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Children's Advocacy Institute, University of San Diego School of Law

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# A WHITE PAPER ON AMERICA'S FAMILY VALUES:

The Facts about Child Maltreatment and  
the Child Welfare Financing System



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September 2018



## **About the Author**

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## **About the Children's Advocacy Institute**

The Children's Advocacy Institute (CAI) was founded in 1989 at the USD School of Law. CAI's mission is to improve the lives of children and youth by successfully embracing all tools of public interest advocacy to effectively advocate on their behalf, and by promoting the practice of child advocacy to law students and attorneys. CAI's goals are to elevate the status of children and youth in our society, protect and promote their interests and rights, and ensure that policymakers give the highest priority to their interests when making policy and budget decisions. CAI does so by serving as a leading and indispensable organization that identifies and researches problems and develops and initiates creative solutions; an effective ombudsman for the rights of children; and a catalyst for coordinating action among children's organizations and the general public.

In its advocacy component, CAI has sponsored 60 enacted statutes, most in the areas of child welfare and child safety, and has litigated appellate cases in the child welfare area. CAI's published reports include studies surveying the law in each of the 50 states relevant to the reporting of child abuse deaths and the provision of counsel for foster children. In its academic component, which is part of a unique child rights concentration at the USD School of Law, CAI provides substantive education as well as clinical training opportunities that allow students to help represent children in dependency and/or delinquency court and engage in policy advocacy at the state and federal level.

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## Executive Summary

### Child Abuse and Neglect in the U.S.

**Incidence.** Reports by professional of child abuse or neglect covered 7.4 million American children in 2016 — the most recent reported year. Of these, 676,000 children were found to be victims of abuse or neglect. About 20% of those children, or 150,000, were removed from their homes and placed into foster care. About half of these will be reunified with a parent — most within the 12 months of removal, although 12% of those will suffer subsequent removal into foster care.

Those children in foster care under the age of 18 have juvenile dependency court judges as their legal parents. A large percentage of these children will leave that jurisdiction for permanent placement with an adoptive parent or a kin-guardian. About 20,000 will age out of foster care each year, most raised until that point by family foster care providers under court jurisdiction. A smaller but significant number will have been raised primarily in group homes or various forms of congregate care.

**Underlying Causes/Correlations.** Underlying causes and correlations of child abuse and neglect are rarely addressed and include (1) a culture that dismisses the seminal right of a child simply to be intended by two committed parents; (2) child poverty that afflicts 15 million U.S. children — 21% of the total child population; (3) parental alcohol abuse and drug addiction with substantial correlation to child abuse; (4) a lack of basic parenting education in public schools or otherwise, notwithstanding its importance; and (5) a political system primarily serving organized adult commercial groupings.

**Outcomes and Cost.** The 20,000 foster children aging out of care in the U.S. annually suffer seven times the general population's drug addiction rate, have arrest records ten times the rate of other youth, drop out of high school at high rates, disproportionately suffer post-traumatic stress disorder and other mental health problems, and have an unemployment rate of 60%. Even by age 21, 90% are earning less than \$10,000 per year. These outcomes occur to youth who lack the safety net and support typically provided by family during this vulnerable time in the lives of all young people. The Centers for Disease Control estimates the total annual cost of child abuse and neglect at \$124 billion.

### Essential Elements of a Child Welfare System

Real prevention directed at the actual causes of abuse and neglect is an essential element of an efficient child welfare system. However, the current U.S. child welfare system includes token prevention efforts, with the Child Abuse Prevention and Treatment Act rarely addressing the causes noted above and providing for small grants to states that total 1/7<sup>th</sup> of one percent of the annual cost of child abuse and neglect noted above.

Most of the other essential elements vary by state with theoretical floors to qualify for federal funds. These elements include detection of child abuse through the mandated reporting by teachers, doctors and others likely to encounter children. Such reports of abuse are investigated by local agencies commonly referred to as child protective services (CPS). Federal law requires these agencies to make reasonable efforts not to remove a child from parents, and recent reforms have centered on family preservation — providing in-home services to parents. Where children suffer death or near death from abuse or neglect, federal law requires states to disclose relevant information and findings to the public.

Where CPS substantiates a report of abuse or neglect and finds that the child has been harmed or is at imminent risk of harm, the child may be removed and is then subject to detention and jurisdictional hearings before a juvenile dependency court judge. Attorneys are appointed for parents and guardians ad litem (GALs) for children. Under current federal law, the GALs may be attorneys or Court Appointed Special Advocates (CASAs) — usually non-attorney volunteer adults who visit the child and advise the court. Some states appoint both attorneys and CASAs for their foster children. While in state custody, the court becomes the legal parent

of the child, deciding where a child will live, which school the child will attend, who may see the child, *et al.* During the period of foster care custody, federal law requires reasonable efforts to reunify children with their parents. A plan to accomplish safe return is formulated with review hearings to measure progress, and about half of the removed children are so reunited. Where reunification does not occur, the court holds a termination of parental rights hearing, usually within two years. To terminate parental rights, the burden is equal to or greater than clear and convincing evidence of parental unfitness. Some children are returned home only to then re-enter foster care, which is a traumatic and brutal cycle to endure.

While in foster care, children are placed with a family (family foster care), in a group home, or in another setting. Many children for whom parental rights have been terminated are adopted or are in guardianships (usually with a blood relative); when either of those events occurs, the children are no longer under the direct jurisdiction of the court. However, about 20,000 U.S. youth age out of foster care each year without such a permanent placement. Federal law now allows states to offer extended foster care, allowing youth to opt in as partially-dependent non-minors, eligible to receive assistance up to age 21 (or earlier, if they opt out). However, the median age of self-sufficiency for American youth is 26 — not 21. Nor are these children in a position to accelerate that process. Outcome measures indicate that extending foster care, while of some benefit, does not alone sufficiently change the dismal outcomes discussed above.

## **Major Child Welfare Funding Streams**

Social Security Act Title IV-E funding provides the majority of the direct reimbursement and/or compensation for family foster parents, kin guardians, group homes and other caretakers and other child welfare costs, including in recent years and with the enactment of the Family First Act, some of the family preservation efforts noted above. Other major funding streams include SSA Title IV-B, the Chafee Foster Care Independence Program, CAPTA, the Social Services Block Grant, and the Victims of Child Abuse Act.

## **The Big Lie of Revenue Neutrality and the Arbitrary Lookback**

Congress has been engaged in the big lie of so-called “revenue neutrality” for almost two decades. Promoted by Republicans, the doctrine falsely posits that keeping the raw numbers the same for child welfare accounts keeps their funding levels neutral. Of course, funding would only remain neutral if there were no inflation or population changes. Failing to adjust for these two essential elements over many years has strangled children’s programs across the board, particularly child welfare spending — where the numbers of children and reports increase — as do the number of taxpayers. Although the large IV-E account has kept pace with these two necessary adjusters since 2012, the laudable inclusion of more foster youth from age 18 to 21 from this source should have increased beyond overall population change to accomplish steady per capita spending. That has not happened and per child spending has been in decline. Meanwhile, thirteen other major accounts have declined by 24.8% in the last seven years when properly adjusted for inflation and population changes.

Congress has also found a way to annually reduce the number of children eligible for Title IV-E foster care entitlement funding — the only existing federal entitlement in the child welfare arena, and which is supposed to represent a commitment to the children legally parented by the state. Even more reprehensible than the big lie of neutrality is the so-called “lookback” provision, which provides that any child removed from a home where the family income is above the poverty line as it existed in 1996 (\$12,980 for a mother and two children) is not eligible to receive federal assistance for his/her basic foster care costs. Currently, more than half of the children brought into foster care receive no federal match for basic foster care — and the number and percentage of ineligible children increases each year. This results in increasing burdens and stresses for state budgets.

## **Other Critical Failures**

Federal law includes numerous floors required of the states for the receipt of federal monies. These include a wide range of benefits and rights for foster children, such as, in theory, due process in court, a court-appointed

GAL, the mandatory disclosure of information about child abuse deaths and near deaths by states, appropriate reimbursements to foster care parents, and others. Each of these requirements, and others, are regularly violated by most states, as reflected in studies and court holdings resulting from the work of Children's Rights, the Children's Advocacy Institute, and others. The ability of states to ignore these federally-mandated floors is facilitated by court decisions denying private standing or civil remedies, the failure of statutes to be amended to provide such enforcement, and the location of many of the purported requirements in CAPTA, which only involves annual appropriations of \$157 million nationally, rather than the Child Welfare Act or other funding streams involving federal funding in the billions. Many states receiving under \$1 million in CAPTA funding have no real incentive to ensure compliance in order to keep such minimal amounts. The failure to put requirements in the proper statutory location and Congressional committee territoriality and fragmented oversight all contribute to the failure.

Other critical failures of our current child welfare system include the following:

- The failure to meaningfully address actual underlying causes, instead of defining prevention as social worker attention to families post-abuse report;
- outrageous policies and practices even beyond the neutrality and lookback scandals, including allowing states and counties to embezzle Social Security benefits directed at foster care beneficiaries; and barring any child from federal foster care benefits if he/she has more than \$10,000 in total assets and barring SSI benefits for any child with over \$2,000 in total assets;
- the absence of evidence-based tests for major foster care programs, notwithstanding the addition of some now required by the 2018 enacted Family First statute;
- the failure of most states to provide appropriate reimbursements to family foster homes, with resulting diminution of supply;
- the inattention paid to the consequences of *not* removing a child, such as deaths and near deaths; and
- the writing off of youth aging out of foster care at 18 or 21. These youth should receive help and support to at least age 26 — the median age of self-sufficiency for American youth.

## Counter-Productive Positions and Prescriptions

True child advocates reject the fiction of revenue neutrality. Those promoting responsible financial commitment to our children belie their stated concern for abused children where they begin their advocacy with the acceptance of an artificial and arbitrary resource limitation precluding responsible care. We must first determine what our children need for protection, and what those we remove and take custody of need for productive lives. Then we figure out how to get it. Certainly we do not continue to fund services that do not achieve results, and accountability is properly required. But we do not arbitrarily pick a number, particularly a current number demonstrably inadequate, and then frame our proposals under that self-defeating construct.

Nor should advocates endorse proposals to cut off federal IV-E matching funds children in a misguided effort to give states an incentive to move these children out of the generally counterproductive foster care system involving excessive movement between placements, group home parenting by employees, *et al.* States already have a strong financial disincentive to keep children in group homes or otherwise in foster care status. And most state policymakers are well aware of and support the non-financial advantages that accrue from permanence — the more likely success of the children who most of them commit their careers to protect and to serve. Another dangerous prospect which seems to be always lurking in the shadows of the child welfare finance reform debate is the idea to do away with the foster care entitlement altogether and transform it into a block grant. This coincides with the popular pendulum shift in favor of waivers and flexible funding. While waivers have indeed produced some impressive innovation and interesting case studies around the country, they are not a cure-all and have serious downsides as well.



## Federal Child Welfare Financing Reform Proposals

Our recommendations for reforming the federal child welfare financing system include the following:

- Adjust the term revenue neutral to its proper definition and end the lookback.
- Require evidence-based and funded evaluation with sunset specifications.
- Achieve permanence through a federal incentive that provides an enhanced federal match for the Adoption Assistance and Kinship Guardianship programs. This new formula should add 15% to the current ratio applicable to each state for payments made to children who have achieved permanence.
- Adopt additional statutory changes, such as
  - ending the irrational impediments that undermine the ability of young adults to attain self-sufficiency after leaving foster care;
  - unifying federal child welfare laws to create a comprehensive and cohesive framework that provides clear direction to DHHS and states, mandates robust oversight and enforcement by DHHS to ensure state compliance, requires Congressional monitoring of DHHS performance, and imposes consequences on DHHS for failing to engage in oversight and enforcement;
  - explicitly providing clear private remedies to allow the enforcement of all child welfare statutory mandates by the child beneficiaries;
  - cross-referencing all CAPTA and other child welfare statutory provisions to the Child Welfare Act so the full panoply of federal funding stands behind those requirements;
  - requiring the appointment of attorney GALs for every foster child, consistent with the caseload standard set forth in *Kenny A. v. Purdue*, in addition to the appointment of court appointed special advocates and requiring reasonable juvenile court caseloads, given their role as the legal parents of these children;
  - addressing the underlying causes of child abuse and neglect, including unplanned children, the collapse of marital commitment, and financial and other abandonment by many fathers, including studies that educate public officials and the body politic of correlations and of possible incentivizing policies for child welfare;
  - Addressing child poverty and enact the conservative and prudent recommendations to that end by the Children's Defense Fund;
  - expending meaningful resources on preventing and treating alcohol and drug abuse — particularly meth addiction — closely and increasingly related to serious child abuse; and
  - acknowledging the need for and subsidizing parenting education in high schools so future parents will understand what children need, how to keep them safe and healthy, and the financial commitment required to provide for them.
- Fully fund all federal child welfare programs at levels commensurate with the full and effective implementation of each provision.

