



# Too Fast for Families

## Washington's Get-Tough Adoption Law Hits Home

— In 1999, following state implementation of the federal Adoption and Safe Families Act (ASFA), the number of petitions to terminate parental rights filed in Family Court jumped by one-third—to 4,201. (See "Terminations," page 6)

— The number of children assigned to the adoption track rose by 10 percent last year, reversing a five-year trend. (See "Adoptions," page 7)

— Since 1996, the percentage of foster children in the system who have been assigned to the goal of adoption has fallen from 44.6 percent to 33.8 percent. (See "Adoptions," page 7)

— Caseworkers spend from five to 20 percent of their time locating services for parents, according to an informal survey of foster care agency administrators conducted by CWW. What takes up the biggest share of a caseworker's time? Paperwork. (See "Survey," page 11)

† New York's 62 contracted foster care agencies differ enormously in the percentages of children they assign to the adoption track. The citywide average is 34 percent—but some agencies have adoption track rates as high as 76 percent or as low as 13 percent. (See "Rushing Roulette," page 8)

† Only 15 percent of the foster care adoptions completed in 1998 would have conformed to ASFA's new speedier timetables. (See "Strife in the Fast Lane," page 2)

† The city has finally begun to weigh family reunification and adoption equally in its new system for rating the performance of contracted foster care agencies. (See "EQUIP-ed," page 10)

† In 1998, nearly two-thirds of the adoptive parents in New York City were single mothers. Not one was a single father. (See "Adoption Snapshot," page 5)

† Only one percent of the 11,000 foster parents or adoptive parents who have been fingerprinted under the state's tough new ASFA implementation law actually had criminal records. (See "Bad Rap Sheets," page 13)

Child Welfare Watch is a joint project of the Center for an Urban Future and the New York Forum  
This edition was written by Shalini Ahuja, Jonathan Bowles, John Courtney, Peggy Farber and Glenn Thrush

The New York Forum: James Dumpson, New York Community Trust Julius C.C. Edelstein, Senior Vice-Chancellor Emeritus, CUNY  
Augusta Kappner, President, Bank Street College Stanley H. Lowell, former Deputy Mayor, City of New York  
Milton Mollen, ex-Justice Richard C. Wade, Distinguished Professor Emeritus, CUNY

Center for an Urban Future: Kim Nauer, Executive Director, Neil Scott Kleiman, Director, Shalini Ahuja, Family Desk Director, Glenn Thrush, Editor

Funded by the Hite Foundation with ongoing support from the Child Welfare Fund.

# Introduction: Strife in the Fast Lane

AT WHAT POINT SHOULD GOVERNMENT step in to sever the bonds between parents and their children?

In 1997, the federal government attempted to address this nearly unanswerable question when it passed the Adoption and Safe Families Act (ASFA), the most sweeping child welfare legislation in nearly 20 years. In the past, Washington mandated that local governments focus on the task of reuniting foster children with their parents. Now the pressure is on to move children out of foster homes as quickly as possible, even if that means pushing biological parents out of the picture faster.

The law is already having a big impact in New York and it shows in the number of new filings of court applications to permanently sever the legal relationships between parents and their children. Since the beginning of last year, when the law was implemented, the number of these "petitions to terminate parental rights" has shot up by a third.

It's because ASFA has given local foster care agencies a simple, powerful ultimatum. If a child has spent 15 of the last 22 months in foster care, the agency must either move to terminate a parent's rights—or justify in writing why a child isn't a good candidate for adoption. In the past, child welfare agencies were compelled to ask: "Why terminate the parent's rights?" Under ASFA, the question has become:

"Why *not* terminate parental rights?"

This fundamental shift in philosophy comes in response to a very real problem. The time it takes to adopt a child out of foster care has been rising steadily in the U.S. over the last decade. In New York, this delay has increased from a median of 5.8 years to 6.8 years in the last four years alone.

*Child Welfare Watch* has spent the last six months analyzing the potential impact of this major new initiative. After interviews with dozens of parents, caseworkers, agency executives, advocates, judges and lawyers, we conclude that the law could result in the unfair dissolution of many families. ASFA's fatal flaw is that it accelerates the termination process

but does virtually nothing to assure that parents get equally speedy access to the services they need to get their kids back. And it will affect a lot of families: A recent analysis of adoptions in New York found that 85 percent failed to be completed in accordance with ASFA timetables.

"ASFA was long overdue—kids cannot stay in agencies forever," says Arlene Goldsmith, executive director of New Alternatives for Children, one of the 62 private agencies contracted by the city that care for the vast majority of the city's foster kids. "But it's a problem when you are working to reunify families. You need time. You can't change a parent in five minutes. You need time and support and resources to make it work."

But while the law is long on mandates, it's short on new resources—there's almost no money to pay for more caseworkers or legal help for parents.

And the system is already letting families down. In this report, we document the failure of many agencies to deliver services to parents in a timely, efficient way. When *Child Welfare Watch* canvassed administrators in city-contracted foster care agencies, we found that caseworkers devoted the smallest portion of their time—in some cases as little as five percent of their overall working hours—to helping parents obtain services.

We want to make one thing very clear: This report is not an attempt to discount the importance of adoption or to demean the thousands of parents in New York City who make great sacrifices to adopt children out of foster care.

Instead, we are raising issues of fairness and prudence. ASFA's biggest problem may be that it presents adoption as *the* solution to the myriad of problems afflicting the nation's troubled child welfare systems.

What's being lost in the shuffle is this: Creating a new adoptive family means the death of an existing family. In some cases, that's a good thing. There are biological families so dysfunctional that they are dangerous to a child's well-being and safety. But many, many more parents aren't beyond redemp-

2

Introduction

3

Recommendations

4

What's in ASFA?  
ASFA: The Low-Budget Sequel

5

My Law's "Flawed"

6

Thanks to ASFA,  
Termination Petitions Skyrocket

7

Adoptions:  
Ready to Rise Again?

8

Rushing Roulette

9

Agency Adoption  
Tracks Vary Widely

10

Parents Can't Always Get  
What They Need

11

Survey: Little Time For Parents

12

Insider's View:  
Agency Administrators

13

Fingerprinting: Bad Rap Sheets

14

Book Review:  
Nobody's Children

15

Watching the Numbers

# Recommendations & Solutions

proposed by *Child Welfare Watch*

The Adoption and Safe Families Act is the most dangerous piece of child welfare legislation to come along in two decades. It may also be the least understood.

In extensive interviews, *Child Welfare Watch* found that many of the people who work in the city's child welfare system had precious little idea what the law meant. The general befuddlement was best summed up by a state court official who admitted: "We have no idea what's going to happen. We're just going to have react when the other shoe drops."

Unfortunately, what they don't know about ASFA will hurt foster care children and their families.

Over the last year, the number of termination petitions against birth parents has risen dramatically, by more than a third.

If these increases are sustained—and there's good reason to think they will be—the entire system will have undergone a major upheaval. Still, the child welfare system behaves, for the most part, as if there isn't a crisis at hand. The city's Administration for Children's Services deserves credit for undertaking a wide range of initiatives to improve the system's performance. Still, most of ACS's proposals are only in the planning or early implementation stages.

And speed is of the essence.

ASFA, after all, is all about speed. If parents can't get their lives together quickly, their children are put on the fast track to adoption—no matter how sluggishly the system is working on a families behalf.

And while ASFA is a looming reality, so far, better accountability to parents is a still just a promise.

This report is intended as a warning. There is a basic inequality in the way ASFA was drafted and is being implemented. The system already fails to provide enough help to birth parents. If we don't address that problem quickly, families *will* be broken up, without getting a fair shot to get back together.

The best solution, of course, would be to repeal ASFA. The next-best solution would be to mandate—and fund—overdue institutional reforms: smaller caseloads for foster care workers, increased visits for birth parents and better representation for birth parents in Family Court, to name just three.

With that in mind, we propose the follow-

ing short-term solutions:  
The ENTIRE SYSTEM must  
rededicate itself to  
HELPING PARENTS.

The best way to avoid a tough job is to tell everyone you've already done it. That's just what many prominent child welfare theorists in the country are doing when they claim that the system is already working too hard to help parents. Five minutes in a foster care agency or a Family Court hallway will shatter that myth. Nothing could be further from the truth.

The city and its agencies need to recognize they are failing to do this fundamental job—and that many families will be wrongly split apart as a result of that failure.

ACS must force agencies  
to PROVIDE SERVICES  
BEFORE they proceed with  
TERMINATIONS against parents.

