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The Adoption & Safe Families Act's Progress towards Permanency

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Abstract

In 1997 the Adoption and Safe Families Act was enacted in response to the number of children that had been in foster care for an extended amount of time. Many of the children that spent an extended amount of time in the foster care system also experienced multiple placements. While children languish in the foster care system their ability to form healthy attachments to caregivers and establish a sense of stability suffers greatly. The hope was that the Adoption and Safe Families Act would facilitate more adequate permanency planning and thus, providing more stability and security for the children. This writing will explore the impact that key provisions of the Adoption and Safe Families Act has on the permanency rate for youth that are removed from their family of origin, what the consequences are, and where improvements could be made.

Keywords: Adoption, Permanency, Child Welfare

Introduction

The area of child welfare policy has continued to develop in response to changes in the beliefs of society. Child welfare reform has vacillated from making efforts to preserve families at almost any cost to the removal of children to save them (Ross, 2006). The Adoptions and Safe Families Act of 1997 (ASFA) was one of the first laws that reflected this move away from family preservation. The ASFA has multiple provisions that specifically address increasing the rate of permanency for children that are unable to be returned to their families of origin. The ASFA identifies 5 permanency outcomes: returning to the parent, adoption, legal guardianship, permanent placement with relative, and another planned permanent living arrangement (Godsoe, 2013). This paper will explore the impact that the key provisions of ASFA has made on the permanency rate for youth that are removed from their family of origin, what the consequences are, and where improvements could be made.

Impact of ASFA Permanency Provisions

With the overarching goal of reducing the number of children in foster care, ASFA features provisions that were designed to aid states in decreasing the amount of time it took to provide permanent placements for youth (Courtney, 2013). Although there are many provisions contained in ASFA, there are three that tend to stand out as instrumental to reaching the goal of permanence: the fast-track provision, the 15-month rule, and the funding for innovative adoption practices. These provisions help to expedite permanency in many cases where children were thought to be languishing in care for an extended amount of time otherwise.

Fast Track

One of the provisions is the fast-track provision. The fast-track provision details specific circumstances where states are not required to demonstrate reasonable efforts to prevent removing a child from a home or returning a child to a home. The circumstances covered by the fast-track provision are: if a parent has lost parental rights to a sibling of the child; when a parent has committed specific types of felonies; or if the parent has subjected the child to aggravated circumstances. It was believed that in cases such as these, it was unreasonable to try and reunify the family (Adler, 2001). For situations where the fast-track provision does not apply, the 15-month rule could help ensure that a child achieves permanency as quickly as possible.

15 Month Rule

The 15-month rule is another provision included in ASFA that requires states to move to terminate parental rights when a child has been in foster care for 15 of the most recent 22 months. There are 3 situations that allow states to exempt children from this requirement. One of the situations is if the child is placed with a relative. Another reason a state may seek an exemption is if the state has not provided services needed to make the home safe for the child's return. The third scenario that warrants an exemption is if the state documents a compelling reason that filing to terminate parental rights is not in the child's best interest. The data that has been collected does not clearly indicate how effective the policy was in achieving its goals. Ross (2006) explains, "The extent of noncompliance is unknown, in large part because the federal government does not collect data on how often the states use the 15/22-month rule to trigger a termination proceeding" (p. 129). Another key provision to help children achieve permanency in addition to the 15-month rule is the provision for funding innovative adoption practices.

Funding for Innovative Adoption Practices

Provisions to fund innovative adoption practices was included in ASFA to further support states in accomplishing the goal of increasing permanent placements for youth in foster care. ASFA allowed for broader use of certain federal funds in testing innovative adoption and foster care practices. One of the approved uses for the funding was for adoption promotion and support services (United States General Accounting Office, 2002). Another use for the funding was to create an adoption incentive payment program for states that exceed a baseline by increasing the number of adoptions that are finalized. Some states have taken advantage of this provision to fund subsidized guardianship subsidies to attract more relatives and kin that are willing to provide placement for youth in care (McDonald et al., 2007).