## Conclusion

Accomplishing broad reform of the child welfare financing structure in this country is a daunting and complicated process. There are major systemic obstacles to hurdle on the way to reform. But in theory, helping these children should bind the most strident ideologues from both parties. Liberal Democrats embrace state assistance for those with diminished opportunity, and conservative Republicans espouse basic family values as a core principle. These children are the legal children of the state — governed by both parties. Our nation's performance to date in protecting them from abuse and neglect, ensuring their well-being while in state custody and managing their transition to self-sufficiency as adults — will determine their respective legacies, and ours.

# **A White Paper on America's Family Values: Child Maltreatment and the Child Welfare Financing System**

## **I. Overview**

This White Paper identifies shortcomings in the current federal child welfare financing system, and recommends changes for improvement. It calls for a funding system that allows effective implementation of child welfare laws by government at the state and federal levels. It also recommends required longitudinal independent studies of each major program receiving federal funds and a specified appropriation for that purpose. Such empirical testing would include sunset dates terminating each program where data fails to warrant continuation. Such sunset proceedings are commonly used in evaluating regulatory agencies in many states. Based on the studies they compel, programs that do not perform will be discontinued and those that do may be continued, expanded and replicated in analogous settings. The understandable reticence to expend monies on social welfare among many in Congress should be assuaged by that assured accountability.

Nelson Mandela was famously quoted as observing, “There can be no keener revelation of a society’s soul than the way in which it treats its children.”<sup>1</sup> But federal child welfare spending is a step above such general humanitarian sentiments. This is not funding for children in general. Rather, it is funding to protect and promote the well-being of those who are more than our children in a metaphorical sense. These children have been removed from their homes and their parents and are in state custody. We delegate their care to our publicly appointed and paid judges who serve as their legal parents. And their seizure by the state and their subsequent fate is largely determined by laws enacted by our elected officials and funded by us through mandatory taxation. For those who politically cite “family values” as a basic moral tenet, the status that these children hold as a direct legal part of our “family” makes their treatment a basic test of the *bona fides* of that stated value.

## **II. Child Maltreatment: Incidence and Response, Causation, Outcomes, and Costs and Obligations**

### **A. Incidence and Response**

According to data compiled by the National Child Abuse and Neglect Data System (NCANDS) Child Maltreatment report for 2016, child protective services (CPS) agencies across the nation received 4.1 million referrals alleging child abuse or neglect involving 7.4 million children. Of those referrals, 42% were “screened out” — meaning that the CPS agencies did not follow up with an investigation. The remaining 58% referrals that were “screened in” involved 3.5 million children who received either an investigation or alternative response. Of those 3.5 million children, CPS agencies determined that 676,000 (17.2%) were victims of child abuse or neglect and 2,824,000 were found to be nonvictims (82.8%).<sup>2</sup> Although this is the most complete and relied upon source of federal data on child welfare, the NCANDS system is voluntary, not mandatory. Thus, it is no surprise that this data, when submitted, is widely understood to represent only a fraction of the actual incidence of child maltreatment.

In a June 2014 article published by the American Medical Association (AMA), Christopher Wildeman of Yale University and four colleagues examined the NCANDS data in a different light. The AMA Journal report calculated the incidence of serious substantiated abuse/neglect reports of children not for a single year, but for

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<sup>1</sup> Speech by President Nelson Mandela at the launch of the Nelson Mandela Children’s Fund, May 8, 1995 (available at [www.un.org/en/events/mandeladay/gallery/photo\\_25.shtml](http://www.un.org/en/events/mandeladay/gallery/photo_25.shtml).)

<sup>2</sup> See U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, *Child Maltreatment 2016* (Feb. 2018) (available at [www.acf.hhs.gov/sites/default/files/cb/cm2016.pdf](http://www.acf.hhs.gov/sites/default/files/cb/cm2016.pdf)).

all U.S. children before they reach 18 years of age. It found an incidence of such reports covers over 12% of American children, or 5.6 million potential child victims over the 18 years of childhood. About 80% of the confirmed reports pertain to neglect, with another 1.1 million relevant to affirmative physical abuse.<sup>3</sup> By ethnic group, African American children are particularly at risk with just under 20% incidence, with Hispanic children at 13%, white children at 10.7% and Asian children at 3.8%.<sup>4</sup>

Although 65% of the screened in reports are submitted by mandated reporters, such as doctors, counselors, teachers and other professionals, the vast majority of these reports that are investigated are effectively disregarded as “unsubstantiated” — 83% of the children who are the subjects of the screened in reports were found to be nonvictims.<sup>5</sup> Certainly, a high threshold is appropriate for state intervention into family integrity, and the relegation of some reports as unsubstantiated may be prudent. Nevertheless, the degree of disregarded reporting, especially of cases involving infants and toddlers who are the most vulnerable, is troubling.

In particular, the common disregard of multiple and/or previous maltreatment reports, not viewed or considered in combination, correlates with child deaths and near deaths from abuse or neglect.

To summarize, 75% to 80% of children who are subjects of investigated child abuse or neglect reports — most from professionals who are mandated reporters — are not given substantiated status. Of the 20% to 25% of children subject to substantiated abuse reports, only about one in five are removed for their protection. Almost half of these are reunited with their parents.<sup>6</sup> Accordingly, less than 3% of children with substantiated reports are removed from their parents and not reunited.<sup>7</sup>

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There has emerged a considerable and prudent preference for focusing on preventive services to keep children safely at home when possible instead of rushing to removals. Removal is not only an extreme intrusion and a challenge to the constitutional right to parent,<sup>8</sup> but it is well-understood to cause profound emotional and cognitive trauma to children. Federal law has long required reasonable efforts not to remove a child (as well as reasonable efforts to reunify children who are removed from their parents). Similarly, federal funding has recently been opened up to allow more flexibility so such in-home preventive services are eligible for federal reimbursement, rather than confining federal matching funds to foster care costs post-removal.

But there is some concern that the pendulum between a laser-focus on child safety and a commitment to family preservation has swung too far in the moribund direction. The concern here is magnified by the regulatory structure attending child protection. It understandably emphasizes the constitutional rights of parents. For

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<sup>3</sup> See Christopher Wildeman, PhD; Natalia Emanuel, BA; John M. Leventhal, MD; Emily Putnam-Hornstein, PhD, MSSW; Jane Waldfogel, PhD, MED; Hedwig Lee, PhD, *The Prevalence of Confirmed Maltreatment Among US Children, 2004-2011*, JAMA PEDIATRICS (August 2014) Vol. 168, No. 8 (706-713) (available at <http://archpedi.jamanetwork.com/article.aspx?articleid=1876686>). See also <http://www.techtimes.com/articles/7923/20140603/12-percent-of-kids-in-u-s-are-victims-of-maltreatment-abuse.htm> and <http://www.reuters.com/article/2014/06/02/us-usa-child-maltreatment-idUSKBN0ED23B20140602>.

<sup>4</sup> These percentages also reflect comparative child poverty incidence. In terms of racial make-up of victims of substantiated reports, 44% are white, 22% Hispanic, and 21% African-American. See *The Prevalence of Confirmed Maltreatment Among US Children, 2004-2011*, *supra* note 3, at x.

<sup>5</sup> *Child Maltreatment 2016*, *supra* note 2, at x.

<sup>6</sup> About 12% of these reunifications fail and those children suffer subsequent re-removal.

<sup>7</sup> About one-half of children added to the foster care population each year are reunified with their parents, usually within a year, leaving about 3% of children who are the subjects of a substantiated report of abuse effectively removed from prior parents and in long-term foster care — or in another and different permanent placement.

<sup>8</sup> See *Santosky v. Kramer* 455 U.S. 745 (1982).

example, in most states, parents are typically appointed counsel in child welfare cases.<sup>9</sup> As noted above, federal and state statutes require that reasonable efforts be made not to remove a child. To terminate parental rights, the burden is equal to or greater than clear and convincing evidence of parental unfitness.<sup>10</sup> But there are no similar checks on CPS decisions not to remove a child. When a referral is screened out or determined to be not substantiated, children remain at home — often without any continuing involvement or oversight by a court or case workers. Some states have established independent ombudsmen to monitor the effectiveness of their systems,<sup>11</sup> but this is not an adequate safeguard, as evidenced by alarmingly high and consistent rates of child maltreatment fatalities.<sup>12</sup> Of the children who are removed and then reunified with their parents, approximately 12% are then removed again due to continued or further abuse. Some experts express concern that the reunification process is not optimally monitored and receives less in resources than is warranted.<sup>13</sup> And we know that interrupted adoptions are an issue but do not have good data to explore the extent of the problem.

As for those children who are removed into foster care, the goal of federal and state law and the consensus of child advocates is to work as quickly as possible toward a short stay in foster care with as few placements as possible, and to move quickly towards permanency.

Of the 437,465 children in foster care as of September 30, 2016,

- almost one-third (32%) were in relative homes, and nearly half (45%) were in nonrelative foster family homes;
- 55% had a case goal of reunification with their families, and 51% were so reunited; and
- close to half of the children (45%) who left foster care in FY 2016 were in care for less than 1 year.<sup>14</sup>



<sup>9</sup> See *Lassiter v. DSS* 452 U.S. 18 (1981). The facts of *Lassiter* were *in extremis* against this parent's parental rights. Abby Lassiter was imprisoned for murder, had neglected her ill child, *et al.* Thus, the Court allowed the parental rights termination to stand. But the Court made clear that if counsel could reasonably matter to the outcome, the constitution requires attorney representation for parents. Accordingly, it is almost universally provided.

<sup>10</sup> *Santosky v. Kramer* 455 U.S. 745 (1982).

<sup>11</sup> See, e.g., information on the Colorado Child Protection Ombudsman (available at <https://www.coloradocpo.org/>).

<sup>12</sup> See U.S. Department of Health & Human Services, Administration for Children and Families, Administration for Children, Youth and Families, Children Bureau, *Child Maltreatment 2016* at Chapter 4 (available at [www.acf.hhs.gov/sites/default/files/cb/cm2016.pdf](http://www.acf.hhs.gov/sites/default/files/cb/cm2016.pdf)), showing a 13% increase in child maltreatment fatalities from 2013 to 2016.

<sup>13</sup> See, e.g., John Sciamanna, *Reunification of Children with Their Families: The First Permanent Outcome*, SPARC and First Focus (Oct. 2013) (available at [http://www.nationalfostercare.org/uploads/8/7/9/7/8797896/reunification\\_of\\_foster\\_children\\_with\\_their\\_families.pdf](http://www.nationalfostercare.org/uploads/8/7/9/7/8797896/reunification_of_foster_children_with_their_families.pdf)).

<sup>14</sup> Child Welfare Information Gateway, *Foster Care Statistics 2016* (Apr. 2018) at 2 (available at [www.childwelfare.gov/pubPDFs/foster.pdf](http://www.childwelfare.gov/pubPDFs/foster.pdf)).

## B. Causation

The causes of child abuse or neglect are many. We cite five broad factors that underlie child abuse and neglect incidence, most of which are ignored in child welfare funding or in most discussions of child welfare.

### 1. Cultural Denigration of Initial Adult Commitment to Children

In the U.S., almost a quarter (23%) of the children born to married couples were unplanned; over half (51%) of the children born to unmarried parents who are cohabiting were unplanned; and over two-thirds (67%) of children born to unmarried non-cohabiting parents were unplanned.<sup>15</sup>

Almost 40% of American children are born to unmarried biological parents.<sup>16</sup> This is not to imply that single parenthood, divorce, or the death of a parent or other causes of single parenthood portend child abuse or neglect. The vast majority of single parents are devoted to their children. But all other things being equal, marriage represents a beneficial relationship between two people that provides important benefits for their offspring. It represents a commitment and creates a greater economic base from which to raise children. If there is a divorce, both parents may continue to maintain contact with — and be held accountable to — their children, with legal rights and responsibilities attending that status.

A 2018 Census Bureau report reveals that 22.4 million U.S. children live in 13.6 million single-parent households. Custodial parents with legal or informal child support agreements receive an average of only \$180 per month per child — less than a quarter of a typical child's direct cost. The custodial parents of approximately 13.9 million children receive no child support at all.<sup>17</sup>

The median income of all families with children is over \$57,000 per year; the median income for a never married mother is \$17,400.<sup>18</sup> More significantly, while only 10% of children in two-parent households live below the federal poverty line, over 66% of children in single-parent households do.<sup>19</sup>

### 2. Child Poverty

Poverty correlates with child maltreatment, particularly child neglect. Of course, most impoverished families are devoted to their children, but the lack of resources for the provision of food and shelter and the many other needs of children can result in unintended neglect. Further, the lack of reliable income can produce pressures, stress, and distractions that correlate with mandated reports and removals. Almost 15 million U.S. children — over 21% of our nation's youth — live in families with incomes below the federal poverty line.<sup>20</sup> The percentage of impoverished children in the U.S. is among the highest among all developed nations.<sup>21</sup> Nevertheless,

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<sup>15</sup> Mosher WD, Jones J, Abma JC. *Intended and unintended births in the United States: 1982–2010*. National health statistics reports; No 55. Hyattsville, MD: National Center for Health Statistics. 2012 (available at [www.cdc.gov/nchs/data/nhsr/nhsr055.pdf](http://www.cdc.gov/nchs/data/nhsr/nhsr055.pdf)).