As we document throughout this report, ASFA's great flaw is that it speeds up the clock on terminations without creating an equal mandate to pressure agencies to make energetic efforts on behalf of reuniting families.

In communications with its contracted foster care agencies, the city has outlined its commitment to helping families. But paper promises won't get the job done. The city needs to step up the pressure on agencies to immediately improve their efforts on behalf of parents.

In addition, the city must fulfill its promise to increase the abundance and quality of

services it has identified as essential for families, including housing assistance and drug treatment.

ACS needs to SCRUTINIZE  
the agencies that have placed a  
HIGH PERCENTAGE of their CHILDREN  
on the ADOPTION TRACK.

One of the most crucial indicators of an agency's commitment to reuniting parents with their kids is the percentage of children it places on the adoption track.

Citywide, an average of 34 percent of foster kids have been given a goal of adoption—but some agencies have adoption track percentages that range closer to 50 percent. There are many reasons for this wide variation, including the ages and typical case characteristics of the children in question. But the bottom line is this: The higher the percentage of children on the adoption track, the lower the number of kids who ever make it back home.

The city needs to take a close look at those agencies that have assigned a high percentage of their children to the adoption track, investigate why this is the case—and take corrective action if an agency fails to help parents adequately.

Agencies and ACS  
need to make MAXIMUM USE of  
ASFA's exemptions for  
KINSHIP CARE, FAILURE to  
PROVIDE SERVICES and REUNIFICATION.

Under ASFA, agencies can use one of three exemptions to pull children off of the termination track. An exemption is possible if a child is placed in kinship care. An exemption is also granted if an agency lawyer stands up in court and admits his agency failed to provide necessary services to parents.

The third—and most important—exemption is simply to keep kids off the adoption track by assigning them to be reunified with their families. All three tools should be used as vigorously as possible.

FAMILY COURT JUDGES should  
be given DISCRETION in deciding  
whether a parent with  
an old FELONY CONVICTION can  
remain a FOSTER PARENT.

Under the state's version of ASFA, parents are automatically excluded from retaining their children, or adopting new kids, if they have been convicted of a violent crime. In some instances, however, reformed criminals have proven to be

# What's in AFSA?

## A Detailed Summary of the New Law

### 1. ASFA greatly speeds up termination of parental rights.

Under ASFA, a procedural clock starts the day that child welfare officials remove a child from the family's home. When a child has been in foster care for 15 of 22 months, the city or its contracted agency *must*, in most cases, move to terminate the parents' rights and place the child up for adoption.

### 2. New York's version of the law includes three important exemptions to the "15 of 22 months" rule.

First, agencies are allowed to cite a "compelling reason" that a child shouldn't be slated for adoption. If an agency documents a reunification goal in its case planning, they are permitted to suspend the 15 of 22 month rule. Another compelling reason: In New York, children 14 or older are still given the right to reject adoption. Second, agencies can place children in kinship foster care. If a child is being cared for by relatives, they are also exempt from the 15 of 22 month rule. A third exemption goes into effect when an agency admits it has failed to provide the "necessary" services that give parents a fair chance of reuniting with their children.

### 3. ASFA prevents children from being returned home if a parent is a confirmed

### child abuser or violent criminal.

Under ASFA, agencies are exempt from mandated "reasonable efforts" at reunification under the following circumstances: If the child has been severely or repeatedly abused; if the parent has been convicted of manslaughter involving one of their other kids; if the parent has been convicted of attempted murder or manslaughter of another family member; or if a parent has been convicted of first or second-degree aggravated assault on a child under the age of 11 resulting in that child's "serious physical injury."

With this provision, the agency must apply in court to waive their "reasonable efforts" obligation.

### 4. New York State now requires all foster families and adoptive parents to be fingerprinted.

Under New York state's version of ASFA—one of the toughest in the nation—the state now fingerprints all adult members of a foster household. In addition, the state now fingerprints anybody over the age of 18 in house-

holds that have applied to adopt a child.

If an adult in any of these families is found to have a violent criminal record, the entire household is *automatically* barred from adopting kids, or even

from retaining custody of foster children. The criminal offenses that trigger the law are very similar to those that are used for suspension of reasonable efforts. In addition, an agency can ask the courts to disqualify parents if they've ever been *charged* with any of the aforementioned crimes.

*On November 19, 1997, President Clinton signed the Adoption and Safe Families Act (ASFA), the most significant piece of major federal legislation dealing with child welfare services since 1980. Fifteen months later, New York Governor George Pataki signed the state law that*

### 5. Adoption planning is part of every foster care child's planning routine from day one.

Before ASFA, local agencies were not mandated to assign children simultaneously to two tracks: Adoption and reunification. Now, case managers must create "concurrent" plans that simultaneously provide for reunification and adoption, beginning on the day a child is removed from home. The agency must identify potential adoptive parents and document grounds for termination, even while it pursues efforts to reunify families. Agencies must also review the

## ASFA II, THE LOW-BUDGET SEQUEL

The federal version of ASFA contains a lot of new mandates, but scarcely a penny for overburdened state courts to deal with the law's strict new timelines.

Last year, in response to a growing chorus of complaints about the impact ASFA would have on state courts, a bipartisan group of ten U.S. Senators introduced legislation that establishes new funding to implement the law, easing the pressure on court systems across the country. But even this effort—the only proposed federal attempt to tackle the problems created by ASFA—provides a pittance. No new money is earmarked for legal representation for parents, which they desperately need.

If that isn't bad enough, it hardly stands a chance of being passed into law.

The bill, introduced in 1998 and revived last spring, would provide a total of \$50 million to help state courts reduce their current backlogs and set up procedures for complying with ASFA. "As well-intentioned as the strict time lines [are], mandatory filing dates won't be enough to promote permanency if the court docket is too clogged to move the cases through the system," said Senator Mike DeWine (R-Ohio), the bill's primary sponsor, in testimony before Congress last March.

That may be true, but DeWine's dollar amounts are hardly enough to make a dent. The bill sets aside \$10 million for extended court hours and money for hiring new judges and court staff; \$10 million is tapped for computer upgrades; and \$25 million is slated to provide states with tech-

nical assistance. That leaves a mere \$5 million nationwide to expand court-appointed advocates that speak for abused or neglected children. The money would be provided in two chunks—\$30 million up front and \$20 million phased in over the next four years.

No matter how you slice it, it's not much. Court officials in Cleveland—which deals with far fewer adoption cases than New York City—estimate that their Cuyahoga County court system alone needs \$7 million in new funds to comply with ASFA.

But even more importantly, the bill doesn't provide any additional funding to increase the pay—and decrease the caseload—of lawyers who represent parents. A year ago, *Child Welfare Watch* reported that attorneys representing parents in New York courts—known as 18B's—earn lower pay than parents' lawyers in all but six other states. Largely because of this, 90 percent of them don't even file a single written motion on their clients' behalf, according to one study.

Still, the bill has bigger problems. Though it was introduced by DeWine, a Republican, it hasn't gotten a nod from Senate Majority Leader Trent Lott and has no companion bill in the House of Representatives. Even worse, the only other Republican co-sponsoring DeWine's legislation, Senator John Chafee, died last October.

# My Law's "Flawed"

Says Richard Gelles

IF THE ADOPTION AND SAFE FAMILIES Act can be said to have a father, it's the controversial conservative Richard Gelles. In an interview with *Child Welfare Watch* in November 1999, ASFA's father expressed a few second thoughts about his new offspring.

His concerns: ASFA doesn't meet the needs of older foster kids, and the law doesn't channel enough money toward good programs.

"I wrote the law, and I'm glad it's out there," says Gelles, chairman of the Child Welfare and Family Violence program at the University of

Pennsylvania School of Social Work. "But there's no doubt that it's flawed—in some ways deeply flawed. Like everything else that ever comes out of Washington."

Gelles is the author of *"The Book of David: How Preserving Families Can Cost Children's Lives,"* a book which chronicles the 1990 beating death of David Edwards, an infant in Boston. Gelles uses the tragedy to illustrate what he believes are the excessive efforts to preserve dangerously dysfunctional families.

His critics—and they are legion—charge that he blames parents for the failures of the system. They point out that most foster care cases start with charges of neglect, not severe abuse. And, they say, the child welfare system lets families down by failing to support birth parents.

But Gelles' thesis—that child welfare systems save the family at the expense of the child—became the philosophical bedrock of the new federal law. Soon after the book came out, Gelles began consulting conservative Ohio Senator Mike DeWine, who later would become instrumental in creating the new law.