Impact of the Provisions

These provisions have garnered much attention, but their impact remains unclear and in need of examination. The literature suggests that the data that is being reported is inconsistent and difficult to determine compliance and effectiveness. The United States General Accounting Office (2002) noted:

The role that ASFA played in the increase in adoptions after 1997, however, is unclear. Similarly, whether the number of foster children being adopted will continue to rise in the future is unknown. While ASFA may have contributed to the adoptions of these children, other factors may have also played a role. For example, HHS officials have noted that earlier state child welfare reform efforts may be linked to the observed increase in adoptions. (p. 12)

There currently appears to be no legislative response to remedy the issues with the efficacy and service coordination problems (Phillips & Mann, 2013). It is important to recognize the consequences that have resulted from the provisions.

What are the Consequences?

The research that is available on ASFA seems to be overwhelmingly critical and vague. Most of the research focuses on the flaws and shortcomings of the policy. Even with all the criticism there are intended and unintended consequences that have resulted from this policy that are helping the policy work towards achieving its goal of increasing the rate of permanency for youth in the child welfare system and possibly causing children to end up in the foster care system.

Intended Consequences

With the goal of ASFA being to increase permanency for youth in foster care, there has been research that supports that the goal has been achieved. It appears that the provision that allowed for funding to be allocated to innovative foster care programs has been especially important in achieving this. The ability to use funding to support subsidized guardianship placements has helped the overall success of ASFA.

Subsidized guardianship was instrumental in helping ASFA achieve the goal of increasing the rate of permanency for youth in foster care. Townsend, Hignight, & Rubovits (2008) conducted a study of permanency outcomes for children before and after ASFA and they found that guardianship was a significant factor in children achieving permanency after ASFA had been implemented. Specifically, 62% of the children achieved permanency post-ASFA, whereas 44% of the pre-ASFA sample had done so (Townsend et al., 2008). It was also found that the rate of adoption disruption post-ASFA was 11% less than placements that occurred prior to ASFA (Smith et al., 2006). Smith et al., (2006) attribute the lower rate of disruption to the increased number of relative adoptions and placements which were found to have not only a lower risk of disruption, but also a lower rate of other problematic factors.

The National Council of Juvenile and Family Court Judges (2011) highlights that placing a child with kin or another person with whom they have a relationship with is in accordance with ensuring the safety and well-being of the child and should be first priority. The Child Welfare Information Gateway (2012) also noted that there was more stability for children that were placed with relatives as they had a lower risk of disruption. There are also studies that support that there is no difference between a child that is being cared for by a guardian and a child that has been adopted (Godsoe, 2013).

Unintended Consequences

The rush to get the children placed into permanent homes can end up in families adopting children that they are not adequately prepared to raise. Because of the pressure to meet the goal to move so many children out of foster care and the financial incentive to place children in permanent placements there may be pressure for caseworkers to place a child in a home regardless if it is a good fit for the child or not. That pressure to place could cause a case worker to overlook the risk that the placement is not right for the child and it could result in a disrupted placement.

Another unintended consequence is the shift in focus from preservation to termination. There is the possibility that due to the provisions in ASFA that set goals that states must reach in terms of moving children out of foster care and into permanent placements, that some children may have their cases moved towards termination based in the policy shift and because the funds that were once dedicated to services that assisted with preserving the families are now used to also fund post-adoption services (Kemp & Bodonyi, 2000). This means there is less funding overall for preserving and stabilizing families that could have possibly remained intact if they had more supports and resources available to them.