<sup>16</sup> Centers for Disease Control and Prevention, National Center for Health Statistics, *Unmarried Childbearing* (available at [www.cdc.gov/nchs/fastats/unmarried-childbearing.htm](http://www.cdc.gov/nchs/fastats/unmarried-childbearing.htm)).

<sup>17</sup> U.S. Census Bureau, *Custodial Mothers and Fathers and Their Child Support: 2015* (Jan. 2018) (available at <https://www.census.gov/content/dam/Census/library/publications/2018/demo/P60-262.pdf>).

<sup>18</sup> Pew Research Center, *Breadwinner Moms* (May 2013) (available at [www.pewsocialtrends.org/2013/05/29/breadwinner-moms/4/#chapter-4-single-mothers](http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/4/#chapter-4-single-mothers)).

<sup>19</sup> The Bump, *Data on Single Parent vs. Dual Parent Households* (available at <http://living.thebump.com/data-single-parent-vs-dual-parent-households-15860.html>). Of the 11 million unmarried single parents in 2016, 8.5 million were women and 2.5 million were men.

<sup>20</sup> National Center for Children in Poverty, *Child Poverty* (available at [www.nccp.org/topics/childpoverty.html](http://www.nccp.org/topics/childpoverty.html)). The 2018 federal poverty line for a single parent and one child is \$16,460 for the 48 contiguous states; for a single parent and two children, it is \$20,780. See U.S. Department of Health & Human Services, *Poverty Guidelines* (available at <https://aspe.hhs.gov/poverty-guidelines>).

<sup>21</sup> See discussion of UNICEF report ranking the wealthiest 41 nations, with the U.S. finishing 36<sup>th</sup>, only above five other moderately developed nations. This calculation is not based on the U.S. poverty line, but a variable more measurable between nations — the number

Congress has generally retracted from previous levels of basic safety net support for these children. The substantial decline in the safety net over the last two decades (*e.g.*, Temporary Assistance for Needy Families (TANF) benefits per child adjusted for inflation) is relevant to child welfare.<sup>22</sup> Current trends do not presage correction.<sup>23</sup>

### 3. Alcohol Abuse and Drug Addiction

Alcohol abuse and drug addiction are increasingly potent causes of child abuse and neglect. Though the drug of choice changes over time, the issue remains consistent. In the 1990s, the crack epidemic drove up reports and foster care placements. Over the last decade, methamphetamine addiction has starkly impacted rates of maltreatment and foster care placements.<sup>24</sup> More recently, opioid addiction has increased, and the correlations between that epidemic and increased stresses on child welfare have been made clear.<sup>25</sup>

There have been few studies of the subject,<sup>26</sup> but the Children's Advocacy Institute (CAI), which has operated a clinic representing abused children in dependency court for 25 years, has observed a remarkable increase in alcohol and drug abuse by parents correlating with parental unfitness and removal into foster care. CAI estimates that more than half of the cases entering dependency court in San Diego over the last decade involve parental alcohol or drug abuse, with methamphetamine addiction the single most common drug of choice for involved adults. Meth diminishes paternal instinct and distracts adults, while often energizing them and stimulating abuse.

Beyond drug culture infection of parents, older foster youth are too commonly caught in their own drug culture-related cycle of truancy, drop out, gang affiliation, delinquency, and sustenance through illicit drug marketing. Increasingly, the drugs capturing youth are opioid-based.<sup>27</sup> Dependent upon sales and often addicted, such foster children then suffer sex trafficking victimization, criminal arrest, and homelessness.<sup>28</sup>

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living in families lower than 60% of the median level for the nation. The U.S. percentage is 32.2% (families earning less than \$31k per annum); by comparison, Norway has 5.2%. See <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/10/29/child-poverty-in-the-u-s-is-among-the-worst-in-the-developed-world/>.

<sup>22</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 transformed safety net protection for dependent children in impoverished families from a minimum entitlement with floors to a static state grant with ceilings (with eligibility depending upon maternal identification of biological fathers, agreed acceptance of employment within two years, and a five-year lifetime term for assistance *et al.*). Some states provide limited state only funds in some circumstances beyond the federally-matched sums. And from 1996 to 2002, the economy allowed the static block grant amounts to cover many children in need. However, the disingenuous "revenue neutrality" mindset discussed below has accomplished accruing actual reductions in such assistance *vis-à-vis* the rising actual costs of housing and other necessities, and the increases in impoverished children. For a detailed study of one state's implementation of TANF and other safety net programs involving federal subsidy, see the tracking of such expenditures adjusted properly for inflation and child population from 1989 to 2004 in the *California Children's Budget* cataloguing all major federal/state child related accounts, with proper adjustments from 1989. The trend since the 2004 report has not altered the previous decade of sequentially accruing cuts in this basic poverty ameliorating accounts. See <http://www.cachildlaw.org/childrens-budget.htm>, at Chapter 2.

<sup>23</sup> Congress is currently considering numerous reduction prospects. These include a 2018 House-passed Farm Bill, which would make it considerably harder for low-income families to provide food for their children by making SNAP (food stamps) more difficult to access. See, *e.g.*, <https://campaignforchildren.org/news/press-release/kids-came-in-last-in-the-house-farm-bill-vote/>.

<sup>24</sup> See studies at <https://www.childwelfare.gov/topics/systemwide/substance/drug-specific/meth/?hasBeenRedirected=1>.

<sup>25</sup> See, *e.g.*, ASPE Research Brief, *The Relationship Between Substance Use Indicators and Child Welfare Caseloads* (March 9, 2018) (available at <https://aspe.hhs.gov/system/files/pdf/258831/SubstanceUseCWCaseloads.pdf>).

<sup>26</sup> See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4894838/>.

<sup>27</sup> These drugs are increasingly available to youth, including foster youth. Their marketing can also be a source of occupational aspiration. The level of opioid abuse is increasing markedly, with an estimated 80% of the world's oxycontin ingestion concentrated in the U.S. The federal jurisdiction properly stimulates and obligates physician and pharmacist use of the CURES system that tracks narcotic prescriptions to prevent multiple prescription conversions — now a common problem, as well as the policing of the sales and distribution practices of the narcotics drug industry.

<sup>28</sup> Quite apart from the problems of parental addiction, drug gang entry, and the marketing of narcotic pills by foster children is the related issue of direct over-prescription of psychotropic medication to foster children themselves. These children receive an extraordinary level of restricted drugs as a "management" tool — with profound implications for their competence and future. See *e.g.*, the investigative report of noted journalist Karen De Sa, interviewing 175 persons and documenting the problem at



#### 4. Lack of Basic Parenting Education

Public high school education includes many courses relevant to a career or to college entry. It also provides many courses that may not be relevant to the future of many students, such as trigonometry, physical education, French, or band. The vast majority of students will not be moving to Paris, suiting up for an NFL team, or engaging in advanced math — but most of them will eventually be parents. Data from 1990 to 2013 reveals a very steady percentage of from 72% to 74% of American adults are parents. Only 5% have no desire or intention to have children.<sup>29</sup> And those who do not have children may one day find parental tasks as aunts and uncles. But there is little public education in this essential subject. Students receive little to no information on why babies cry, the significance of small body size in terms of medicine, basic infant nutrition, common dangers and causes of death, effective discipline, parental interactions (from reading to a child to listening with care), or the costs of raising a child. Such instruction may not warrant a full year-long course, but could sensibly be presented in modules that fit into other courses offered to high school juniors and seniors.



Child advocates often cite the so-called Hawaii model of home visiting of infants by nurses to help train new parents, where the advocacy focus is on in-home education of new parents. There may be some benefit to sending a nurse into a home for instruction, and more recently the Maternal Infant and Early Childhood Home Visiting program has broadened this concept with some beneficial outcomes, including some evidence-based proof of reduction of child maltreatment fatalities.<sup>30</sup> But a more efficient and sensible option is to have trained educators impart parenting information to future (and some current) parents while they are all in one place — public high school.<sup>31</sup>

#### 5. Political Focus on Adult Rights

The political impotence of children is a rarely discussed but critical causative element in child welfare deficiency. Foster children are directly parented through our democratic institutions. Those institutions are preoccupied with special interest influence. All three branches are increasingly passive and subject to domination and control by those interests with a short-term profit stake in public policy. Campaign contributions and lobbying influence sources are increasingly organized adult associations. Wall Street, the pharmaceutical industry, alcohol and tobacco, and the political associations of almost every trade and profession, as well as public employees, have proliferated in state capitals and in Washington D.C. Public Citizen, which regularly examines the required reports on lobbying expenditures before Congress, found that major economic adult interests spend billions on

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[webspecial.mercurynews.com/druggedkids/](http://webspecial.mercurynews.com/druggedkids/); see also the new California Medical Board guidelines for such prescriptions at [www.mbc.ca.gov/licensees/prescribing/Psychotropic\\_Medication\\_Guidelines.aspx](http://www.mbc.ca.gov/licensees/prescribing/Psychotropic_Medication_Guidelines.aspx).

<sup>29</sup> See <https://news.gallup.com/poll/164618/desire-children-norm.aspx>.

<sup>30</sup> The more general model is managed in partnership with the federal Administration on Children and Families. See <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview>. These and other affirmative intervention models suggest outcome improvement to child health and safety. And the timing of such instruction, with the baby *in situ* is likely to stimulate parental attention. But the efficiency of instruction in a school setting of 20 to 30 students who are being graded and taught by a professional teacher is preferable to individual and occasional tutoring by visitors.

<sup>31</sup> The Children's Advocacy Institute successfully sponsored legislation to provide such parenting education modules in California (SB 1307 (Chapter 1355, Statutes of 1992); an even stronger bill was subsequently vetoed by then-Governor Gray Davis (SB 305 (1999)).

the influence of public executive branch and legislative officials.<sup>32</sup> Beyond the billions spent by trades, professions and commercial interests, even an age-based citizen group, the American Association of Retired Persons (AARP), spends an average of from \$20 to \$25 million per year in reported lobbying. The total spending for child advocates professionally lobbying for children in D.C. totals \$1 million.<sup>33</sup> Children do not vote, and provide no campaign contribution benefit.<sup>34</sup> Certainly a young child can evoke strong public sympathy, but general sentiments do not dictate legislation or rulemaking or provide access to the judiciary.<sup>35</sup>

Manifestations of this imbalance include the public budget process where children do not fare well, as discussed below, rising child poverty, and radically increased higher education tuition — even at public schools.<sup>36</sup> Adding to these regrettable trends is the longer extreme deficits in the federal budget and through Social Security, Medicare, and public employee pensions and coverage.<sup>37</sup> Children represent a particularly paltry political force

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<sup>32</sup> See Public Citizen, *Government Reform* (available at [www.citizen.org/government-reform](http://www.citizen.org/government-reform)).

<sup>33</sup> See findings of Charles Bruner; note that this total includes the Children's Defense Fund, the Children's Advocacy Institute, the Partnership for America's Children, and others with Washington D.C. offices and presence. There are additional lobbyists for providers of specific children's services (teachers, pediatricians, social workers and others) and their positions are often consonant with those who represent children *qua* children. However, there are conflicts or different priorities where representing a vested grouping receiving public funds or otherwise profiting from child services. For example, the major opposition to increased reporting of child abuse deaths and near deaths tend to be the social workers who may be embarrassed by such disclosures. See Children's Advocacy Institute, *State Secrecy and Child Deaths in the U.S.* (2012) (available at [www.caichildlaw.org/Misc/StateSecrecy2ndEd.pdf](http://www.caichildlaw.org/Misc/StateSecrecy2ndEd.pdf)); see also SB 39 (Migden) (Chapter 468, Statutes of 2007), sponsored by CAI to require disclosure of child deaths and near deaths from abuse, described at [www.caichildlaw.org/Leg\\_2007\\_08.htm](http://www.caichildlaw.org/Leg_2007_08.htm). Another example of many is the policy of teacher unions to supported dismissals and rehiring based on seniority — not on teaching efficacy or subject matter need. See CAI's amicus curiae letter brief in *Vergara v. State of California* at [www.caichildlaw.org/Misc/Vergara\\_Amicus.pdf](http://www.caichildlaw.org/Misc/Vergara_Amicus.pdf). Forty years of lobbying by the Center for Public Interest Law for consumers and CAI for children has taught a hard lesson about political groupings — on issue after issue, the views of individual members, taken aside and reflecting their ethical values, are not the positions advocated by their representative association.