According to Gelles, the law's architects had two basic goals. First, they wanted to create a system that would automatically remove kids from parents with histories of child abuse or violent crime. Second, they wanted to speed up the process by which agencies permanently sever the bonds between kids and their birth parents.

At first the bill seemed destined for Washington's back burners. Then, to Gelles'

surprise, the measure attracted a formidable ally: Hillary Rodham Clinton. "She got on the phone and started making telephone calls." Gelles recalls: "I don't think that bill would have been voted on in that Congress if she hadn't got involved."

The adoption part—which has attracted the most press—was basically an "afterthought," Gelles says. "Initially, this was just supposed to be a safe families bill, not really an adoption bill at all," he explains. "The adoption

*The adoption part—which attracted the most press—was basically an afterthought. It was a way of sanitizing the bill, to make it more appealing to a broader group of people. Adoption is a very popular concept in the country right now.*

component was a way of sanitizing the bill, to make it more appealing to a broader group of people. Adoption is a very popular concept in the country right now."

Something was lost in the effort to please all parties, Gelles now

admits. He takes issue with the law's timetables, which weren't customized for children of different ages. Under ASFA, child welfare agencies must pursue termination of parental rights if a child has been in foster care for 15 of the last 22 months. "I have always been in favor of a sliding timeline, not the one-size-fits-all thing," he says. "The 15 months was a terrible compromise. It's too long for the small kids, and too short for the big kids."

Gelles says the termination timetable should be much shorter for infants and toddlers—six months, in most cases. But he also says there shouldn't be any timetable at all for

children in their teens. "I get a lot of comments from people out in the field who tell me, 'We are asked to support a termination and adoption plan for a 13-year-old because of the law you wrote, you moron.' I tell them that [pushing older kids towards adoption] wasn't in the original bill and it probably shouldn't be in the one that we have."

Another criticism searing Gelles' ears these days is the charge that Congress didn't do enough to channel resources to localities. Recently, on a trip to New York, Gelles asked New York City child welfare chief Nicholas Scoppetta what it would take to double the number of caseworker visits the city's Administration for Children's Services conducts each year. According to Gelles, Scoppetta responded without hesitation. "Richard," Scoppetta said to him. "You would have to double my budget."

## NYC ADOPTION IN 1998: A Snapshot

### Children Adopted were:

- 95% black or Hispanic
- 8.4 years was the median age when they were adopted
- 85% were adopted by their foster parents
- 4.4 months was the median age when they first entered foster care

### Facts about *Adoptive Parents*:

- 41% were related to the child
- 99.6% received the adoption subsidy
- 67.6% were single mothers
- 0 were single fathers

Source: *NYC Adoptions 1998*, Trudy Festinger, NYU School of Social Work.

# Thanks to ASFA, Termination Petitions Skyrocket

The leading edge of ASFA has hit New York—with a stunning increase in the number of court motions aimed at severing the legal bonds between parents and their children.

IN 1999, THE NUMBER OF NEW FILINGS for Terminations of Parental Rights (TPRs) jumped by one-third to 4,201, according to state court records. “That’s major,” said an official in the state’s Office of Court Administration. “Right there, that’s ASFA.”

System watchers expected an increase in TPR filings under the new law. But the magnitude of the change has taken many by surprise. “It’s kind of a shock,” says Michael Arsham, executive director of the Child Welfare Organizing Project, a parent advocacy group.

Yet despite this shift, the city and its contract agencies have not created a plan to respond to the sudden rush of terminations. There is no new strategy aimed at improving the quality, quantity and speed of help delivered to parents.

“I don’t think agencies are being reckless with these terminations, but there’s no doubt parents are being written off much more quickly,” says Arsham.

The key to this sharp increase is the law’s retroactivity. Most foster care agencies have accumulated a big backlog of children who have been languishing in foster care for years. Under ASFA, cases that hit the 15-month marker must be immediately pushed toward termination—or agency administrators must justify why the children should remain in foster care.

“ASFA is like Ex-Lax,” says Joseph Carrieri, a lawyer whose firm handles termination petitions for two of the city’s largest foster care agencies, Little Flower Children’s Services of New York and St. Christopher–Ottilie. “It’s clearing out the whole system, clearing out the backlog.”

Carrieri says that by April, a few months after the state passed its version

of ASFA, he was buried in an avalanche of manila folders. Agency staffers, after a harried phone call, dumped off the “boxes and boxes” of cases they wanted pushed towards termination.

This backlog purge reverses the recent downward trend in termination filings. In 1996, TPR petitions topped out at around 3,900. Since then, they have steadily declined to around 3,200 a year. But last year, in the wake of ASFA, they bounded past the 4,000 mark. Carrieri alone filed 150 extra TPRs in addition to the 500 or so he deals with in any given year.

Parents facing termination orders don’t stand much chance of getting their kids back. Agency lawyers who file these documents told *Child Welfare Watch* that they generally win more than 90 percent of the cases they begin. “If the case goes to trial, chances are the parent is going to lose their kid,” says Ira Eras, a Brooklyn attorney who represents three agencies.

## TERMINATION PETITIONS Filed in FAMILY COURT

FY	Terminations
1995	3655
1996	3926
1997	3428
1998	3209
1999	4201

Source: NYS Office of Court Administration

Will the increase in termination petitions continue? The Giuliani administration says no. “We have always estimated that, at any given time, between one-fourth and one-third of the children will have their goals changed to adoption,” says ACS spokesperson Jennifer Falk. “ASFA isn’t going to change that basic calculation.”

Falk chalks up the rise in TPRs to an ASFA-induced clearing out of the most extreme cases of abuse and neglect. “It’s having an effect on these more extreme cases, if there’s severe abuse or fatality of a sibling,” says ACS spokesperson Jennifer Falk. “Why should the other children be put through the rigmarole of waiting for permanency when we can just terminate their parental rights sooner?”

But agency lawyers who process these cases claim that the new TPRs are no different than the ones they have always dealt with. “There was no difference, we just got a rush of new cases,” Carrieri says. “These are all the same cases we usually do, except they’ve been hanging around for a year-and-a-half or two.”

And experts say the jump in terminations will persist, because the speeded-up ASFA timetables have yet to be applied to new cases. “There will be an increase, overall, in the number of terminations as a result of the new law,” says Joseph Lauria, the recently-appointed Administrative Judge of the city’s Family Court.

“This rush will keep up for another six to 12 months,” Carrieri, a 30-year veteran of the system, predicts. “Then it will plateau. But these numbers are basically here to stay. This increase in TPRs is real.”

But ACS’s Falk maintains there won’t be a radical increase in terminations over the long haul. She points to the introduction of the new neighborhood-based services programs, which will be expanded from the Bronx to the rest of the city later this year. These programs, says Falk, will help keep families together by making more social services available to parents in the communities they live in.

For parents, however, those services may not come quickly enough. “What happens to all these families in the meantime?” asks Arsham. “ASFA is already here and you haven’t even seen finalized [neighborhood-based agency] contracts in four of the five boroughs.”

For the most part, birth parents—even ones that didn’t get the services they need—will have to fight it out against the odds in court. The situation could change if Family Court judges, as a group, begin to demand more accountability from agencies—and more vigorously question the quality of agency efforts on behalf of parents. But that’s unlikely to happen. “When it comes to advocating for parents, some

# Adoptions: Ready to Rise Again?

**FINDING:**

*Thanks to the city's adoption push, New York's finalized adoptions rose through the mid-1990's. Then the trend tapered off. ASFA aims to send the numbers skyward again.*

AFTER THREE YEARS, NEW YORK City's much-publicized effort to push up the total number of completed adoptions has apparently hit its ceiling.

ASFA, however, might prompt a reprise of the rise.

Between 1994 and 1997, the number of adoptions finalized in the five boroughs increased by 73 percent, reaching a high of 4,009 adoptions in the 1997 fiscal year. At that time, 20 percent of all foster care adoptions completed nationwide were in New York City, even though the city was home to just eight percent of the total number of kids in foster care. The climb coincided with the introduction of the city's well-publicized adoptions initiative, which is aimed at cutting delays between the time a child is freed from his or her birth parents and the time the court finalizes the adoption papers. The plan includes: giving contract foster care agencies adoption incentive payments, a citywide adoptive parent recruiting drive and an effort to expedite paperwork more efficiently.

But the initiative seems to have ended its initial growth spurt. Over the last two years, adoption finalizations have risen dramatically across the county, spurred by the \$4,000 incentive that feds pay to states for each completed adoption under ASFA. In 1998, finalizations in Illinois jumped 100 percent. At the same time, they shot up 75 percent in Texas, and 57 percent in Florida.