A third unintended consequence is that ASFA, while intending to move children out of foster care quicker to place them in to permanent placements to enhance their overall well-being, is also traumatizing children simultaneously. Katz (2019) discusses how removing a child from their home is, in and of itself, traumatic and how ASFA is funding removal instead of directing that funding to interventions that may be less traumatic for the child. She argues that a majority of youth

that are removed from their homes are due primarily to neglect and that there are more effective and trauma-informed ways to address neglect. Katz (2019) notes, "In the name of protecting children from abuse and neglect, the child welfare system causes the ultimate trauma to children and families by removing children from the parents and caregivers" (p. 76).

Improvements That Could Be Made

Prior to ASFA, many of the child welfare policies focused on preservation and reunification. That focus changed in response to a change in societal values, which began to prioritize the child's safety and well-being over preservation and reunification. There are improvements that can be made in both the policy and practice sectors.

Policy Improvements

There are improvements in the policy arena that could be made that would better serve the children and families affected by ASFA. There needs to be better balance between termination and preservation. There also needs to be time spent redefining the actual problem that results in such many youths being trapped in the foster care system.

Find a better balance

There is concern that since ASFA was created there has been an imbalance between family preservation and termination. The child welfare practice is over-valuing adoption and under-valuing preserving families. Godsoe (2012) further asserts, "This devaluation has resulted in costly and ineffective child welfare policies, embodied in the Adoption and Safe Families Act (ASFA) and related state laws" (p. 113). There is suspicion that the incentive payments that are offered to states for finalizing adoptions has played a part in the push for terminating the rights of parents (Phillips & Mann, 2013). It may be beneficial for states to also receive an incentive payment for reunifying and preserving families in order to remove the appearance of an incentive to terminate parental rights.

Redefine the problem

A criticism that was found repeatedly throughout the literature discussing ASFA is that it is only treating a symptom of a much larger disease. Socioeconomic factors such as poverty, play a role in the lives of many of the families connected with the child welfare system seem to be largely ignored. The families that were believed to be most affected by ASFA are the disadvantaged and marginalized who struggle to access resources that assist them in meeting their family's basic needs (Whitt-Woosley & Sprang, 2014). Whitt-Woosley and colleagues (2014) argue, "If inequality as evidenced by extreme poverty and all it entails leads to child maltreatment and increased likelihood of placement in foster care, then how can we expect micro level interventions to effectively remedy this societally influenced problem" (p. 113).

Roberts (1999) perspicuously asserts that rather than hailing adoption as the goal, we should be focused on reducing the need for adoptions in the first place. Families and children would be better served by the child welfare system if it took a preventative approach akin to the medical field (Godsoe, 2012). The child welfare system should work on promoting healthy family behaviors while educating and targeting risky behaviors to prevent the need for child welfare services in the first place. Children should only be removed as a last resort and when there is evidence that it would be unsafe to allow them to remain in the home (National Council of Juvenile and Family Court Judges, 2011).

Practice Improvements

Practice improvements are just as crucial to addressing the problem that the provisions of ASFA strive to address. Policies can be strengthened by solid practices. Consistency in agencies and courts as well as preventing dissolution from occurring are areas where social workers can be instrumental.

A policy or law's success is largely dependent on the people that are tasked with executing it. Agencies and courts are instrumental in interpreting the law and carrying it out in good faith. There seems to be improvements that could be made in both sectors.

Consistency in Agencies

Agency staff are crucial to the success of ASFA. Having well-trained and competent staff have a direct impact on the timely achievement of permanence (McDonald et al., 2007). Agencies that are expected to adhere to ASFA should ensure that their staff have proper training on the ASFA provisions. They should also work to reduce staff turnover as this also impacts the permanency rate. When a child goes through multiple caseworkers it decreases their chance of acquiring timely permanence (Potter & Klein-Rothschild, 2002). When there is staff turnover then a new worker must familiarize themselves with the case and the child's needs and this can delay permanency (National Council of Juvenile and Family Court Judges, 2011).