<sup>34</sup> The imbalance is accentuated by *Citizens United v. Federal Election Commission* 558 U.S. 310 (2010), a U.S. Supreme Court case that cedes to corporations the political First Amendment status of individuals. Individual persons making up our democracy tend to care deeply about their children and the future. Corporations can accomplish much — but they are artificial “persons” controlled by officers and directors with a sacrosanct fiduciary duty to advance the profits of their entity, a generally short-term concern, and they have organized in associations and through political action committees accordingly.

<sup>35</sup> Access to the judiciary for foster children turns substantially on the ability of counsel appointed to represent their interests. But many states do not follow the *Kenny A.* precedent (356 F.Supp.2d 1353 (2005)) — a published decision at the federal district court level requiring counsel for foster children as a matter of constitutional law mandate. It was not appealed to the Circuit court level and is therefore not a binding precedent outside of Georgia, where the case was litigated. Similarly, CAI filed a case challenging caseloads for attorneys representing foster children, which reached 380 children per attorney in Sacramento County (the situs of the lawsuit). The California Supreme Court's own staff agency declared less than half of that as an absolute limit. CAI's case, filed in federal district court, was brought against the high court, which controls these attorney contracts. The empathy lines of the federal court did not extend to children in this case involving due process in a publicly concealed (confidential) state dependency court setting, but with their state court colleagues. The Ninth Circuit actually invoked the equitable defense of abstention to irresponsibly avoid enforcement of any standard. See pleadings and briefs in *E.T. v. George* at <http://www.caichildlaw.org/caseload.htm>. Also limiting judicial access for children, especially foster children, are court decisions that deny a private cause of action for the enforcement of federal statutes providing foster care benefits (including CAPTA, discussed below). Adding to child remedy disadvantage is the holding in *AT&T Mobility v. Concepcion* 563 U.S. 333 (2011), allowing commercial terms and conditions to preclude any class action remedy — a significant impediment to child use of the courts to assure compliance with the law and damage recovery.

<sup>36</sup> See, e.g., National Center for Education Statistics, *Fast Facts* (available at <https://nces.ed.gov/fastfacts/display.asp?id=76>). Tuition and living expense costs have increased at an even higher rate for graduate school, at both public and private non-profit institutions.

<sup>37</sup> The federal budget deficit has been markedly increased by the 2018 “tax reform” legislation. See, e.g., [www.magnifymoney.com/blog/news/tax-reform-2018-explained/](http://www.magnifymoney.com/blog/news/tax-reform-2018-explained/). Of even greater consequence as of 2018 are \$9.2 trillion in liabilities that are not accounted for in the national budget debt, such as federal employee retirement benefits, accounts payable, and environmental/disposal liabilities, plus \$30.8 trillion in obligations for current Social Security participants above and beyond projected revenues from their payroll and benefit taxes, and \$34.6 trillion in obligations for current Medicare participants above and beyond projected revenues. Combining the figures above yields about \$88.9 trillion in debts, liabilities, and unfunded obligations at the close of its 2017 fiscal year. This shortfall is 92% of the combined net worth of all U.S. households and nonprofit organizations, including all assets in savings, real estate, corporate stocks, private businesses, and consumer durable goods such as automobiles and furniture. It equates to \$704,391 for every household in the U.S., 456% of the U.S. gross domestic product, and 2,485% of annual federal revenues. Social Security, medical, and public pension benefits may well be warranted — but instead of being paid for by current adults, the costs are being kicked down the road in amounts unprecedented in human history. See, e.g., [www.justfacts.com/nationaldebt.asp](http://www.justfacts.com/nationaldebt.asp).



— particularly foster children who are concealed behind confidentiality.<sup>38</sup> This political imbalance aspect of child protection underlies all of the causes enumerated above, as well as the specific problems discussed below. Although it is understandable that as a non-voting constituency, children have diminished political capital, but each of us has close ties to one or more children, and should effectively ensure their political consideration.

### C. Outcomes

Each year, 20,000 of the nation's foster children age out of the foster care system and are expected to become independent, self-sufficient, and contributing members of society with little or no assistance from others. These are young adults who experienced significant psychological trauma during their formative years — including being neglected and/or abused; being separated from their homes, friends, families, and most things familiar to them; and enduring multiple placements in homes and institutions, interrupting (among other things) their educational progress. Of special concern are those foster youth who live their teen years in group homes. They do not benefit from normal growing-up experiences that most of us took for granted, but which prepared us for adult life, such as seeing an adult pay bills each month, do the laundry, buy groceries, pay taxes, arrange for car insurance, or undertake the dozens of other mundane tasks required to be responsible and self-sufficient.

The foster care system itself creates huge barriers to the normalcy of a child's growing-up experience, causing foster youth to miss out on many rites of passage experienced by their peers. Many foster youth lack control over even minor aspects of their lives, giving them little opportunity to make decisions about their lives. Unlike their peers who were not raised by the foster care system, most foster youth alumni do not have a strong familial support system to offer guidance and to which they can go for help if they experience the difficulties that typically face young adults. We essentially abandon our foster youth in the wilderness when they age out, with no resources, no map or compass, and no one to serve as guide.

The consequences of our failure to adequately prepare foster youth for life on their own are woven throughout every aspect of their lives after foster care. They are evident in the bleak outcomes and challenges these youth face in the areas of educational attainment, employment, housing, homelessness, physical and mental health issues, credit issues, and identity theft. Youth who age out of foster care:

- have a higher incidence of Post-Traumatic Stress Disorder (PTSD) than America's war veterans (25% among foster care alumni compared with 15% among Vietnam veterans, 6% among Afghanistan veterans, and 13% among Iraq veterans);<sup>39</sup>
- have a rate of panic disorder that is over three times that of the general population;<sup>40</sup>
- experience seven times the rate of drug dependence and almost twice the rate of alcohol dependence as the general population;<sup>41</sup>
- are more likely to experience a major depressive episode, generalized anxiety disorder and/or eating disorder (seven times more likely to have bulimia) than the general population;<sup>42</sup>

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<sup>38</sup> The only major counterweight to special interest control is directing public attention to the plight of children, and especially those who are victims of abuse. But the juvenile dependency court system is cloaked in secrecy. While the names of child victims may warrant confidentiality, the current system cloaks everything. That excessive concealment inhibits the democratic counterforce from public pressure to actualize.

<sup>39</sup> Spark Action, *Study: One in four foster children suffer from PTSD* (April 2005) (available at <https://sparkaction.org/content/study-one-four-foster-children-suffer-ptsd>).

<sup>40</sup> Foster Care Alumni Studies, *Assessing the Effects of Foster Care: Mental Health Outcomes from the Casey National Alumni Study* at 1 (available at [www.casey.org/media/AlumniStudy\\_US\\_Report\\_MentalHealth.pdf](http://www.casey.org/media/AlumniStudy_US_Report_MentalHealth.pdf)).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

- have incarceration rates of about 25%–35% after leaving care<sup>43</sup> (the rate for youth without a foster care history is 2.7%);<sup>44</sup>
- complete high school at rates far below the average (a recent study found that foster youth had the highest high school dropout rate and the lowest high school graduation rate, even when their peers in other at-risk groups were included);<sup>45</sup>
- overwhelmingly have no source of income when they leave care and are expected to be on their own (one study estimated this to be true for 90% of former foster youth);<sup>46</sup>
- have a staggering unemployment rate of 60%;<sup>47</sup>
- of those former foster youth who are employed, 90% earn less than \$10,000 a year after leaving foster care,<sup>48</sup> and 75% earn less than \$10,000 annually at age 21, well below the poverty rate level for a single individual<sup>49</sup> (dire economic straits that unsurprisingly lead former foster youth into drug marketing and sex trafficking at disproportionate rates); and
- experience homelessness at rates that not only exceed those of their peers with no history of foster care, but exceed the homeless rates of individuals discharged from prison.<sup>50</sup>



#### D. Costs and Obligations

A 2012 study from the Centers for Disease Control (CDC) found that the total lifetime estimated costs associated with **one year** of confirmed cases of child abuse and neglect is approximately **\$124 billion**.<sup>51</sup> These

<sup>43</sup> O'Sullivan, J. & Lussier-Duynstee, P., *Adolescent Homelessness, Nursing, and Public Health Policy*, POLICY, POLITICS, & NURSING PRACTICE 7 (2006) 73–77. California Youth Connection, *Facts on Emancipation*, distributed at Summer Policy and Leadership Conference (August 2008). For other similar findings, see also Courtney, Mark, Piliavan, Irving and Grogan-Kaylor, Andrew, *The Wisconsin Study of Youth Aging Out of Out-of-Home Care: A Portrait of Children About to Leave Care* Madison, Wisconsin: School of Social Work, University of Wisconsin (1995); Nevada KIDS COUNT, *Transition From Care: The Status and Outcomes of Youth Who Have Aged Out of the Child Welfare System in Clark County, Nevada*, Issue Brief II, Las Vegas: University of Nevada (2001); *Foster Care – Hope Emerges*, SAN FRANCISCO CHRONICLE (Dec. 22, 2005) (available at <http://sfgate.com/cgi-in/article.cgi?file=/c/a/2005/12/22/EDGABGB5LE1.DTL&type=printable>); Casey Family Programs, *Improving Outcomes for Older Youth in Foster Care* (2008) at 4 (available at <https://isc.idaho.gov/cp/docs/Improving%20Outcomes%20for%20Older%20Youth.pdf>).

<sup>44</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

<sup>45</sup> Barrat, V. X., & Berliner, B., *The Invisible Achievement Gap, Part 1: Education Outcomes of Students in Foster Care in California's Public Schools*. San Francisco: WestEd. (2013) at 36 (available at [www.wested.org/resources/the-invisible-achievement-gap-education-outcomes-of-students-in-foster-care-in-californias-public-schools-part-1/](http://www.wested.org/resources/the-invisible-achievement-gap-education-outcomes-of-students-in-foster-care-in-californias-public-schools-part-1/)).

<sup>46</sup> Human Rights Watch, *My So-Called Emancipation* (2010) at 4 (available at [www.hrw.org/en/reports/2010/05/12/my-so-called-emancipation-0](http://www.hrw.org/en/reports/2010/05/12/my-so-called-emancipation-0)).

<sup>47</sup> Mark E. Courtney, et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19*, Chapin Hall (2007) (available at [www.chapinhall.org/research/midwest-evaluation-of-the-adult-functioning-of-former-foster-youth/](http://www.chapinhall.org/research/midwest-evaluation-of-the-adult-functioning-of-former-foster-youth/)).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> M. William Sermons and Peter Witte, *National Alliance to End Homelessness, State of Homelessness in America: A Research Report on Homelessness* (January 2011) at 26 (available at [www.endhomelessness.org/library/entry/state-of-homelessness-in-america-2011](http://www.endhomelessness.org/library/entry/state-of-homelessness-in-america-2011)).

<sup>51</sup> Fang, X., et al. *The economic burden of child maltreatment in the United States and implications for prevention*. *Child Abuse & Neglect* (2012) (available at [www.sciencedirect.com/science/article/pii/S0145213411003140](http://www.sciencedirect.com/science/article/pii/S0145213411003140)).

costs do not include what attorneys call “irreparable harm” flowing from deaths and molestation,<sup>52</sup> nor do they cover the traumatic ripple effects of maltreatment throughout a community when a child suffers maltreatment. Many of the other costs are also not easily measurable in dollars. Foster children have a higher PTSD rate than do Iraqi veterans. And many of the abuses visited upon children translate across the generations, often regrettably correlating to either the abuse their caregivers likely suffered and/or to those which their own children are likely to perpetuate in the future.

Of particular note in examining public financial commitment is the matter of return on investment and the extent to which Congress does or should consider the ultimate value of prevention and early intervention. For the accounts discussed below, the correct timeline to measure benefit is not the next fiscal year, but savings as they occur over ten to twenty or more years. Such a time horizon is critical in evaluating child-related investments, though it is a difficult sell to legislators fixated on justifying spending for one fiscal year at a time. Saving \$124 billion over the lifetime of the children believed to be abused in a single given year is a minimal measure of the public stake in prevention and in successful foster youth. Those savings are augmented by ancillary savings across multiple generations and throughout communities. A savings is no less of a benefit where it occurs over ten years rather than within one. It is properly measured by its return over a longer span than budget discussions typically encompass.

### III. The Child Welfare System: Essential Elements

#### A. Prevention

Real prevention directed at the actual causes of abuse and neglect is absent from substantial federal monetary commitment. The federal Child Abuse Prevention and Treatment Act (CAPTA), now overdue for reauthorization, facilitates some marginally beneficial grants but except for some rhetorical attention to the opioid addiction increase, do not address the causes discussed above.