Meanwhile, the numbers in New York City have been moving in the other direction. Finalizations slid down 11 percent over the same two-year period, ending up last year at around 3,800—that's 700 below the city's own prediction of 4,500.

"We've hit a plateau," explains Jennifer Falk, spokesperson for the city's Administration for Children's Services. Finalizations are a stat politicians love to tout as the measure of adoption success. But

they are notoriously tricky to interpret. For example, experts say the increases in New York's adoption rate in the mid-1990s may have simply been the result of natural cycles: Many of the children who were adopted had entered the system in the late 1980s, when the city's foster child population was increasing day by day.

The slowdown is equally hard to analyze—even if its causes have potentially profound implications. Drawing on the experiences of other states, Madelyn Freundlich, director of the Evan B. Donaldson Adoption Institute says finalizations may have slowed because the city has already propelled most "easy-to-place" kids—healthy, emotionally stable children under age ten—through the system. In fact, ACS itself predicted just such a phenomenon in the 1996 Mayor's Management Report.

"At first, it was necessary to focus on finalizing adoptions for children who were already placed with adoptive parents," Freundlich says. "Those adoptions have [now] been finalized. But then there are children who are not initially placed with adoptive families who need to find families. This creates a whole new challenge to the system, and makes it hard to keep the number of adoptions going up."

Other interpretations emphasize the natural fluctuations in intake. Trudy Festinger, a professor of social work at New York University, says finalizations have dipped simply because fewer foster children were admitted into the system in the 1990s.

Still, there's no doubt that ACS's reforms have had a sustained impact on the system. And ACS is pushing ahead with changes aimed at accelerating all aspects of the adoption process, particularly for hard-to-place

kids. Recently, the agency created an adoption expediting unit, charged with speeding up the paperwork necessary to complete adoptions after parental rights have been terminated. The city has also begun to step up its efforts to recruit more adoptive parents. Last April, ACS began co-sponsoring a weekly televised adoption feature called "Wednesday's Child" to help find permanent homes for foster children who have special needs and have been freed for

adoption. It also started up an adoption hotline, held adoption fairs and published the NYC Family Album, a portfolio that advertises adoptable kids with photographs and biographies. And ASFA may be having an impact. After declining consistently throughout the 1990s, the number of foster kids that the city placed on the adoption track

increased last year by about 10 percent, to 3,554. Will the trend continue? "It's only been 11 months since the state law was passed," says Falk of ACS. "That's way too short a time to identify trends. It's impossible to tell what the effect will be on adoptions."

At the very least, the new law seems to make it inevitable that more kids will be pushed into the adoption pipeline.

As we report in this issue, the number of petitions for terminations of parental rights jumped last year. ASFA's speedy termination timetables were drafted to increase the number of children being pushed into adoptive placements, and ACS Commissioner Nicholas Scoppetta seems committed to enforcing the law to its letter. The city has even held trainings to show agencies how to push through termination petitions faster, system insiders tell *Child Welfare Watch*.

"If a child is to be reunified with parents, he or she should be reunified within 15

### Number of NYC Children Put on the ADOPTION TRACK

Calendar Year	# of Children
1993	6,069
1994	4,729
1995	4,109
1996	3,515
1997	3,230
1998	3,554

Source: 1998 Monitoring and Analysis Profiles, NYS Office of Children and Family Services

### Number of FOSTER CHILDREN ADOPTED in NYC

Fiscal Year	# of Finalized Adoptions
1995	3,665
1996	3,666
1997	4,009
1998	3,848
1999	3,806

Source: Mayor's Management Report.

# Role of Foster Care Agencies: Rushing Roulette

A MOTHER'S ODDS OF GETTING HER child out of foster care has a lot to do with her own behavior. But it may have as much to do with the foster care agency her kids have been placed with. It's a game of chance with very serious implications.

If the agency works energetically toward family reunification, her chances may be very good. If not, she's in deep trouble. Essentially, it's the luck of the draw.

In interviews with a dozen executives at the nonprofit agencies that handle 81 percent of the city's foster care cases, *Child Welfare Watch* found huge variations in agency performance—based on size, leadership, case-worker quality, access to services and even in their capacity to supplement their government funding with outside money (see "Agencies Vary," next page). But the most significant differences may be philosophical—how far an agency is willing to go on behalf of a birth parent.

"How well a parent does has everything to do with an agency's efforts to get the family reunified. It's as simple as that," says Luis Medina, executive director of St. Christopher's, Inc. in the Bronx. "Five years ago, we had an adoption track rate of like 40 percent. We had to sit down and make a concerted effort to focus on reunification. And we've gotten it down to about 14 percent."

By focusing on adoption track numbers, Medina improved his quality of service. "They were my outcome measure," he says. The effort began by asking birth parents what services they needed. Medina also began scrutinizing the termination petitions his agency was producing—to make sure St. Christopher's had done everything it needed to keep the family together. "We started focusing on what the families needed and delivering it to them as fast as possible," he says.

Not many agency directors have adopted Medina's approach. Citywide, the percentage of foster children placed on the adoption track averaged 33.8 percent at the beginning of 1999, when the most recent statistics were gathered. Some foster care agencies, including Little Flower Children's Services of New York and Lakeside Family and Children's Services have adoption track rates pushing 50 percent. (ACS's own caseload is among the very high-

est at 57.2 percent, but that might have a lot to do with a recent push to increase kinship adoptions for children in the care of ACS.) By comparison, Medina's agency and the New York Foundling Hospital, among others, have assigned fewer than 20 percent of their kids to adoption.

"I know that in some places there is a lingering negative attitude toward birth families," says Mary Moe, director of foster care and adoption at New Alternatives for Children, a Manhattan-based agency whose adoption track percentage is a shade above the citywide average. "It's usually a certain bias that says, for instance, substance abusers can't be rehabilitated."

And although it's an issue that never makes it into the reams of case paperwork, system veterans say that bias can easily affect the likelihood of a child returning home.

"A caseworker has the most contact with the family," points out Emma L. Diaz-Alexander, a caseworker with Episcopal Social Services, which has a 22 percent adoption track percentage. "The worker could leave out something to make the family look good or to make the family look bad—depending on how the worker feels."

The caseworker's own expertise and energy level is another crucial factor. "The main problem our agencies deal with is caseworker turnover," says Edith Holzer, spokesperson for the Council of Family and Child Caring Agencies (COFCCA), a trade association of foster care providers. "So when half of your caseworkers quit every year, how can you achieve any consistency in quality? How can you have enough consistency to achieve any kind of a permanency plan—even adoption?"

Under the new law, decisions made by caseworkers and their supervisors become even more important. Courts may make the ultimate judgments, but it's up to the agencies to decide how cases are tracked—whether children are headed for adoption, or headed back home.

If ASFA achieves its desired result, more will be adopted. Termination petitions are

already on the rise, as we report in this issue (see "Terminations Petitions Skyrocket," page 6). And in 1998, for the first time in five years, the number of kids whose goals were changed to adoption rose slightly, increasing about 10 percent over 1997.

Still, agency executives canvassed by *Child Welfare Watch* were generally optimistic about ASFA's potential. But they acknowledged that parents who found themselves placed with the wrong agency could be short-shrifted.

## FINDING:

*Some agencies have a strong commitment to putting families back together. Others don't. It's a game of chance that can be the difference between whether a family is saved or pulled apart.*

"What the law does is force us to be aware of time frames—we have gotten lazy," admits Willie Wren, executive director of Miracle Makers, a Brooklyn foster care agency. "But there are dangers. ASFA would make sense if agencies were all on an equal playing field, but that is not true."

Wren, whose own agency cares for about 1,000 kids, says that smaller organizations are at a disadvantage—they just don't have the clout to get their clients into the limited number of slots for drug treatment and other services. "We are all competing for resources every single day," Wren says.

Finding a residential program for parents with multiple problems like mental illness and alcoholism is also very tough, says Moe. Agencies have to be aggressive in lobbying for a slot, and like anything else, it matters who you know.

Some parents do strike it lucky. There are a handful of agencies that manage to avoid the competition for resources altogether by fundraising heavily for support services.

Luis Medina's agency has partnered with another local nonprofit to start up a drug-treatment center on site at its Bronx offices. And, in response to parents' chronic housing problems, Medina is even considering buying local buildings for them to live in.