Consistency in Courts

Agencies are only part of the equation when it comes to implementing ASFA in an effective and consistent manner. Courts would benefit from better guidance regarding the provisions contained in ASFA. Judges can range from one extreme to the other. Some judges need to be better educated on the impact of adoption (Barth, 1997).

Prevent Placement Dissolution

Another area of improvement would be to focus attention on preventing children from returning to the child welfare system after the dissolution of permanent placements (Child Welfare Information Gateway, 2012). Dissolution occurs after an adoption is finalized but for one reason or another, the legal relationship is terminated, and the child is placed into a new foster or adoptive family. The National Council of Juvenile and Family Court Judges (2011) mention, "10 to 25 percent of pre-adoptive placements disrupt prior to finalization, and a smaller number of finalized adoptions dissolved" (p. 6).

Avery (1999) noted that to focus on increasing permanency for youth without investing as much or more effort in preparation and supports for those families that the children are being placed with may be inefficacious. There should be better preparation and support for the adoptive families. Due to the timeframe set by ASFA workers may be rushing to get a child in to a permanent placement but not have the time to adequately prepare the family or the child for the transition (O'Brien et al., 2001). McDonald and colleagues (2007) presents the idea that there could be an extension of time, similar to a trial period, where the families and children could adjust to each other and get a sense if it is a good match. Palacios and fellow researchers (2019) specifically note that assessments that are thorough in identifying strengths and weaknesses of parents and children, comprehensive preparation for adoption, effective matching, and post-placement followup and quality support services. It is also extremely crucial to prepare families when children are being placed with them that have experienced prolonged and significant trauma (Tregeagle et al., 2019).

There are supports that could be put in place to reduce the risk of the placement falling through. Post-placement supports such as mental health services and educational support services can greatly increase the probability that a placement will remain intact (Avery, 1999). But as Charles & Nelson (2000) note, "Adequate post adoption services are not offered consistently throughout the system" (p. 13).

Implications

There are multiple implications for the practice of child welfare resulting from ASFA. There are multiple points in the child welfare system where specific people could be more effective preserving the fidelity of ASFA, so it could be successful in achieving the goal of increasing permanency for youth in foster care.

Micro Level

Some of the direct practice implications for caseworkers to take into consideration are the preparation and communication that they have with prospective adoptive and guardianship placements. When the caseworkers can give the prospective placement comprehensive information

regarding the child and the status of the case, it helps the prospective placement better understand the complexities and complications that may come with that child. This could help the prospective placement better prepare for having the child placed in their home or help them determine if they are not the best placement to meet that child's needs. If a prospective placement can determine ahead of time that they are not able to meet the child's need then it prevents a potential placement disruption. Alternatively, it could help a prospective placement determine what supports it will need before the child is placed with them and allow them to begin getting those supports in place ahead of time.

Macro Level

The child welfare system is in dire need of reassessment. Over the years, the priority of the child welfare has vacillated between extremes. Currently, it appears to be consumed by termination of parental rights whereas in the past it was very much focused on preservation. Roberts (1999) asserts, "Without careful attention to social justice, rights tend to reinforce social hierarchies and benefit the most privileged members of society" (p. 140).

There needs to be further discussion about the foundations that the child welfare system was built on and if those foundations are still appropriate for the challenges that society faces today. Perhaps it is more appropriate to redefine the goals of the child welfare system altogether. That is certainly a conversation worth having for the sake of the children and families that are impacted by the system. As Adler (2001) contends, "ASFA advantages termination for the time being, but history suggests that the impulse to preserve families and the diverse cultures they have been credited with sustaining will not go quietly" (p.36).

Conclusion

The Adoption and Safe Families Act was enacted to help more children in foster care get placed in permanent placements so they could experience an increased sense of stability and security. While the provisions contained in ASFA have helped some children move more efficiently into permanent placements, they have also likely caused other children to come into foster care needlessly. There are significant improvements that could be made in both the policy and practice sectors. It is reasonable for there to be continued discussions regarding further improvements to ASFA.

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