As documented in the Children’s Advocacy Institute’s *Shame on U.S.* report,<sup>53</sup> CAPTA also contains important aspects of child welfare law, including the required public disclosure of child abuse and neglect deaths and near deaths (which allows the public to help identify and address systemic flaws in the child welfare system). But these and other provisions are housed in a minimalist grant giving statute that involves an average of about \$3 million annually per state — many states receive well under \$1 million per year (see discussion below). The placement of potentially helpful prevention-focused mandates in a chronically under-funded and under-enforced statute allows states to disregard encourages of substantial federal financial withdrawal if those terms are not met.

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#### B. Detection

Detection of child abuse and neglect currently depends primarily on professionals who are mandated by state statutes to report suspected abuse or neglect. Such professionals constituted 65% of persons reporting abuse during 2016, with educators, law enforcement personnel, social service workers, and health professionals the

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<sup>52</sup> See e.g. the lifelong effects discussed by one expert at [www.ted.com/talks/nadine\\_burke\\_harris\\_how\\_childhood\\_trauma\\_affects\\_health\\_across\\_a\\_lifetime](http://www.ted.com/talks/nadine_burke_harris_how_childhood_trauma_affects_health_across_a_lifetime).

<sup>53</sup> Children’s Advocacy Institute, *Shame on U.S.* (2015) at 53–60 (available at [www.caichildlaw.org/Shame\\_on\\_US.htm](http://www.caichildlaw.org/Shame_on_US.htm)).

primary sources.<sup>54</sup> Although newborns are subject to some attention and constitute a population often reported, children ages 1 through 5 may not often be in the presence of mandated reporters. It is appropriate for the federal jurisdiction to mandate an adequate population of mandated reporters, and to include prohibitions on the suppression of reports by supervisors, in order to facilitate pattern detection.<sup>55</sup>

### **C. Family Preservation, Removals, Placements, and Permanence**

#### **1. Family Preservation and Child Removals**

Before 2000, in-home services were foregone because substantial federal matching funds were triggered only by the removal of the child and relegation to state custody. Hence, the cost of providing services without removal — commonly referred to as preventive services or family preservation — was borne solely by states. Not only did this framework engender a perverse financial incentive to remove children, it reflected a cultural value of prioritizing foster care over services that may have been able to help families keep children safely at home. This distortion has been somewhat corrected through a better understanding of the intersection of poverty and neglect as well as research identifying the profound trauma caused by family separation. This has resulted in a significant increase in preventive services on the front end and decreased numbers of removals. This, combined with a clearer picture of the vast expenses incurred by states to pay for services, casework and supervision, court and administrative costs, and foster care maintenance for the over half of children removed who do not qualify for federal reimbursement, may now have seen a reversal of policy towards an incentive not to remove.

In addition to the policy shift to prioritize keeping children at home with services rather than removing them to foster care, there exists an additional less obvious and troubling tension. Certainly, the decision to interfere with a parent's fundamental rights to raise their children and place a child in the custody of the state is momentous and can entail serious negative effects and risks. Accordingly, it is properly limited to circumstances where the child has already suffered harm or is at imminent risk of doing so. But the checks on excessive removals are many and the parallel protocols and checks in place to ensure the safety of children left at home are few. There is generally no assured review by a court or by any outside person.

The only indicator available is the draconian worst-case scenario in child protection — the death or near death of a child from abuse or neglect where there have been prior reports, as noted above. If there were errors made by the child welfare system along the way in the handling of one of these tragedies, information about where the system broke down along the way may be elusive. It is a well-worn and ever-frustrating scenario for CPS to hide behind a veil of transparency and mischaracterize the intent and extent of confidentiality protections in order to protect them from public scrutiny and scorn. And while hindsight is 20-20 and child protection an inherently imprecise system, there is valuable information to learn and critical lessons about systemic deficiencies in every instance of a child maltreatment fatality or near-fatality. Regrettably, a lack of transparency is far too common in the thousands of cases in which children die from abuse or neglect, and a lack of public accountability further fuels in efficiencies and dangerous practices. Nor does a provision prohibiting the disclosure of a child's name diminish this common and often successful advocacy for death and near death secrecy.<sup>56</sup> Finally, although CAPTA has some language requiring public disclosure of findings and information regarding child abuse and neglect fatalities and near fatalities, the Children's Bureau, part of DHHS' Administration for Children and Families, has adopted Child Welfare Policy Manual provisions that contradict Congressional intent by purporting

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<sup>54</sup> *Child Maltreatment 2016*, *supra* note 2, at 8.

<sup>55</sup> In many cases, reports are unsubstantiated, but several or many reports from different sources can make a substantial difference. We acknowledge that many abuse reports may be in error. Hence, all such report information is properly held in strict confidence by state child protection authorities. However, the sometimes proposed remedy of excision unless each one reaches a threshold of confidence removes the important feature of pattern detection that can provide more reliability than any single report, or multiple reports from the same source.

<sup>56</sup> For documentation of the mixed transparency among the states, notwithstanding, see *State Secrecy and Child Deaths in the United States*, *supra* note 33.

to allow states to refuse CAPTA-mandated disclosure based on, among other things, the interests of siblings, parents, and other family members.<sup>57</sup>

There is obvious merit to family preservation services where effective — especially when that focus is carried out with a continuing commitment to child safety and safety net programs outside child welfare, and with a firm commitment to learning from systemic failures that lead to tragic abuse and neglect deaths and near deaths.

## 2. Placements and Permanence

In 2007, a major study analyzed the actual costs of caring for a foster child across the nation.<sup>58</sup> In documenting the eight major costs included in the federal Child Welfare Act's command for state coverage, the report found that states' foster care reimbursement rates varied widely and that most do not cover the minimum floor required by federal law.

A more recent study concluded that “[i]n the majority of states providing information...most children received the (lower) basic rate,” and further found that “[t]he basic foster care rates in the majority of states fall below our estimate of the costs of caring for a child.”<sup>59</sup>

Lawsuits brought by child rights organizations have compelled reimbursement rate increases in some states, but the vast majority of states continue to provide compensation below federally-required floors. Although a condition precedent to states receiving federal foster care funding is that they provide reimbursement rates that

cover the eight major costs enumerated in the Child Welfare Act, the federal jurisdiction has largely ignored state violations in this regard.<sup>60</sup>



Some have argued that children should be cared for without regard to monetary reward and that providing compensation stimulates cynical acceptance of children for economic motives. These arguments have little merit in the real world of parenting. The compensation required by federal law does not provide profit. Indeed, full compliance will inevitably mean a net financial debit for the acceptance of foster children into a typical home.<sup>61</sup> But failing to meet basic costs means that foster

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<sup>57</sup> See U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *Child Welfare Policy Manual* at 2.1A.4 (available at [www.acf.hhs.gov/cwpm/public\\_html/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=68](http://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=68)).

<sup>58</sup> Children's Rights, National Foster Parent Association, University of Maryland School of Social Work, *Hitting the MARC: Establishing Foster Care Minimum Adequate Rates for Children* (2007) (available at [www.childrensrights.org/publication/hitting-m-r-c-establishing-foster-care-minimum-adequate-rates-children-2007/](http://www.childrensrights.org/publication/hitting-m-r-c-establishing-foster-care-minimum-adequate-rates-children-2007/)).

<sup>59</sup> Kerry DeVoght, Dennis Blazey, *Family Foster Care Reimbursement Rates in the U.S.*, The Annie E. Casey Foundation, Casey Family Programs, Child Trends, *Publication #2013-19* (April 2013) at 2.

<sup>60</sup> See *Shame on U.S.*, *supra* note 53, at Appendix D for a matrix of approximately 30 cases filed against states by private class action counsel establishing violations of federal law. As *Shame on U.S.* documents, virtually none of these judgements have been enforced by DHHS, nor have they been applied to other states with identical violations, nor even to neighboring counties where the judgement applies to one or several in a state with generalized violations.

<sup>61</sup> Some misguided commentators decry even basic cost reimbursement, arguing that most parents suffer substantial net losses in providing for their children and do so anyway out of love, and allege that providing out-of-pocket costs (as federal law theoretically requires) would create mercenary “profiteer” caregivers. That point of view is contradicted by both experience and the economics involved. The amounts required federally (eight out of pocket cost factors) do not create profit. But it does remove barriers to entry for many thousands who are promising homes, increasing the supply of those willing to do it markedly. That increased supply allows choice from among more families most likely to adopt and who provide the same home for siblings, and perhaps in the same, continuing school district. Those it may add as prospects include relatives who already know and love a child. Experience teaches us that most foster parents develop a strong bond with their children after placement. Paying the costs means that beloved Aunt Alice may become the parent of the child, even where she not only risks the loss of her pension, but lacks funds to pay all of the direct costs of the child.

parents who are not in the upper economic class must sacrifice precious savings, including retirement sums, in order to serve as such a parent. That necessarily affects supply, and hence placement choices. One of the effects of this supply shortfall — which exists in most jurisdictions — is that children may not be placed with siblings, or where they can remain in their current school, or where they have easy access to other relatives. It also lessens the odds of a placement with a relative or other provider who may be the optimum adoptive family for a child. Any decrease in supply means fewer options for the child.

Experts agree that a common goal for foster children is to minimize placement changes and maximize stability, preferably through a permanent placement. Ideally, that placement would provide all of the desirable features of a loving family that most of us have enjoyed. Where successful reunification is not feasible, adoption or kin or other guardianship will ideally provide a personal parent devoted to each child.

Where foster care must continue, it is ideally provided in a family setting without disruption or excessive change. There may be a reason to assign some children to a group setting, particularly where specialized help is otherwise not available, or a measure of compelled guidance and restriction are advisable. However, that setting has well recognized drawbacks for most children, who are best raised by personal parents, not employees. And group homes cost 8 to 12 times the amount expended for family foster care (or to subsidize adoptions or kin guardians). However, the acceptable means of assuring this permanence is not by providing a disincentive to the alternatives (which are sometimes regrettably the best interests choice), but by doing the three things discussed *infra* (see Section VII(C)).

#### **D. Assistance with Transition to Self-Sufficiency**

Foster children transitioning into adulthood encounter dire fates, as discussed *supra*. Most private parents maintain contact with their children well past age 18 or 21. The family home remains a place accessible to adult children in need of shelter. Parental support typically continues to flow to adult children through their mid-twenties, with a median of over \$50,000 expended by parents for their children after they reach 18 as they transition to independent adulthood. Such help is crucial for most youth because the median age of basic self-sufficiency is 26 — not 18 or 21. Transitional assistance for youth aging out of foster care is especially critical, and a responsible child welfare system ensures that such assistance is provided to the youth it parents.

### **IV. Federal Child Welfare Funding Streams**

#### **A. Overall**

The *Children's Budget 2017*, published by First Focus, is an important compilation of relevant material germane to overall federal spending on children.<sup>62</sup> It is broader in scope than the focus of this Paper, but its findings reflect a general child commitment retraction by the Boomer generation currently in power. It calculates total children's spending as a percent of total federal government spending. That percentage has declined from a modest 8.5% in 2010 to 7.75% in 2017 — representing a 10% reduction. That collapse has not received compensatory state spending increases, but represents a joint federal/state retraction. That retraction has proceeded to a still lower level in 2018.

The term “child welfare” as a term of art refers to the narrower issue of child protection from abuse or neglect. It includes the creation of mandated reporters of such abuse, Child Protective Services (CPS) in every state and virtually every county to receive reports and investigate them, a juvenile dependency court devoted to adjudicating parental rights, and where those rights are terminated, caring for a child or securing another

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<sup>62</sup> See First Focus, *Children's Budget 2017* (available at <https://firstfocus.org/resources/report/childrens-budget-2017>).



permanent placement. And it also includes efforts to provide services to children subject to abuse reports who remain in the home.<sup>63</sup>

The major source of funding for child welfare is Title IV-E of the Social Security Act, which provides funding for children in foster care placements, adoptive placements, or guardianships. Table 1 below presents some of the major IV-E sources of federal child welfare funding. Table 2 below presents the other primary federal budgetary accounts for child welfare funding.

## B. Major Title IV-E Programs

### 1. Foster Care

Each state, tribe, or territory with an approved Title IV-E plan is entitled to partial federal reimbursement for every eligible cost of foster care to children who meet eligibility criteria. Nationally, there are about 437,000 children in foster care on a given day.<sup>64</sup> The percentage of these children who are eligible for federal IV-E foster care funding has fallen to less than 50% on average, and is well below 40% in many states,<sup>65</sup> with abandonment continuing apace — almost entirely due to the notorious lookback provision discussed below.