ACS Commissioner Nicholas Scoppetta has made these kinds of efforts to improve services a big part of the administration's new neighborhood-based services plan, which has just started up in the Bronx. But the effects of the program may not be felt

## The Percentage of Foster Kids Placed on the Adoption Track Varies Widely by Agency

Agency	# of children with goal of adoption <sup>1</sup>	# of children in agency <sup>2</sup>	% of children with goal of adoption <sup>3</sup>
SYSTEM AVERAGE	11,616	34,500	34%
ACS DIRECT CARE	2,930	5,124	57%
OHEL Children's Home and Family Services	12	95	13%
St. Mary's Children and Family Services	27	198	14%
St. Christopher's, Inc.	188	1,347	14%
Green Chimneys Children's Services	19	123	15%
Salvation Army, Social Services for Children	117	656	18%
Children's Village	83	458	18%
Jewish Child Care Association	124	663	19%
Concord Family Services	89	462	19%
New York Foundling Hospital	237	1,172	20%
Episcopal Social Services	130	600	22%
Abbott House	152	638	24%
Graham Windham Services for Children & Families	280	1,124	25%
Brookwood Child Care	163	614	27%
Plus XII Youth and Family Services	163	605	27%
St. Christopher's Otilie Services for Families & Children	627	2,323	27%
Leake and Watts Services	295	1,055	28%
Coalition for Hispanic Family Services	60	210	29%
Talbot Perkins Children's Services	172	592	29%
Cardinal McCloskey Services	164	563	29%
Good Shepherd Services	147	503	29%
St. Vincent's Services	328	1,084	30%
Lutheran Social Services of Metropolitan New York	168	552	30%
Heartshare Human Services of New York	183	585	31%
Edwin Gould Services for Children	215	686	31%
Child Development Support Corporation	148	462	32%
Louise Wise Services	108	333	32%
Miracle Makers	315	961	33%
Seamen's Society for Children and Families	215	627	34%
New Alternatives for Children	27	78	35%
St. Joseph Services for Children & Families	266	747	36%
Angel Guardian Children & Family Services	248	678	37%
St. Dominic's Home	145	388	37%
Little Flower Children's Services of New York	766	1,933	40%
Sheltering Arms Children's Services	174	434	40%
Harlem-Dowling Westside Center	284	658	43%
Lakeside Family & Children's Services	460	961	48%
Catholic Home Bureau	452	943	48%
Downey Side	42	55	76%

<sup>1</sup> Adoption Monitoring System, New York State Office of Children and Family Services, September 1999.

<sup>2</sup> ACS file of Management Development and Research, October 1999. Numbers include foster care and congregate care populations.

<sup>3</sup> Note: Source data compares most recent numbers available. Agencies that only maintain group homes were excluded from this table.

# Parents Can't Always get What They Need

IT'S AN OLD MANTRA WITH NEW urgency: Parents aren't getting the help they need in order to rebuild their lives and get their kids out of foster care.

The federal Adoption and Safe Families Act, along with the state's version of the law, has speeded up the basic clock that governs the nation's child welfare system. The law forces foster care agencies to bring a court case to sever parental rights once a child has been in foster care for 15 out of the previous 22 months. With this strict deadline, parents need to get their lives together in a hurry, or face losing their kids for good.

Local foster care agencies are charged with the task of helping parents get the services they need to stabilize their lives so that their kids can come home. But in interviews with more than 50 parents, lawyers, judges, agency administrators and caseworkers, *Child Welfare Watch* found that in many cases, the job isn't getting done. The reasons for the failure are wide-ranging. Casework is one of the lowest-paying, highest stress, most thankless jobs in public service. In addition, some don't encourage their caseworkers to put a high priority on tracking down services for birth parents. (See "Rushing Roulette," page 8)

"In New York State, we've never seen an aggressive use of these services," says Martin Guggenheim, professor of clinical law at the New York University School of Law and a national expert on children's and parents' rights. "There's a myth that we're trying too hard to help parents. But we have not tried hard

enough. And now, with the new law, that could have profound consequences for families that could be saved."

Child welfare groups lobbied for ASFA to increase funding for new caseworkers to deal with the law, but they were turned down. Congress and the White House included virtually no new money to beef up staffs in the city's Administration for Children's Services or the 62 privately contracted agencies who care for most of the city's 35,001 foster care kids.

That caseworkers often don't have the time, training or inclination to work energetically for birth parents isn't lost on mothers like Lucille Delapenha. On January 19, 1993, when Delapenha gave birth to her daughter, both she and her husband were addicted to cocaine and barely able to care for their 18-month-old son. Soon after she delivered, Delapenha tested positive for drugs. Both children were removed by child welfare officials.

Drug addiction is one of the most common reasons the city takes away kids. According to state and federal law, the family was entitled to be referred to a drug treatment program.

Technically, that's exactly what they got—and nothing more. "I was given two tokens and a piece of paper with the name of a treatment

program," Delapenha says. "I was told I didn't need anything else. When I went to the treatment program it turned out I needed identification and Medicaid, so I was turned away."

Admittedly, the Delapenhass were not a very sympathetic pair at the time. Yet underneath their haggard appearance lay a powerful desire to get their lives—and

## FINDING:

*Under the new law, the federal government forces foster care agencies to terminate parental rights at a much faster pace. But the law does nothing to speed up delivery of the vital services that parents need to keep their kids.*

their kids—back. The problem was that the caseworker who was supposed to work on their behalf gave them a half-hearted effort, while the mechanism that permanently removed their kids functioned far more efficiently. No laws were broken, but it was the end of the line for the Delapenha family.

After the children were gone, their lives deteriorated into a series of drug-blurred catastrophes and they were soon sleeping on rooftops. But their fortunes were about to change. On January 13, 1995, two years after their children were removed, the Delapenhass found their way to a multi-service drop-in center run by the Grand Central Partnership

It helped them get temporary shelter, and introduced them to social workers who were focused on their needs. Within three months they had both cleaned up and had begun taking steps to re-establish a home. "It's the thing that saved our lives," says Ms. Delapenha.

But it was too late to save their family. On September 17th, 1995, a Family Court judge terminated their parental rights. "It was the most horrifying experience we've ever been through," says Ms. Delapenha, who had maintained a strong attachment to the children through years of regular visits. Now she has no idea where they are—or even whether they were adopted.

The Delapenha case shows just how quickly parents can turn their lives around when caseworkers provide them with consistent, energetic help. In New York, as in most states, foster care agencies are required to provide or procure services like housing assistance, alcohol and drug treatment, psychological and family counseling, medical assistance and help obtaining employment or benefits. But for parents, hooking up with effective services is a matter of chance. Some agencies are competent and helpful. Others aren't.

"I've seen cases where a kid has been freed for adoption, where I know that the maximum amount of work hasn't been done to keep the

## Finally, Families Are EQUIP-ed

Last year, *Child Welfare Watch* reported that the Administration for Children's Services favored adoption over family reunification in its new system for rating foster care agencies.

Thanks to pressure from family advocates, that has changed. Under the new "EQUIP" rating system launched this month, returning children quickly to their families is as important as speeding adoptions. EQUIP analyzes the amount of time an agency takes to achieve reunification and adoption, and counts the proportion of kids who end up later returning to foster care.

Previously, agencies were evaluated with the same basic criteria the city uses to score all its contractors: even then, a third received low grades. The new system is set up to encourage accountability; agencies that score well will get more foster children, while low performers will find their caseloads reduced.

The first version of EQUIP was criticized for favoring adoption-focused agencies over those aggressively attempting to reunify families. In response, ACS reworked its 100-point scale. Speedy adoptions and reunifications now each earn an agency a maximum of 10 points.

"[We] place equal emphasis on both adoption and reunification, as both are important," ACS administrators wrote in a memo explaining the changes. "In total, adoption and reunification are weighted equally."

## Survey:

### LITTLE TIME FOR PARENTS: Seven agency administrators say helping parents get services they need is their second-lowest priority. Paperwork is job number one.

Everyone agrees that the quality—and quantity—of casework on behalf of parents is crucial if birth families are to be given a fair chance to get their kids back.

ACS Commissioner Nicholas Scoppetta marked this idea in boldface when he sent his ASFA implementation guidelines to private foster care agencies last March. "Agencies have an obligation to make and document their diligent efforts to...strengthen the parental relationship," he wrote. "An agency's failure to make diligent efforts is a breach of its obligations under the Social Services Law and of its contract with ACS."

But that mandate doesn't necessarily jibe with current practice. In conjunction with the Bedford-Stuyvesant Child Welfare Task Force, *Child Welfare Watch* conducted an informal survey of seven administrators at foster care agencies last December to find out how much time caseworkers actually spend helping birth parents get the services they need.

