 – 1/25.
- 2 25 U.S.C. 1901 et seq.
- 3 42 U.S.C. 620 et seq. and 42 U.S.C. 670 et seq, respectively.
- 4 See, e.g., 143 Cong. Rec. H2013 (daily ed. April 30, 1997) (statement of Cong. Deborah Pryce); 143 Cong. Rec. H2020 (daily ed. April 30, 1997) (statement of Cong. Todd Tiarht); 143 Cong. Rec. H2020 (daily ed. April 30, 1997) (statement of Cong. Earl Pomeroy); 143 Cong. Rec. H2021 (daily ed. April 30, 1997) (statement of Cong. Steny Hoyer); 143 Cong. Rec. H2023 (daily ed. April 30, 1997) (statement of Cong. Ron Packard); 143 Cong. Rec. H10789 (daily ed. November 13, 1997) (statement of Cong. Deborah Pryce); 143 Cong. Rec. S3947 (daily ed. May 5, 1997) (statement of Senator Mike DeWine).
- 5 See, e.g., 143 Cong. Rec. H2013 (daily ed. April 30, 1997) (statement of Cong. Deborah Pryce); 143 Cong. Rec. H2018 (daily ed. April 30, 1997) (statement of Cong. Tim Roemer); 143 Cong. Rec. H2018 (daily ed. April 30, 1997) (statement of Cong. Dan Burton); 143 Cong. Rec. H10788 (daily ed. November 13, 1997) (statement of Cong. Barbara Kennelly); 143 Cong. Rec. H10789 (daily ed. November 13, 1997) (statement of Cong. Deborah Pryce); 143 Cong. Rec. S3947 (daily ed. May 5, 1997) (statement of Senator Mike DeWine).
- 6 See, e.g., 143 Cong. Rec. H10788 (daily ed. November 13, 1997) (statement of Cong. Dave Camp); 143 Cong. Rec. H10789 (daily ed. November 13, 1997) (statement of Cong. Deborah Pryce); 143 Cong. Rec. S2701 (daily ed. March 20, 1997) (statement of Senator John Chafee); 143 Cong. Rec. S9645 (daily ed. September 18, 1997) (statement of Senator John Chafee); 143 Cong. Rec. S9652 (daily ed. September 18, 1997) (statement of Senator Larry Craig); 143 Cong. Rec. S9652 (daily ed. September 18, 1997) (statement of Senator Jay Rockefeller).
- 7 See, e.g., 143 Cong. Rec. S9652 (daily ed. September 18, 1997) (statement of Senator Jay Rockefeller); 143 Cong. Rec. H10788 (daily ed. November 13, 1997) (statement of Cong. Dave Camp).
- 8 See, e.g., 143 Cong. Rec. H2020 (daily ed. April 30, 1997) (statement of Cong. Earl Pomeroy); 143 Cong. Rec. H10789 (daily ed. November 13, 1997) (statement of Cong. Sander Levin); 143 Cong. Rec. S9645 (daily ed. September 18, 1997) (statement of Senator John Chafee).
- 9 See, e.g., 143 Cong. Rec. H2015 (daily ed. April 30, 1997) (statement of Cong. Clay Shaw, Jr.).
- 10 42 U.S.C. 622(b)(10)(B) as amended by section 102(1) of ASFA; 42 U.S.C. 629b(a)(9) as added by section 305(c) of ASFA; 42 U.S.C. 671(a)(15) as

amended by section 102(2) of ASFA; 42 U.S.C. 675(5)(E) as amended by section 101 of ASFA.