Eligible Title IV-E costs include payments for foster care maintenance payments (for the child's room and board); caseworker time to perform required activities on behalf of eligible children in foster care (*e.g.*, finding a foster care placement for a child and planning services needed to ensure a child is reunited with his or her parents, has a new permanent home, or is otherwise prepared to leave foster care); and program-related data collection, training, or other administrative costs. For the most part, the share of Title IV-E program costs that are reimbursed by the federal government is between 50%–83% of eligible foster care maintenance payment costs (the percentage is re-determined annually and varies by state, with higher federal support going to states with lower per capita income); 75% of program training costs; and 50% of all other eligible program costs).

Some states have an approved child welfare waiver project under which they are allowed to use Title IV-E foster care funds to provide services or assistance on behalf of children (and families) that would not ordinarily be eligible for Title IV-E funding. Before granting this waiver authority, DHHS, together with the Office of Management and Budget, must ensure that the state will not receive more funding under the approved waiver than it would have received in the absence of the waiver.

**TABLE 1. Major IV-E Child Welfare Funding Streams**

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Title IV-E Foster Care	\$4,180.0	\$4,132.0	\$4,746.0	\$4,581.0	\$4,800.0	\$5,362.7	\$5,277.8
Title IV-E Adoption Assistance	\$2,296.0	\$2,278.0	\$2,450.0	\$2,510.0	\$2,674.0	\$2,706.1	\$2,861.0
Title IV-E Kinship Guardianship	\$74.0	\$77.0	\$90.0	\$109.0	\$135.0	\$145.2	\$186.0
<b>TOTAL, Unadjusted</b>	<b>\$6,550.0</b>	<b>\$6,487.0</b>	<b>\$7,286.0</b>	<b>\$7,200.0</b>	<b>\$7,609.0</b>	<b>\$8,214.0</b>	<b>\$8,324.8</b>

*Dollars in millions*

<sup>63</sup> This limited meaning of the term does not remove the relevance of other accounts that correlate with abuse mitigation or prevention. Child poverty, child disability, parenting education, and youth education, drug enforcement and other accounts correlate to child protection incidence and causation. Although a detailed presentation is beyond the scope of this Paper, some major federal accounts that have such an effect on child welfare are presented in Appendix B.

<sup>64</sup> Child Welfare Information Gateway, *Foster Care Statistics 2016* (April 2018) (available at [www.childwelfare.gov/pubPDFs/foster.pdf#page=2&view=Children%20in,%20entering,%20and%20exiting%20care](http://www.childwelfare.gov/pubPDFs/foster.pdf#page=2&view=Children%20in,%20entering,%20and%20exiting%20care)).

<sup>65</sup> Child Trends, *Title IV-E* at 4 (available at [www.childtrends.org/wp-content/uploads/2016/10/Child-Welfare-Financing-SFY-2014-Title-IVE-12.2016.pdf](http://www.childtrends.org/wp-content/uploads/2016/10/Child-Welfare-Financing-SFY-2014-Title-IVE-12.2016.pdf)).

**TABLE 2. Other Primary Child Welfare Funding Streams**

	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
CAPTA	\$93.7	\$87.9	\$93.8	\$93.8	\$98.1	\$97.8	\$157.6
Stephanie Tubbs Jones Child Welfare Services	\$280.7	\$262.6	\$268.7	\$268.7	\$268.7	\$267.9	\$266.9
Promoting Safe & Stable Families Program	\$408.1	\$387.1	\$379.8	\$379.6	\$381.3	\$520.6	\$381.6
Family Connection Grants	\$15.0	\$14.2	\$15.0	\$0.0	\$0.0	\$0.0	\$0.0
Child Welfare Research / Training / Demo Grants	\$26.1	\$24.4	\$24.9	\$16.0	\$18.0	\$17.9	\$17.9
Adoption & Legal Guardianship Incentives	\$39.3	\$37.2	\$37.9	\$37.9	\$37.9	\$38.0	\$37.7
Children's Justice Act	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0
Tribal IV-E Plan Dev't and TA	\$3.0	\$3.0	\$3.0	\$3.0	\$3.0	\$3.0	\$3.0
Chafee Foster Care Indep. Program	\$185.2	\$182.3	\$183.3	\$183.2	\$183.2	\$183.0	\$183.3
Victims of Child Abuse Act	\$24.0	\$24.7	\$26.5	\$26.5	\$31.0	\$31.9	\$31.0
Adoption Opportunities	\$39.2	\$36.7	\$40.6	\$39.1	\$39.1	\$39.0	\$38.8
Abandoned Infants Assistance Act	\$11.5	\$10.8	\$11.1	\$11.1	\$0.0	\$0.0	\$0.0
Social Services Block Grant	\$1,700	\$1,613	\$1,578	\$1,576	\$1,584	\$1,583	\$1,588
<b>TOTAL, Unadjusted</b>	<b>\$2,845.8</b>	<b>\$2,703.9</b>	<b>\$2,682.6</b>	<b>\$2,654.9</b>	<b>\$2,664.3</b>	<b>\$2802.1</b>	<b>\$2,725.6</b>

*Dollars in millions*

## **2. Adoption Assistance**

States with an approved SSA Title IV-E plan are required to enter into an adoption assistance agreement with the adoptive parents of any child who is determined by the Title IV-E agency to have special needs. Any such child may receive reimbursement for a part of the cost of nonrecurring adoption expenses. This part of the fund is reserved for onetime costs related to legally finalizing the adoption, as long bureaucratic delays in adoption approval are common. Children may have partial federal help for ongoing monthly subsidies on behalf of adopted children. To Congress's credit, the lookback exclusion (discussed below) was phased out to remove it as a bar to federal contribution for this account, and the income of families from which such special needs children have been removed no longer disqualify them, as of October 2017.

Not included in the IV-E foster care account, adoption assistance rates are generally comparable to the rates paid to family foster care providers. As with Title IV-E foster care funding, Title IV-E adoption assistance funding is authorized on a permanent (no year limit) basis and Congress typically provides the amount of annual funding for this open-ended entitlement that DHHS estimates will be necessary to reimburse states for eligible program costs.



### 3. Guardian Assistance Program

Guardianship Assistance provides permanence for a large number of foster children in lieu of adoption. To explain one factor: A biological parent is less likely to contest a guardianship with a relative. Among other motivations, such a relative may be less likely to cut-off the parent from further contact with the child. In contrast, an adoptive parent is able to accomplish complete exclusion and often will do so given the unfitness adjudication that is the predicate for the adoption and the fact that original parents are usually strangers to many of the adoptive parents of their children. In order to encourage this permanence option, which is preferable over expensive and often problematical group home placements, payments are commonly made to kin-guardians who attain that formal court conferred status (guardianship which carries with it parental prerogatives). They function as the legal parents or guardians pursuant to a court order. And the payment for care is generally set at the same level as for the provision of family foster care generally. However, as noted above, some states use the absence of federal funding for the ever growing lookback-impacted children (now a majority of foster children) to excuse their own abandonment of federal standards. This includes the 1979 U.S. Supreme Court *Miller v. Youakim* case that prohibits compensation or other discrimination against foster child caregivers simply because they are (non-parent) relatives.<sup>66</sup> As discussed above, California is an example of a state that has, to a varying extent, denied full compensation to relatives caring for children regardless of need or federal requirement — unless that child is receiving federal matching funds. The position of the states generally is that federal requirements only are obligatory as to children receiving federal subsidy. Those who are not may suffer denial of federal court and statutory floors.

As with other Title IV-E program components, funding is authorized on a permanent (no year limit) and states with an approved Title IV-E plan that includes the kinship guardianship assistance option are entitled to reimbursement for a part of the program costs, including assistance payments, and related program administration, including training costs.

### 4. Adoption and Legal Guardianship Incentive Payments

Any state or territory with an approved Title IV-E plan may receive federal incentive payments for increasing the number of children who are adopted from foster care overall, as well as the number of older children (age 9 or more) and those with special needs who are under the age of nine. This adoption incentive is paid to the state separate and apart from any funding for adoption assistance payments. It is a straight reward to states who improve adoption rates over previous years. Much of its motivation is to encourage states to stimulate a larger supply of adoptive parents, and to speed up and simplify the adoption process.

### 5. Children's Justice Act

Children's Justice Act grants are provided to help states and territories improve the assessment, investigation, and/or prosecution of child abuse and neglect cases — particularly cases involving suspected sexual abuse and exploitation of children, child fatalities suspected to be caused by abuse or neglect, and those involving children who are disabled and children with serious health disorders. Among other things, the improvements must aim to limit additional trauma to a child and/or child's family.<sup>67</sup>

To be eligible to receive these funds, a state or territory must meet the requirements necessary to receive CAPTA state grants, and it must establish and maintain a multidisciplinary taskforce to review how the state handles civil and criminal child abuse and neglect cases, including cases involving more than one jurisdiction (*e.g.*, state and tribe, or more than one state). The taskforce must make recommendations for ways to improve handling of these cases through reform of state law, regulations, and procedures; training; and/or testing of innovative or experimental programs.<sup>68</sup>

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<sup>66</sup> 440 U.S. 125 (1979).

<sup>67</sup> Congressional Research Service, *Child Welfare: An Overview of Federal Programs and Their Current Funding* (Jan. 10, 2017) at 30 (available at [www.crs.gov](http://www.crs.gov)).

<sup>68</sup> *Id.*

## 6. Tribal Title IV-E Plan Development and Technical Assistance

Social Security Act Section 476(c) authorizes DHHS to make grants to native American tribes, valued at up to \$300,000, to assist them with costs related to preparing a Title IV-E plan for DHHS approval. Through early 2014, 22 tribes (or tribal consortia) had received a plan development grant and three tribes (or consortia) had approved Title IV-E plans. This authorization for tribal technical assistance and IV-E plan development grants was added to the Social Security Act by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). The law provides a permanent (no year limit) annual appropriation of \$3 million.

## 7. Recent Amendments: The Family First Prevention Services Act

The Family First Prevention Services Act was signed into law in February 2018. It represents the most significant shift in child welfare financing since the establishment of the Title IV-E entitlement in 1980. The primary feature of the Act is that it opens up the Title IV-E entitlement for the first time to pay for services outside of foster care in order to keep children safely at home while their parents get the support they need to care for them. This represents not only an expansion of the only entitlement program in child welfare, which is in and of itself nothing short of revolutionary in the political climate it was born into, but a remarkable shift in values as we move from fiscally incentivizing removals and foster care placements to promoting family preservation when parents can get needed services while having their children at home or with family members. But as unexpected, exciting, and promising as this legislation is, it is not comprehensive federal child welfare finance reform. It does not cure the chronic underfunding of most child welfare programs or other programs that support the children and families that end up in child welfare. And although the services it covers are not subject to the restrictive eligibility determinations of the rest of Title IV-E funding, it does not cure the arcane lookback which plagues the rest of the program and which has resulted in fewer and fewer families qualifying every year to draw down federal dollars to pay state child welfare costs. Family First participation is not required, but states are permitted to opt-in, and would begin to follow the new law in 2019 if they are ready.

The central provision of the Family First Act allows for Title IV-E entitlement dollars, historically limited to payments for foster care and adoption assistance, to be used for three types of time-limited services for parents of children who are “candidates for foster care.”

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Specifically, approved evidence-based programs for substance abuse, mental health, and parenting skills can be accessed for up to twelve months. Children who would otherwise be removed from care may remain at home for the duration of these services if deemed safe. Services can also be provided to pregnant and parenting foster youth. The new law does not provide financial assistance to relatives who care for children while these services are provided, but does propose to match state spending on kinship navigator programs.

One of the Act’s main goals was to reduce the excessive use of congregate care for foster youth. These facilities are exorbitantly expensive, poorly supervised and regulated, and overutilized for long periods of time which is unhealthy and damaging to children’s psyches. The Family First Act cuts off federal reimbursement for stays in these facilities after two weeks, with a few notable exceptions.

The Act has several other important provisions of note. It requires states to address child abuse and neglect fatalities by working towards compiling complete and accurate information on maltreatment-related deaths and describing their efforts to develop and implement a multidisciplinary fatality prevention plan. This provision reflects recommendations made by the federal Commission to Eliminate Child Abuse and Neglect Fatalities, as well as provisions in the Child Welfare Oversight and Accountability Act introduced in 2017.

Family First also has several important provisions relating to transition age foster youth. Eligibility for benefits through the Chafee Independent Living program was extended from 21 to 23, and the age limit to access Chafee Education Training Vouchers was extended from 23 to 26. These changes were made without any increases in funding for Chafee programs, which may result in states having to spread the same money around a now-larger group of students — and many states are rightfully concerned about this.

One of the primary funding mechanisms to pay for the preventive services opened up by the Family First Act came at the expense of adoption assistance spending. Federal adoption assistance payments under IV-E used to be subject to the same arcane lookback formula as foster care eligibility. However, a 2008 law began to sunset the adoption assistance limitations, and by 2019 would have resulted in adoption subsidies for all children adopted regardless of the income of their birth families. Regrettably, the Family First Act re-linked adoption assistance eligibility to the lookback formula for children from birth to age two.