(The agencies canvassed were chosen to represent the system as a whole. They are located in Brooklyn, Queens and Manhattan, and range in size from a few dozen kids to nearly a thousand. One of the agencies deals exclusively with adolescents in congregate care. All respondents were promised anonymity to encourage candor.)

Next to staff trainings, caseworkers spent the *fewest* hours working with birth parents. Parent assistance consumed from five to 20 percent of a caseworker's average work week.

"Bio-parents are virtually an afterthought," said one director of foster

care. "You're sanctioned if you don't get services to the child, but if you don't go with a parent to a drug treatment program you won't get into trouble."

Arranging visitations—another key to reuniting families—was also a fairly low priority, averaging about 15 percent of caseworker hours.

Several administrators were also quick to point out that dealing with parents was probably the most difficult and complicated job their staff were charged with. "The parents are not up-front with us," one of them commented. "They're ashamed they've gotten involved with this system."

Five out of the seven administrators said that paperwork was the most time-consuming activity—with the average respondent estimating that pen-and-paper chores ate up a third of caseworker hours. One foster care director said she figured about 40 percent of her staff's time was spent on filling reports, but that the figure she admitted "would be closer to 50 percent if everything was up to date."

One point each administrator stressed was that competition for caseworker hours was fierce and unpredictable. Court appearances while often sporadic, often swallow two to three days of a caseworker's time.

Caseworkers are also prey to emergencies that crop up in their clients' lives—a child's illness, a parent's loss of benefits, interruptions of checks to foster parents or conflicts that flare up between any of the people involved in a case.

"When a crisis comes up the caseworker has to stop everything to deal with it," said one agency director.

## Parents *Can't Always get What They Need* (continued)

family together," admits the adoption director of a large foster care agency in Brooklyn. "Everybody knows it's a problem."

The problem isn't new, but never before has the law been so unforgiving to parents. ASFA does contain a provision allowing agencies to pull kids off the termination track if parents haven't been getting adequate services. But there's a big catch: In order for this to happen, an agency lawyer must voluntarily submit a statement in court admitting their failure. "It won't happen," one attorney told CWW.

But those service-delivery failures are not that uncommon, according to the annual "Child Welfare Score Card" put out each year by Public Advocate Mark Green's Child Planning and Advocacy Now (C-Plan) office. In its 1998 analysis, the office substantiated 257 parent complaints against contract agencies and the city. In two-thirds of these cases, parents told Green's office that contract agencies had failed to provide adequate assistance to parents. About half the time, the analysis found, the problems stemmed from caseworkers' "lack of knowledge of procedures and policy, inadequate attention to follow-up, lack of availability, lost records or files, negative attitudes and communication problems."

And the process was invariably haunted by other issues that made the casework even more difficult to cope with: Parents were poor, their entitlements kept them living below the poverty level and their housing situation was often tenuous.

Parents interviewed by *Child Welfare Watch* tell a similar story, of service referrals that are often rushed and seldom pursued. In 1994, Tonya B. voluntarily placed her four children in foster care so she could deal with her heavy drinking. Tonya's agency caseworker did give her a substance abuse referral—but it was to a program that didn't accept alcoholics. Two years later, Tonya found her own alcohol treatment program, according to her lawyer, Catherine Ivers of Brooklyn Legal Services. She's been alcohol-free since starting the program and her children are now in the process of being released back to her.

ACS's new neighborhood-based services plan, which has been launched in the Bronx and will be phased in citywide throughout the city later this year, is designed to make it easier for agencies to hook parents up with service providers. In the course of designing the new system, ACS surveyed 333 parents in the Bronx and Staten Island to determine what services

they needed most. Not surprisingly, drug and alcohol abuse was the number one issue, affecting 34 percent of the families in the survey. Other services parents wanted included parenting courses, domestic violence counseling and housing assistance.

"ACS, of course, cannot focus on all of these complex needs at once," the study's authors concluded. "We start by focusing on what is most important and what is most achievable. We start with housing." Since then, ACS has pledged to give more funds to agencies to strengthen their housing advocacy and support services, start up a new housing advocacy office run jointly by ACS and the city Human Resources Administration.

One area the city apparently hasn't targeted for improvement is the need for increased mental health services for families, a service that many believe is crucial—especially in cases where older kids come into conflict with parents. "You'd be amazed at the cases where it didn't occur to anyone to recommend family therapy," says Lauren Shapiro, another attorney at Brooklyn Legal Services.

Brooklyn Family Court Judge Philip Segal, who also believes in the value of counseling, told CWW that he has seen cases drag on for

*continued on page 13*

Insider's View:

# Agency Administrators For Hurting Parents, Not Much "Hand-Holding"

LAST DECEMBER, CHILD WELFARE Watch researcher Peggy Farber spoke with two case managers at Harlem Dowling-Westside Center for Children and Family Services, a large Manhattan-based foster care agency, to discuss the impact of ASFA on their already-strained case management staff. Harlem-Dowling is one of the most pro-adoption agencies in New York. More than 43 percent of its 600-plus foster children have been placed on the adoption track, state records show. This is 10 percent above the city-wide average. What follows is an excerpt from Farber's talk with agency adoption director Barry Chaffkin and Dorothy Worrell, the deputy executive director in charge of foster care.

CWW: What impact will ASFA have on your agency?

BC: With the new ASFA laws, we're constantly assessing a way to find permanency for that child beyond just working with the mother on her issues. We're asking: Is there a grandmother, an aunt, or the birth father who could be used as a resource? Realistically, some of our parents have been abusing substances for many, many years. They're not going to get their kids home in a year or a year-and-a-half.

DW: The thing I want to clearly emphasize is

that ASFA doesn't mean at 15 months you must take a parent's rights away. If they're not making significant progress and you don't see it in the next six months you may need to consider [filing a petition for termination of parental rights]. We have parents at 15 months who are engaged in a drug treatment program, and we think the kids will go home—in those cases, we're not looking to terminate.

CWW: Are there instances where terminations occur because the birth mother hasn't been given a real chance to get the help she needs?

DW: At any agency, you could find a particular case that was mishandled. Maybe that worker didn't do what they should have done. In the defense of caseworkers, you really have to take a look at what we are asking our workers to do.

CWW: How can you better use the caseworkers you have?

DW: First, I'm not going to tell you I have as many caseworkers as I need.... There are tasks that should be handled by others—so cases don't fall through the cracks. Clearly, giving a parent a referral for services can be done by someone [other than a caseworker]. Making sure a parent actually gets to the treatment

site—that can be done by someone else, too. CWW: Is caseworker turnover still a problem?

DW: Yes. We try very hard to maintain our staff, but we can't change the child welfare system, the rules, the regulations, the paperwork, the pay. It burns people out.

CWW: Parents who have their kids taken away are, by definition, in bad shape. Many have drug problems, many lose their government benefits, many are confused or depressed. Shouldn't the caseworker be spending a lot more time helping birth parents through these hard times?

DW: In the past, workers have made phone or letter referrals [without escorting the mother]. It depends on your caseload. It's preferable if I go with the mother, sit with her for two hours and make sure she doesn't go out and use drugs.

BC: Although it's nice to be able to go with someone and hold their hand, it's not required or necessary. We would put the responsibility on [the mother] to do it. At some point the parents need to take responsibility—these are adults who have to parent children. If you're unable to go around the corner and sign an application, how are you going to be able to help your child get through school, how are

## UNJUST VISITING

If a parent wants to get a child out of foster care, the most important tool is also the most obvious: access to the child.

ASFA, with its focus on speeding terminations of parental rights, makes timely visitations crucial. If parents aren't given the chance to repair bonds with their kids early on, they may never get the chance again. The meetings also let caseworkers gauge whether parents are ready to be reunified with their children.

Yet, in interviews with agency staff and legal advocates for parents, *Child Welfare Watch* found that it's common for caseworkers to give parents no more than the state-mandated minimum—one visit every two weeks. "Many parents just get the minimum required by law," says Lynn Vogelstein, who represents parents at Brooklyn Legal Services. This makes reunification almost impossible. But it's really not necessary, in the vast majority of cases, to limit the visitation."

Often families don't even get the biweekly visits: A 1997 analysis conducted in connection with the *Marisol v. Giuliani* lawsuit found that 57 percent of children studied saw their parents less than the legal minimum.

"For the most part, visitation is underutilized or poorly utilized," says Boston College social work professor Anthony Maluccio, who has studied the role of visitation in child welfare. "The fiscal constraints agencies face clearly get in the way. Visitation requires a lot of time and effort on the part

of social workers because they have to arrange for everybody to be in the same place at once. A lot of caseworkers don't have the time."