- <sup>11</sup> 42 U.S.C. 671(a)(20) as added by section 101 of ASFA.
- <sup>12</sup> 42 U.S.C. 671(a)(15) as amended by section 101 of ASFA.
- <sup>13</sup> 42 U.S.C. 673b as added by section 201 of ASFA.
- <sup>14</sup> 42 U.S.C. 675(5)(E) as added by section 203 of ASFA.
- <sup>15</sup> 42 U.S.C. 671(a)(15)(F) as added by section 101 of ASFA.
- <sup>16</sup> 42 U.S.C. 675(5)(C) as amended by section 302 of ASFA.
- <sup>17</sup> 42 U.S.C. 622(b)(12) as added by section 202 of ASFA; 42 U.S.C. 671(a)(23) as added by P.L. 105-200.
- <sup>18</sup> 42 U.S.C. 671(a)(15) and 42 U.S.C. 675(1)(E) as amended by section 101 of ASFA.
- <sup>19</sup> 42 U.S.C. 629b(a)(4) as amended by section 305(b) of ASFA; 42 U.S.C. 629a(a)(7) and (8) as added by section 305(b) of ASFA.
- <sup>20</sup> Compare 143 Cong. Rec. H2015 (daily ed. April 30, 1997) (statement of Cong. Clay Shaw, Jr.) with 143 Cong. Rec. S2706 (daily ed. March 20, 1997) (statement of Senator Jay Rockefeller). See also 143 Cong. Rec. H10789 (daily ed. November 13, 1997) (statement of Cong. Sander Levin) which refers to this debate.
- <sup>21</sup> See, e.g., 42 U.S.C. 673b.
- <sup>22</sup> See, e.g., 42 U.S.C. 675(5)(C).
- <sup>23</sup> See, e.g., 143 Cong. Rec. H2030 (daily ed. April 30, 1997) (debate between Cong. Connie Morella and Cong. Dave Camp and comments of Cong. Barbara Kennelly); see also Hearing on Encouraging Adoption before the House Committee on Ways and Means, Subcommittee on Human Resources, 105th Cong., 1st. Sess. (1997) at 106 (Statement of Terry Cross, National Indian Child Welfare Association); Hearing on H.R. 867 before the House Committee on Ways and Means, Subcommittee on Human Resources, 105th Cong., 1st. Sess. (1997) at 63-65 (statement of William Pierce, National Council for Adoption).
- <sup>24</sup> See 42 U.S.C. 675(5)(E)(i) as added by ASFA, section 103; 42 U.S.C. 675(5)(C) as amended by ASFA, section 302 and ASFA, section 303.
- <sup>25</sup> See, e.g., 143 Cong. Rec. H2017 (daily ed. April 30, 1997) (statement of Cong. Sander Levin); Hearing on Encouraging Adoption Before the House Committee on Ways and Means, Subcommittee on Human Resources, 105th Cong., 1st. Sess. (1997) at 36, 45 (Statement of David S. Liederman, Child Welfare League of America)
- <sup>26</sup> See, e.g., Hearing on H.R. 867 Before the House Committee on Ways and Means, Subcommittee on Human Resources, 105th Cong., 1st. Sess. (1997) at 50-51 (statement of MaryLee Allen, Children's Defense Fund) and 74-77 (statements of the Child Welfare League of America, Inc. and the National Association of Homes and Services for Children); see also S. 511, 105th Cong.,

- 1st Sess. (1997), sec. 304 and 143 Cong. Rec. H2021 (daily ed. April 30, 1997) (statement of Cong. Sheila Jackson-Lee).
- <sup>27</sup> See, e.g., Statements of Cong. Dave Camp and the Heritage Foundation submitted to Hearing on S. 1195 Before the Senate Finance Committee, 105th Cong., 1st Sess. (1997) (unpublished) (on file with author).
- <sup>28</sup> 42 U.S.C. 629b(a)(4) as amended by section 305(b) of ASFA; 42 U.S.C. 629a(a)(7) and (8) as added by section 305(b) of ASFA.
- <sup>29</sup> S. 511, 105th Cong., 1st Sess., Sec. 203 (1997)
- <sup>30</sup> P.L. 105-89, sec. 405.
- <sup>31</sup> 42 U.S.C. 675(5)(E)(i) as added by section 203 of ASFA.
- <sup>32</sup> See 42 U.S.C. 675(5)(C) as amended by section 302 of ASFA, 42 U.S.C. 471(15) as revised by section 101 of ASFA
- <sup>33</sup> 25 U.S.C. 1901 et seq.
- <sup>34</sup> P.L. 103-432, section 204, was codified as 42 U.S.C. 622(11).
- <sup>35</sup> See *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 32-37, 49-50 (1988).
- <sup>36</sup> See, e.g., *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974) (“Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.”)
- <sup>37</sup> See, in general, Title 25 of the United States Code.
- <sup>38</sup> See, e.g., *Ramah Navajo School Board v. Bureau of Revenue*, 458 U.S. 832, 838 (1982).
- <sup>39</sup> 25 U.S.C. 1912(a).
- <sup>40</sup> 25 U.S.C. 1912(e) and (f).
- <sup>41</sup> 25 U.S.C. 1912(d).
- <sup>42</sup> 25 U.S.C. 1911(b) and (d).
- <sup>43</sup> 25 U.S.C. 1915.
- <sup>44</sup> 25 U.S.C. 1911(c).
- <sup>45</sup> 42 U.S.C. 471(15) as revised by section 101 of ASFA
- <sup>46</sup> 25 U.S.C. 1912(d).
- <sup>47</sup> Bureau of Indian Affairs, *Guidelines for State Courts: Indian Child Welfare Proceedings* (November 26, 1979), section D.2
- <sup>48</sup> 42 U.S.C. 475(5)(E) as amended by section 103 of ASFA.
- <sup>49</sup> 25 U.S.C. 1912(f).
- <sup>50</sup> 25 U.S.C. 1912(d).
- <sup>51</sup> 25 U.S.C. 1915(a).
- <sup>52</sup> 25 U.S.C. 1903(2).