## **8. A 2018–19 Pending Threat**

A pending White House budget proposal, supported by officials at DHHS, is of concern. The Trump 2019 budget contained an old offer to states to exchange the uncapped IV-E entitlement for a flexible but capped allotment of money — otherwise known as a block grant. This “flexible funding” option proposes to address the expiration of the waivers in 2019, but would threaten to contravene implementation of the Family First Act’s provisions by trading one for the other. Furthermore, there is good reason to suspect that any structural changes to the entitlement will lead to its deterioration or even demise, as happened with the Social Services Block Grant. The intent to provide states with a flexible funding option is laudable, but it cannot come at the expense of compromising the structural integrity of the only entitlement available in child welfare.<sup>69</sup>

### **C. Major SSA Title IV-B Programs**

#### **1. Stephanie Tubbs Jones Child Welfare Services**

Each state receives a base allotment of \$70,000 in funding from this program; additional funds are distributed in proportion to the state’s population of children under age 21 multiplied by the complement of the state’s average per capita income. States must match 25% of the funds expended. States spend approximately 46% of this funding on child protective services; 19% on family preservation services; 11% family support/prevention services; 11% foster care maintenance payments; 6% for adoptions; 6% on program administration; and 6% on other.

#### **2. The Promoting Safe and Stable Families Program**

This Program requires specified amounts of funding to be reserved each year for related activities. Funding for each state is based on its population of children receiving SNAP (food stamp) benefits. States must match 25% and must spend at least 20% of PSSF funding on each of its purpose areas unless written rationale for not doing so. State spending is a typical balance of 25% family preservation; 25% family support services; 21% time-limited family reunification services; 20% adoption; 5% program admin; and 4% other.

#### **3. Family Connection Grants**

Family Connection Grants were established as part of the Fostering Connections to Success and Improving Adoptions Act of 2008. Through FY 2013, Family Connection grants were awarded to 48 grantees, including ten

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<sup>69</sup> Note that the Personal Responsibility Act of 1996 addressed Aid to Families with Dependent Children welfare payments to impoverished families, changing it to “Temporary Assistance for Needy Families” and removing its entitlement status. Those expenditures became block grants, and have suffered major reductions in relation to living costs in the 22 years following that Act. However, the AFDC category for foster children (AFDC-FC) and paying family foster care providers was not touched by that change for good reason. This is not assistance to someone else’s children, it is for the care of the children seized by the state and now under our full control. Accordingly, there was a basic ethical distinction that precluded the consideration of these funds as anything but an “entitlement.” It is basic support for the legal children of the state, seized through no fault of their own. The removal of that status raises profound ethical issues about the alleged “family values” of its proponents.

public child welfare agencies (state, local, and tribal) and 38 private nonprofit agencies. Projects were typically funded for three years and grantees were required to provide nonfederal matching funds (between 25% and 50% depending on the year of the grant) and participate in coordinated evaluation activities. The authorization for Family Connection Grants expired in FY 2015.

#### **4. Child Welfare Research, Training, or Demonstration Program**

These research, training, or demonstration grants/contracts are authorized to support child welfare research or demonstration projects that have regional or national significance, advance the practice of child welfare, encourage the use of research-based experimental or special types of child welfare services, and advance training for child welfare workers (including through traineeships).

Funding for training has the stated purpose of improving leadership of the child welfare workforce and supporting recruitment and retention of qualified workers. With regard to other child welfare research and demonstrations, the Administration is currently supporting a five-year project (begun in FY 2010 and called the Permanency Innovations Initiative) that is aimed at demonstrating and evaluating methods to reduce the number of children with long stays in foster care (*i.e.*, three years or more). Annual funding for these purposes is authorized on a permanent (no year limit) basis at such sums as Congress may determine necessary.

##### **D. Court Improvement Project**

A separate account within the Administration of Children and Families under HHS provides limited funding for the Court Improvement Project. This account includes \$10 million for grants to states for the study of foster care and adoption laws and their improvement.<sup>70</sup>

##### **E. CAPTA**

The Child Abuse Prevention and Treatment Act (CAPTA) includes many provisions that directly relate to the proper administration of the Child Welfare Act, such as the requirements that a guardian ad litem be provided to represent children in child welfare judicial proceedings, and that states allow for the public disclosure of findings and information about child abuse or neglect fatalities and near fatalities. Congress placed important provisions in CAPTA with full knowledge that the statute typically allocates only about \$90 million per year, and only approximately \$25 million in state grants across all 50 states.<sup>71</sup> Historically, most states receive well under \$5 million — and some receive just over \$100,000 per year. Housing these provisions in CAPTA accomplishes what politicians feigning concern for children commonly enact — a toothless provision without remedy or financial muscle to assure compliance, otherwise known as an unfunded mandate.

The CAPTA Reauthorization Act of 2010 extended annual discretionary funding for these grants through FY2015. States and territories do not need to provide nonfederal matching funds to receive this grant money. Each state and territory receives a base allotment of \$50,000 and the remaining funds are distributed among the states and territories based on their relative share of the child (under age 18) population. Funding is used directly by DHHS or awarded competitively to carry out the required or authorized CAPTA activities.

CAPTA contains three major financial subaccounts: state grants, discretionary grants, and Community-Based Child Abuse Prevention grants. Also related to CAPTA funding are three other accounts: an abandoned infants account of about \$11 million annually to allow the surrender of infants without sanction; an “adoption

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<sup>70</sup> See [https://en.wikipedia.org/wiki/Court\\_Improvement\\_Project](https://en.wikipedia.org/wiki/Court_Improvement_Project); see also <https://www.acf.hhs.gov/cb/resource/court-improvement-program>

<sup>71</sup> The Consolidated Appropriations Act of 2018 appropriated \$85.3 million for the CAPTA State Grant in FY 2018, an increase of \$60 million over the annual funding provided in previous years. The committee report for the appropriations act agreement specified that the increase in funding is intended to help states improve their response to families and infants affected by substance use disorders. States are required to prioritize use of the funds for the development, implementation and monitoring of plans of safe care for substance-exposed infants, consistent with the requirement found at section 106(b)(2)(B)(iii) of CAPTA, as amended by the Comprehensive Addiction and Recovery Act of 2016 (CARA). See DHHS, Administration for Children and Families, *Program Instruction No. ACYF-CB-PI-18-06* (May 31, 2018) at 11 (available at [www.acf.hhs.gov/sites/default/files/cb/pi1806.pdf](http://www.acf.hhs.gov/sites/default/files/cb/pi1806.pdf)).

opportunities” account that is really a part of the TANF spending discussed in Appendix A (it is allocated to states as part of the federal match); and a small program of Children’s Justice Act grants (discussed above).<sup>72</sup>

## **F. Chafee Educational Support**

### **1. Chafee Foster Care Program for Successful Transition to Adulthood**

Formerly known as the Chafee Foster Care Independence Program, this statute authorizes funding for states, territories, and tribes to provide services to youth for a successful transition from foster care to adulthood. DHHS is now beginning to report on independent living services to assist in that transition after age 14 financed by the agency administering the Chafee program.

During FY2013, states reported that 99,974 youth and young adults received at least one such service and many of those youth (58%) received three or more. About 44% of the served youth were between the ages of 14 and 17, 52% were between 18 and 21, 2% were between 22 and 26. Approximately two-third (68%) of the youth served received services that were related to life skills or supports (including, among other services, budgeting and financial management; housing education and home management; independent living needs assessment; or supervised independent living). More than half (56%) received at least one educational support service, a little less than half (45%) received career preparation or employment training, and about one in five (about 20%) received mentoring support.<sup>73</sup>

The total funds provided amount to a small proportion of the median funds provided by private parents for their children from age 16 to 26 (the median age of self-sufficiency for American youth). Very little in these foster care accounts is expended for personal mentoring. Most involves compensation for explanatory materials and brief instruction provided by social workers or those under contract. Most states have transition living plan programs, often starting at age 16, to teach several of the things parents normally cover — how to apply for a driver’s license, how to open a bank account, *et al.* Most important, benefits are described as serving youth who are likely to remain in foster care until age 18, youth who, after attaining 16 years of age, have left foster care for kinship guardianship or adoption, and young adults who have aged out of the foster care system.<sup>74</sup> The program is available to young adults up to 23 years of age under certain circumstances, notwithstanding the need to extend assistance to the mid-20s, as evidenced by the assistance provided by private parents.



### **2. Chafee Education and Training Voucher (ETV) Program**

These vouchers defray the cost of postsecondary education or training for any youth who is eligible for Chafee general services. The value of the vouchers is capped at \$5,000 per year. It may pay for the cost of attendance (including tuition, fees, books, room and board, supplies, and other items) at an institution of higher education

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<sup>72</sup> One noteworthy increase to CAPTA was the recent augmentation of \$60 million to implement Plan of Safe Care; Table 2 above reflects that 2018 change.

<sup>73</sup> National Youth in Transition Database, *Data Brief #3* (July 2014) (available at [www.acf.hhs.gov/sites/default/files/cb/nytd\\_data\\_brief\\_3\\_071514.pdf](http://www.acf.hhs.gov/sites/default/files/cb/nytd_data_brief_3_071514.pdf)).

<sup>74</sup> Congressional Research Service, *Youth Transitioning from Foster Care: Background and Federal Programs* (Sept. 8, 2017) at 9 (available at <https://fas.org/sgp/crs/misc/RL34499.pdf>).

(including public or private, nonprofit two- and four-year colleges and universities, as well as proprietary or for-profit schools offering technical training programs, among others).

Youth ages 14–26 are eligible for the ETV program, but a youth’s participation in the ETV program is limited to five years total.<sup>75</sup> Discretionary funding for ETVs is authorized on a permanent (no year limit) basis and program appropriations are distributed based on a state’s relative share of children in foster care.

## **G. Victims of Child Abuse Act**

### **1. Improving the Prosecution of Child Abuse Cases**

Subtitle A (Sections 211-214B) of the Victims of Child Abuse Act (VCAA) supports the expansion and improvement of Children’s Advocacy Centers (CACs). These centers are intended to coordinate a multidisciplinary response to child abuse (*e.g.*, law enforcement, child protection/social service, medical, mental health) in a manner that ensures child abuse victims (and any non-offending family members) receive the support services they need and do not experience the investigation of child abuse as an added trauma. CACs are widespread. The VCAA authorizes funds to directly support establishment and operation of local and regional children’s advocacy centers, as well as training and technical assistance related to improving the investigation and prosecution of child abuse and neglect.<sup>76</sup>

### **2. Court-Appointed Special Advocates (CASA)**

Since its enactment in 1974, CAPTA has required that in each case involving an abused or neglected child which results in a judicial proceeding shall be provided a guardian ad litem (GAL) to represent him/her in such proceedings. CAPTA allows the GAL to be either an attorney or a court appointed special advocate (CASA) (or both). In the 1990 VCAA, Congress made accurate findings that only a small fraction of children in child abuse and neglect proceedings received the CAPTA-mandated representation, and provided additional funding, purportedly to ensure that each foster child would have a CASA made available to them. However, in 2016 the National CASA Association reported that 400,000 children still need a CASA/GAL volunteer.<sup>77</sup>

### **3. Child Abuse Training Judicial Personnel/Practitioners**

Since the early 1990s, Congress has provided annual funding dedicated to this training program for judges, clerks and some attorneys. In early 2013, as part of the reauthorization of the Violence Against Women Act (P.L. 113-4), Congress extended annual discretionary funding authority for the program at \$2.3 million annually for FY 2014–18.

## **H. Adoption Opportunities Program**

The Adoption Opportunities Program requires DHHS to have an administrative structure that allows for centralized planning across all activities affecting foster care and adoption. It requires DHHS to support adoption recruitment activities, including a national adoption information exchange and to support a national resource center on special needs adoptions.

## **I. Abandoned Infants Assistance Act of 1988**

This Act authorizes funding for local demonstration projects to prevent and respond to the abandonment of infants and young children, including local demonstration projects, and grants prioritizing help for abandoned infants with perinatal exposure to HIV or controlled substances or who have a serious medical condition.

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<sup>75</sup> U.S. Department of Health & Human Services, Administration for Children and Families, *Information Memorandum No. ACYF-CB-IM-18-02* (April 12, 2018) (available at <https://www.acf.hhs.gov/sites/default/files/cb/im1802.pdf>).

<sup>76</sup> *Child Welfare: An Overview of Federal Programs and Their Current Funding*, *supra* note 67, at 32.

<sup>77</sup> National Court Appointed Special Advocate Association, *Momentum 2016* at 15 (available at [http://nc.casaforchildren.org/files/public/site/communications/Annual%20Report%20and%20Financials/NCASA\\_Annual\\_Report\\_2016\\_Final.pdf](http://nc.casaforchildren.org/files/public/site/communications/Annual%20Report%20and%20Financials/NCASA_Annual_Report_2016_Final.pdf)).