Many agencies are also understandably reluctant to allow visits in cases involving allegations of abuse or severe neglect. Their caution, however, is sometimes excessive. In July 1998, Cynthia F. had kicked her drug habit and was about to start unsupervised visits with her two toddlers—a final step toward the family's eventual reunification. Suddenly, her caseworker withdrew the offer of visitation. When Cynthia demanded to know why, the caseworker explained that the youngest boy cried every time he left his foster mother. Vogelstein, Cynthia's lawyer, protested the decision and the agency backed down. Recently, the children were returned to Cynthia's care.

Still, Cynthia estimates the visitation delay added two months to the boy's time in foster care. The whole experience "was like being under a microscope," she says. "And the visits went by so fast. The baby screamed the entire hour. As soon as I got settled in, it was time to leave." The problem, says Vogelstein, was that the caseworker saw the toddler's reaction as a warning sign—not as an indication that the family needed more time together to heal.

"A child's reaction to the visit is often used as a reason not to provide visits," says Vogelstein. "There's very little understanding that the child is in a very difficult situation and maybe needs more contact with the parents."

# Fingerprinting: Bad Rap Sheets

NEW YORK'S NEW PARENT FINGERPRINTING program is one of the toughest in the nation. Maybe it's a little *too* tough.

New York State's hard-line version of the federal law calls for children to be immediately removed from foster parents that have serious criminal records. Critics charge that it's too inflexible, and too hard on law-abiding parents. It also requires every adult member of a household seeking to adopt a child to be fingerprinted, while only the potential parents get fingerprinted in non-foster care situations. That stigmatizes many black and Hispanic parents while giving many white parents a free pass, critics say.

But the most surprising aspect of this law may be how few criminals it's actually caught. As of November 1999, the dragnet had snared a total of 100 people, less than one percent of the 11,000 foster care parents screened, according to data obtained from ACS.

And some of those felons, ACS reports, have turned out to be perfectly fine parents who may deserve to keep their kids.

When it was passed in 1997, ASFA gave each state the option of creating a fingerprinting system to perform criminal background checks on all current foster parents and prospective adoptive parents. In February 1999, New York State opted for the toughest fingerprinting rule possible, setting up a "one-strike-and-you're-out" system.

The crimes warranting automatic exclusion include child abuse or neglect, spousal abuse and violent crimes such as rape, sexual assault or homicide. Offenders identified through the fingerprinting system have their rap sheets sent to the foster care agency, which is required to immediately remove any foster care children in their care. If a parent is

on trial for one of these offenses, the foster care or adoption application is postponed until the case is resolved.

The provision that makes the New York law so tough is this: Any person over the age of 18 in these households must also submit to the screening. But, to the surprise of some Assembly Democrats, the GOP-controlled State Senate insisted that the over-18 provision of the law only applies to families that want to adopt children out of foster care. Families that are adopting children outside of the foster care system aren't subject to the indignity of fingerprinting.

It may sound like a trivial difference, but it has big consequences. The majority of families that adopt children from the foster care system are black or Hispanic; white families do most of the non-foster care adoptions. The law, critics say, raises a basic issue of racial fairness. In fact, 90 percent of the adoptive mothers in New York City are black or Hispanic, according to state data.

"This is typical of the two-tiered system that is a reality of adoption services in New York," says Sania Metzger, chief-of-staff for Assemblyman Roger Green, chairman of the Children and Families Committee.

More significantly, some former criminals also happen to be exceptional parents. As a result, the automatic ban is being challenged on several fronts.

Last fall, Kings County Family Court Judge Philip Segal ruled that a 53-year old Brooklyn woman had the right to apply to adopt her four young nieces, despite a 20-year old manslaughter conviction. In 1979,

the unidentified woman—known by the pseudonym "Gwendolyn Grant" in court papers—pleaded guilty to killing her abusive boyfriend in self-defense.

She completed three years of probation, and has since led a law-abiding life, working as a dental assistant. For the past eight years, she has been caring for her nieces. Citing her "excellent" care of the children, Judge Segal ruled that the law should not

prevent Grant from adopting the girls.

*Fingerprinting foster parents and adoptive parents seems like common sense. But New York's strict new criminal background checks raise some basic questions.*

Agency executives say the Grant case isn't an isolated incident. Willie Wren, executive director of Miracle

Makers, a Brooklyn-based agency with about 1,000 children in foster care, has seen numerous cases where ex-criminals have made good foster or adoptive parents—only to have their kids plucked away. Wren feels that "a case-by-case examination is in the best interest of children and families."

The city agrees. City child welfare commissioner Nicholas Scoppetta is drafting a bill that would adopt exactly that approach. "[We] would give the court discretion in deciding what is in the child's best interest in these types of exceptional cases," says Jennifer Falk, Scoppetta's spokesperson.

In the meantime, across-the-board fingerprinting goes on unchecked, with results that sometimes border on the absurd. "Just the other day, we had to fingerprint an elderly, bed-ridden woman," says Debra Fishkin, adoption director for St. Joseph Services for Children and Families, a Brooklyn-based child

## Parents Can't Always get What They Need (continued)

months because agencies have failed to make the necessary referrals, even after he requested it. "Family therapy is a basic tool," he says. "But sometimes it's very hard to get, and that will delay cases for months. It's a real problem." Still, the city has increased its commitment to monitoring the quality of service planning on behalf of parents. According to the panel overseeing the settlement in the *Marisol vs. Giuliani* lawsuit, ACS managers are now pres-

ent at about half of the Service Plan Review conferences held between parents and caseworkers, a significant increase over years past. And the institution of a more intensive case conferencing system, 72 hours after a child is removed is supposed to increase the likelihood that a parent gets the help he or she needs.

Unfortunately, the caseworkers charged with the job of diagnosing and fixing these

complex human problems are usually young and inexperienced, enduring air-traffic-controller pressure for a salary that typically starts at about \$21,000 a year. Caseworker turnover at private agencies is 39 percent a year, according to a 1997 survey conducted by the Council of Family and Child Caring Agencies.

That, in part, is also why Lucille Delapenha lost her kids. "Our case went

Book Review:

# Nobody's Children:

*Abuse and Neglect, Foster Care Drift and the Adoption Alternative*

by Elizabeth Bartholet, 1999, Beacon Press

By Martin Guggenheim

ONE OF THE CORE VALUES IN CHILD welfare has always been that children should, whenever possible, remain with their biological families.

In *Nobody's Children*, Elizabeth Bartholet, a well-known professor at Harvard Law School, attacks that notion with a vengeance.

Bartholet, one of the country's most prominent advocates for interracial adoption, contends that caseworkers and judges subject children to extreme hardship by too frequently choosing to leave them with their families rather than placing them in foster care.

At the core of her argument lies this assumption: the operating principle of current child welfare practice "holds that so long as the parent is guilty of nothing more than poverty, or homelessness, or other victimization by societal injustice, they will not be found in violation of abuse and neglect laws." As a consequence, she asserts, virtually the only children who end up in foster care need to be there in order to be protected from serious maltreatment. Kids languish in foster care for long periods of time, Bartholet says, because officials are reluctant to terminate parental rights. All of these mistakes, she concludes, can be attributed to the system's "blood bias" towards birth parents.

Bartholet proposes a simple solution to the huge number of children currently in foster care in the United States. Recognizing that these children are overwhelmingly non-white, she advocates abolishing all barriers to the adoption of foster children of color by white couples. She points out that there is

currently a surplus of black or Hispanic children who need adoptive homes and a surplus of infertile white couples desperate to adopt. Get these two groups together, she says, and you have solved the nation's entire foster care crisis in one elegant swoop.

These are not voluntary adoptions she is calling for: most of the kids would be taken over parents' objections, through terminations of parental rights. By any measure, calling for the immediate adoption of several hundred

*Bartholet says there's a "blood bias" in favor of birth parents. She's wrong.*

thousand children over their parents' objections is a very radical proposal, and Bartholet has the good sense to acknowledge it.

"Taking adoption seriously would involve a revolution in thinking and practice," she writes. "It's a revolution that is needed if we care about children's well-being, rather than simply about their survival."

To anyone familiar with the demographics of the child welfare system, the racial and class implications of Bartholet's proposals will be immediately apparent. The children adopted in her new system would be disproportionately poor and non-white—while most of the individuals who seek to adopt children would be upper-class and white.