53 42 U.S.C. 675(5)(C) as amended by section 302 of ASFA.

54 42 U.S.C. 671(a)(15)(E)(i) as added by section 101 of ASFA.

55 42 U.S.C. 675(5)(C) as amended by section 302 of ASFA.

56 25 U.S.C. 1912(a) and 1911(c).

57 25 U.S.C. 1915.

58 New section 42 U.S.C. 671(a)(23) as added by P.L. 105-200.  
It is unclear at present how the concept of an 'approved family' will be defined, nor how it will work in practice.

59 25 U.S.C. 1915(a).

60 25 U.S.C. 1911(b).

61 25 U.S.C. 1931(b).

62 See ASFA, Sections 103(c) and 501.

63 See ASFA, Section 103(c).

64 42 U.S.C. 628.

65 45 C.F.R. 1357.40

66 45 C.F.R. 1357.40 makes reference to subsection 422 (b) (9) of the Act and not 422 (b) (10). Technically, then, it could be argued that none of ASFA changes currently apply to tribes unless and until this regulation has been amended. Nonetheless, given the context of the reference, it appears that the reference to subsection (b) (9) is a bureaucratic mistake and that the intended reference was subsection (b) (10).

67 42 U.S.C. 622(b)(10)(B) as amended by section 102(1) of ASFA and 42 U.S.C. 675(5) as amended by sections 102(2) of ASFA, which is made applicable to Title IV-B programs by 42 U.S.C. 422(b)(10)(B)(ii).

68 42 U.S.C. 675(5)(C) as amended by section 302 of ASFA, which is made applicable to Title IV-B programs by 42 U.S.C. 422(b)(10)(B)(ii).

69 Ibid

70 42 U.S.C. 675(5)(G) as added by section 104 of ASFA, which is made applicable to Title IV-B programs by 42 U.S.C. 422(b)(10)(B)(ii).

71 42 U.S.C. 675(5)(E) as added by section 103 of ASFA, which is made applicable to Title IV-B programs by 42 U.S.C. 422(b)(10)(B)(ii).

72 42 U.S.C. 675(1) as amended by section 107 of ASFA, which is made applicable to Title IV-B programs by 42 U.S.C. 422(b)(10)(B)(ii) and 42 U.S.C. 675(5).

73 42 U.S.C. 622(b)(12) as added by section 202 of ASFA.

74 42 U.S.C. 671(a)(15) as amended by section 101 of ASFA.

75 42 U.S.C. 671(a)(15) as amended by section 101 of ASFA.

76 42 U.S.C. 671(a)(15) as amended by section 101 of ASFA.

- <sup>77</sup> 42 U.S.C. 671(a)(20) as added by section 106 of ASFA.  
Title IV-E Foster Care Eligibility Reviews and Child and Family Services  
State Plan Reviews; Proposed Rule  
Notice of Public Rulemaking for 45 CFR Parts 1355 and 1356, volume 63  
number 181, September 18, 1998 Federal Register pages 50057-50098.
- <sup>78</sup> New section 42 U.S.C. 673b as added by section 201 of ASFA.
- <sup>79</sup> 42 U.S.C. 671(a)(23) as added by P.L. 105-200.
- <sup>80</sup> See 25 U.S.C. 1915(c).
- <sup>81</sup> 42 U.S.C. 629b(a)(4) as amended by section 305(b) of ASFA; 42 U.S.C.  
629a(a)(7) and (8) as added by section 305(b) of ASFA. See also 45 C.F.R.  
1357.50(f)(1)(iii).
- <sup>82</sup> 42 U.S.C. 629b(a)(9) as incorporated by section 305(c) of ASFA.
- <sup>83</sup> See 25 U.S.C. 1915(c).
- <sup>84</sup> See ASFA, Section 303.  
Foster Care: Kinship Care Quality and Permanency Issues (GAO/HEHS-99-  
32, May 6, 1999)
- <sup>85</sup> See ASFA, Section 405.  
U.S. Department of Health and Human Services. Blending Perspectives and  
Building Common Ground. A Report to Congress on Substance Abuse and  
Child Protection. Washington, D.C.: U.S. Government Printing Office, April  
1999.
- <sup>86</sup> See ASFA, Section 202.
- <sup>87</sup> 42 U.S.C. 473A(i) as added by section 201 of ASFA.

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## About the National Resource Center for Organizational Improvement

The National Resource Center for Organizational Improvement strengthens and supports state child welfare agencies committed to the welfare of children, youth and families through research, training, technical assistance and evaluation. Our work improves management and operations, bolsters organizational capacity and promotes service integration, with the aim to improve outcomes for children and families.

We can help with:

- on-site technical assistance and training,
- a yearly teleconference training program, and
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