Perhaps most significantly, Bartholet also advocates eliminating systemic preferences for placing children with parents of their own race. In her words, "we need to recognize

that children who are abused and neglected, children who are growing up in foster and group homes, are . . . victims."

Unfortunately, *Nobody's Children* is flawed on many levels. First, the book distorts the true picture of foster care by overstating the degree to which poverty plays a role in child welfare. Second, the book greatly exaggerates the degree to which agencies strive to assist families in need.

Finally, the book's call for wealthy Americans to demonstrate a concern for the children who end up in foster care, though perfectly appropriate, doesn't come close to a significant solution for the system's real problems.

The only assistance she recommends they provide is to adopt other people's children.

The title gives the flaw in her argument away. When Bartholet attempts to call foster kids *Nobody's Children*, she's got it wrong. It is important that we never forget that these children have families which, with the proper commitment, can raise them well.

*Martin Guggenheim is director of Clinical and Advocacy Programs at the New York University*

#### **CORRECTION:**

*The Summer 1999 issue of Child Welfare Watch incorrectly stated that New York Foundling Hospital had not yet set up community-based foster care programs. This was incorrect; New York Foundling has programs in place. Child Welfare Watch regrets the error.*

### ROBERT LANGDON LITTLE (1938-1999)

Former state child welfare commissioner Robert Langdon Little—Malcolm X's brother—died of lymphoma on Nov. 23, 1999. He was 61.

Little, a native of Lansing, Michigan, was the city's top welfare official from December 1990 to January 1994. Over a distinguished 30-year career, Little was a passionate advocate for family preservation, kinship foster care and keeping siblings together during their stay in the system. "We believe that children grow best in the context of their own family," he said in a December

1993 appearance before the New York City Council.

Little, like his famous brother, spent much of his youth in foster care, and left the system committed to making the experience better for the children who followed in his footsteps. "The challenge is to take a system that many people believe is beyond repair and repair it and alter it in ways that result in better child care," he told the *New York Times* in 1990. "I've been called a dreamer...but I am a believer."

# Watching the Numbers

A six-year statistical survey  
monitoring New York City's  
child welfare system.

## 1 Protective Services

	FY '94	FY '95	FY '96	FY '97	FY '98	FY '99
A. Reports of abuse and neglect <i># of abuse and neglect reports are down after reaching a six-year high</i>	49,129	47,591	52,994	53,567	57,732	54,673
B. Reports substantiated (%) <i>More than one-third of all reports were substantiated by child protection workers</i>	29.2	25.1	33	35.6	35.6	36.9
C. Pending rate <i># of new cases assigned each month to each child protective caseworker climbed</i>	7.6	6.3	6.5	7.3	7.3	7.8
D. Average child protective caseload <i>average # of protective caseloads continued to drop</i>	21.7	19.6	24.1	16.8	13.7	12.8
E. Number of child protective workers <i>average # of caseworkers rose significantly in FY '99</i>	718	711	882	909	862	979
F. Child fatalities in cases known to ACS	25	27	24	30	36	DNA

## 2 Preventive Services

A. Families receiving services (cumulative) <i># of families receiving preventive services increased over the last 3 years</i>	28,383	27,726	27,660	25,525	26,216	27,124
B. New families receiving services (active) <i>new families receiving services remained the same</i>	13,675	13,156	13,172	13,026	13,012	13,165
C. Referrals from ACS (%) <i>% of new families receiving preventive service referrals climbed slightly</i>	36	34	32	40	42	43

## 3 Foster Care Services

A. Number of children admitted <i># of children admitted to foster care dropped by 8% in FY '99</i>	9,022	7,949	8,912	11,453	12,000	11,000
B. Number discharged <i># of children leaving foster care dropped</i>	11,592	12,057	11,928	13,300	13,157	11,200
C. Total foster care population <i>six-year foster care population decline continued</i>	46,855	43,484	42,008	41,771	40,909	38,440
D. Average years spent in foster care <i>average length of time spent in foster care declined</i>	3.86	4.14	4.42	4.28	4.00	4.01
E. Children with reunification goal (%) (calendar year) <i>more than one-half of children in foster care are scheduled to return home</i>	51.1	46.8	44.7	47.1	50.9	53.9
F. Percentage of siblings separated (calendar year) <i>total # of separated brothers and sisters continued to rise</i>	51	50	48	49	51	54
G. Recidivism rate (%) (calendar year) <i>rate of re-entry into the foster care system remained roughly the same</i>	12	13	13	11	12	11
H. Percentage of foster children in kinship care (%) <i>decline in the # of children placed with extended family continued</i>	42.7	41.5	46.1	36.1	33	29.9
I. Children placed with contract agencies (%) <i>% of children placed with contract agencies is up substantially</i>	DNA	68.7	69.4	70.8	74.9	81.0

## 4 Adoption Services

A. Children with adoption as a goal (%) (calendar year) <i>% of children with adoption as a goal declined to a five-year low</i>	40	43.4	44.6	42.1	36.0	33.8
B. Finalized adoptions <i>finalized adoptions decreased slightly</i>	2,312	3,665	3,666	4,009	3,848	3,806
C. Children with slow adoption progress (%) (calendar year) <i>ACS continues to improve the #s of children reaching adoption milestone goals</i>	DNA	58.2	60.4	62.7	60.7	53.2

All numbers above reported in NYC fiscal years unless otherwise indicated. DNA means data not available.

Sources: FY 1999 Mayor's Management Report.

New York State Office of Children and Family Services Monitoring and Analysis Profiles.



# Center for an Urban Future

120 Wall St., 20th fl  
NY, NY 10005  
(212) 479-3353

The Center for an Urban Future, the sister organization of *City Limits* magazine, is committed to incubating and promoting proactive public policies that are affordable, practical and humane. It gives community leaders and on-the-ground practitioners a vehicle for sharing ideas and experiences with a wider audience.

# The New York Forum

c/o Julius C.C. Edelstein  
Hunter College,  
695 Park Avenue  
NY, NY 10021  
(212) 772-4224

The New York Forum is an assembly of New Yorkers dedicated to the proposition that urban problems need to be re-thought and re-examined. All channels of public education need to be employed in pursuit of new solutions and improvements, along with a series of think-tank task forces and public forums.

# Child Welfare Fund

c/o The Center for the Study of Family Policy  
Hunter College, Room 1036 East  
695 Park Avenue  
NY, NY 10021  
(212) 772-5548

The Child Welfare Fund is interested in supporting projects to implement the recommendations in the *Child Welfare Watch*. Please contact the Child Welfare Fund for application guidelines.



- David Tobis, *Child Welfare Fund, Chair*  
 Barbara Blum, *National Center for Children in Poverty*  
 Dottie Conway, *Child Welfare Action Center*  
 Mario Drummonds, *Northern Manhattan Perinatal Partnership*  
 James Dumpson, *New York Community Trust*  
 Julius C. C. Edelstein, *The New York Forum*  
 Edythe First  
 Marty Guggenheim, *New York University School of Law*  
 Keith Hefner, *New Youth Connections*  
 Albert Herbert, *Lower East Side Family Union*  
 Beryn Horowitz, *Consultant*  
 Sandra Jimenez, *Bronx Family Central*  
 William Kornblum, *Professor of Sociology, CUNY*  
 Betsy Krebs, *Youth Advocacy Center*  
 Madeline Kurtz, *New York University School of Law*  
 Trude Lash  
 Gary Mallon, *Green Chimneys Children's Services*  
 Luis Medina, *St. Christopher's, Inc.*  
 Lawrence Murray, *Center on Addiction & Substance Abuse*  
 Kim Nauer, *City Limits and the Center for an Urban Future*  
 Edward Richardson, *Bronx Family Central*  
 Sharonne Salaam, *People United for Children*  
 Esmeralda Simmons, *Center for Law and Social Justice*  
 Andrew White, *J.M. Kaplan Center for New York City Affairs*  
 Fred Wulczyn, *Columbia University School of Social Work*

This issue of the Child Welfare Watch was funded by the Hite Foundation with ongoing support from the Child Welfare Fund. Produced by City Limits Community Information Service, Inc., publisher of *City Limits*, New York's urban affairs news magazine, and the *City Limits Weekly* fax and e-mail bulletin. For more information, please call (212) 479-3344.

Design Director: Dayna Elefant

Center for an Urban Future  
City Limits Community Information Service, Inc.  
120 Wall Street, 20th Floor  
New York, NY 10005

NON-PROFIT ORG.  
U.S. POSTAGE  
PAID  
NEW YORK, N.Y.  
PERMIT NO. 3372