## J. The Social Services Block Grant

The Social Services Block Grant intersects child protection and foster children in many of its aspects. It is part of Title XX of the Social Securities Act. Precise allocations vary by state, but it funds various accounts relevant to child neglect prevention, including:<sup>78</sup>

- Daycare
- Protective services
- Special services to persons with disabilities
- Adoption
- Case management
- Health related services
- Transportation
- Foster care
- Substance abuse
- Housing
- Home-delivered meals
- Independent/transitional living
- Employment services

The Social Services Block Grant adds to the account regression in the 24 subaccounts discussed above. It was authorized and funded in 2002 at \$1.7 billion and remained at that level through FY 2012.<sup>79</sup> It has since been reduced — even in raw, unadjusted numbers — declining from \$1.7 billion in 2012 to less than \$1.6 billion in 2018.

## K. Major Other Accounts with Some Effect on Child Welfare

Appendix B presents the major collateral accounts and current spending. These are accounts directed at child poverty, child care and other purposes that are not part of the child welfare (protection) system, but are relevant to it. A review of those accounts indicates a retraction in funding reflecting the general “revenue neutral” budget fiction (discussed below) — which actually compels sequential cuts year after year in actual constant dollars per child.<sup>80</sup>

## L. Pending Child Welfare Bills

Appendix C includes a matrix of the major federal child welfare bills currently pending consideration. Although many bills are listed, it is unclear how many will win enactment in the currently divided Congress.

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<sup>78</sup> See U.S. Department of Health & Human Services, Administration for Children and Families, *About SSBG* (available at [www.acf.hhs.gov/programs/ocs/programs/ssbg/about](http://www.acf.hhs.gov/programs/ocs/programs/ssbg/about)).

<sup>79</sup> See Congressional Research Office, *Social Services Block Grant: Background and Funding* (March 2016) (available at <https://fas.org/sgp/crs/misc/94-953.pdf>); see also [www.acf.hhs.gov/programs/ocs/programs/ssbg](http://www.acf.hhs.gov/programs/ocs/programs/ssbg) and [www.google.com/?gws\\_rd=ssl#q=federal+social+services+block+grant+FY+2012](http://www.google.com/?gws_rd=ssl#q=federal+social+services+block+grant+FY+2012). Some states add to their Social Services Block Grant partially from other federal funds, but these consist of redirected TANF funds intended for the safety net support of impoverished children. Even without that redirection, TANF support levels have fallen substantially in properly adjusted federal contribution and in levels paid to impoverished families with children steadily since at least 2002.

<sup>80</sup> Several child care accounts may enjoy some funding increases post-2018, but the extent and degree in relation to properly adjusted amounts for inflation and population is unclear.



## V. Deficiencies in the Child Welfare Financing System

### A. Seminal Problems Regarding Congress and Child Welfare

Many child welfare programs are authorized by the major statutes in the field discussed in Appendix A. A large number of them touch major issues and problems. However, a fair review of their interaction, effect, implementation, and enforcement — as well as chronic state noncompliance with these federal mandates — warrant the following findings:<sup>81</sup>

- While statutory mandates commonly call for collaboration and coordination, federal provisions purporting to implement them are typically scattered and uncoordinated.
- While federal child welfare mandates seek to address major needs and problems generally recognized as pertinent, Congress rarely provides adequate funding or incentives for a meaningful leveraged impact.
- Congress generally funds federal child welfare programs for one to five years without longitudinal or other studies providing adequate information to guide retraction, expansion, or alteration decisions.
- Congress has situated many beneficial provisions in the CAPTA statute or other acts that lack significant monetary inclusion. Hence, beyond insufficient direct resources, there is little fear of meaningful sanction if —and when — states ignore basic statutory requirements. Specifically, many of the most important provisions of federal law are not linked to the major SSA IV-E or IV-B funding streams, despite the fact that they relate directly to the efficacy of that spending. Accordingly, the failure to simply cross-reference those required floors into the separate laws controlling the brunt of federal child welfare spending, has contributed to the effective immunization of non-compliance.
- Congress relegates enforcement of almost all child welfare statutes to DHHS, and particularly the Administration for Children and Families (ACF) and its Children's Bureau — all of which effectively tolerate substantial state violation and noncompliance with federal mandates. By not taking action to compel appropriate executive branch implementation and enforcement of federal statutory mandates, Congress acquiesces to the disregard and ineffectiveness of its own laws.
- The mandates of prior statutes exist in a legal setting where federal courts are increasingly denying standing or remedy for judicially-compelled compliance.<sup>82</sup> Congress has failed to amend relevant statutes to assure their enforceability — a task that requires the mere insertion of private standing and remedy confirmation for the child beneficiaries of those laws. States that are in compliance with federal child welfare laws should have no concerns about adding such a private right of action provision.

Individual members of Congress have responded to these problems with appropriate concern. In 2009, Senators Grassley and Landrieu formed the Senate Caucus on Foster Youth, now with 20 members.<sup>83</sup> Similarly, Representatives Bass and Bachmann created the Congressional Caucus on Foster Youth, now with over 150 members.<sup>84</sup> Both entities are active in considering new legislation, sponsoring informational events, and engaging in other creditable activities. However, the major issues discussed in this Paper have not been addressed effectively by these laudatory bodies, nor by any of the three branches.

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<sup>81</sup> For documentation of many of the shortcomings listed, see *Shame on U.S.*, *supra* note 53.

<sup>82</sup> See cases highlighted and other discussion in *Shame on U.S.*, *supra* note 53, at 43–48 (e.g., *Henry A. v. Willden*, which held that the leading case for criteria guiding a federal 42 U.S.C. § 1983 action to enforce federal standards did not apply to the two mandates included within CAPTA at issue in the case (the appointment of guardians ad litem and early intervention services under the Individuals with Disabilities Education Act (IDEA)). See also the recent opinion of the Eight Circuit Court of Appeals in *Midwest Foster Care and Adoption Ass'n v. Kincaid* 712 F.3d at 1194 (2013).

<sup>83</sup> See <https://www.grassley.senate.gov/issues-legislation/issues/adoption-foster-care-and-welfare>.

<sup>84</sup> See <https://fosteryouthcaucus-karenbass.house.gov/about/membership>.



## B. Child Welfare Appropriations Fail to Maintain True Revenue Neutral Funding Levels

Current federal spending to address federal spending for child welfare is guided by the bizarrely accepted notion of required revenue neutrality, meaning the repetition of the same raw number spending levels year to year. The

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implication is that maintaining those levels means no change (neutrality) as time advances. However, in order to achieve actual revenue neutral spending year to year, two adjustments must be made to the raw numbers. The first is monetary inflation. Comparisons of raw dollar amounts between years are inherently misleading. Whether it be more money in circulation, or whatever the cause, the value of money changes year to year. Salaries and tax receipts tend to increase based on this factor standing alone, and the dollar quantum for food, salaries, housing and other services on the spending side comparably change. In 2015, inflation was

modest, at only 0.1%, but 2016 it increased to 1.3% and 2017 to 2.1% with 2018 likely to be a similar number.<sup>85</sup> The cuts accomplished over these three years are *de minimis* compared to their steady accumulation over the last two decades. In only one year over the last decade was there deflation (–0.4% in 2009). From 2011 to 2018, CPI inflation amounted to 8.7%. And for accounts established earlier and also subject to “revenue neutrality” the decrease is much more drastic. Over the last 17 years (from year 2000), inflation has weakened the dollar by 35.6%. Over this period, the average annual inflation is 2.2%. Many of these accounts were created in the 1980s. If we take inflation from 1982, it amounts to 107.8%, more than halving appropriations kept at the same raw number amount.<sup>86</sup>

Properly added to the inflation adjustment is a second factor: population. The number of persons and taxpayers increases every year, as does the number of children, particularly impoverished children or those who are in foster care. The child population has substantially levelled over the last five years, but has historically increased fairly steadily (from 70.2 million in 1996 to 72.4 million in 2000 to a projected 80.3 million in 2030, representing annual increases of just over 0.5%).

However, the actual per capita adjustment is properly somewhat higher than base child population. About 15 million children in the United States — 21% of all children — live in families with incomes below the federal poverty threshold, a measurement that has been shown to underestimate the needs of families. This 21% figure is an increase from 16.2% of all U.S. children in 2000. Research shows that, on average, families need an income of about twice that level to cover basic expenses. Using this standard, 43% of children live in low-income families. And that higher poverty incidence is applied to a somewhat growing population of children to calculate actual numbers year to year living in poverty.<sup>87</sup>

But there are several more directly relevant population adjusters. One would be the number of children subject to child abuse reports. The laws and systems pertaining to these reports are substantially consistent over the last two decades, with populations of persons obligated to report relatively stable among the several states. Nor has there been any marked change in reporting requirements or associated funding that would produce an artificial spike. According to annual reports published by DHHS,<sup>88</sup> 3,000,000 different children were the subject of child

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<sup>85</sup> See <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-201803.pdf>.

<sup>86</sup> *Id.* Note that from 1982 to 2000, the cumulative inflationary percentage is 72.2%. *Id.* From 1982 to the present, and with the appropriations would have to more than double to achieve actual gross revenue neutrality.

<sup>87</sup> The number of children living in poverty in 2000 amounted to 11.7 million. See [www.childtrends.org/?indicators=children-in-poverty](http://www.childtrends.org/?indicators=children-in-poverty) at Appendix 1 and [www.childstats.gov/americaschildren/tables/pop1.asp](http://www.childstats.gov/americaschildren/tables/pop1.asp). For more recent numbers, see [www.nccp.org/topics/childpoverty.html](http://www.nccp.org/topics/childpoverty.html). Note that child poverty, as discussed below, correlates strongly with child abuse/neglect for obvious reasons and the U.S. has among the highest rates of child poverty in the developed world. *Id.*

<sup>88</sup> See DHHS’ *Child Maltreatment 2000* and the comparable Child Maltreatment 2013 data from 47 states collected by the U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau. See 2002 edition cover year 2000 at 6, Table 1-1; and 2015 edition covering 2013, at 7, Exhibit 2-A, respectively.

abuse reports during 2000. In 2008, the number increased to 3,311,000, in 2012 it reached 3,409,000, and the most recent data set of 2016 places the number of children so reported at 3,500,000.

Certainly a *de minimis* population measure would be the number of children actually in foster care and served by much of these appropriations. Although that number fell somewhat from 2008 to 2012 with the advent of the policy of providing services in homes rather than protective removal, they have increased from that time. The total served each year includes the many entering and exiting over twelve months. This number has grown from 636,000 in 2012 to an estimated 705,000 for 2017. The number who are in care at a specific date and excluding turnover is somewhat smaller but with similar percentage increases, from 397,000 in 2012 to 437,000 in 2017. This latter count of those in care on September 30 of each year has increased 13.35% from 2012 through 2017, amounting to 2.23% per year.

Nor is this dynamic of recent vintage, with a likely larger disparity over many of the years since 1996. For proper adjustment over the past two decades, many billions in additional expenditures would be required to maintain the federal commitment.<sup>89</sup> In point of fact, including inflation and population, appropriations must increase approximately 4.45% per year to remain even in monetary value per foster child to be served.

Table 3 below includes the three major accounts providing direct support for foster children. In raw numbers, these three accounts have increased 27.1% — almost as much as increases in inflation and the population of children in foster care. This important spending area of apparent increase consonant with adjustments would mean nothing more than there has been no decrease in these three accounts. However, that conclusion is somewhat misleading because in fact these accounts have been applied to larger numbers of children than the population adjuster used indicates. That is, youth opting into extended foster care (up to age 21 in many states) are now increasingly subject to these benefits, as well as increases in adoption assistance and Kinship Guardianship populations — population increases not reflected in the population adjuster used below.

**TABLE 3. Adjusted Federal Child Welfare Funding, Selected IV-E Accounts**

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Change in Funding, FY 2012-2018
IV-E Foster Care	\$4,180.0	\$4,132.0	\$4,746.0	\$4,581.0	\$4,800.0	\$5,362.7	\$5,277.8	
IV-E Adoption Assistance	\$2,296.0	\$2,278.0	\$2,450.0	\$2,510.0	\$2,674.0	\$2,706.1	\$2,861.0	
IV-E Kinship Guardianship	\$74.0	\$77.0	\$90.0	\$109.0	\$135.0	\$145.2	\$186.0	
<b>TOTAL, Unadjusted</b>	<b>\$6,550.0</b>	<b>\$6,487.0</b>	<b>\$7,286.0</b>	<b>\$7,200.0</b>	<b>\$7,609.0</b>	<b>\$8,214.0</b>	<b>\$8,324.8</b>	<b>27.1%</b>
<b>TOTAL, Adjusted*</b>	<b>\$8,339.6</b>						<b>\$8,324.8</b>	<b>−0.2%</b>

Dollars in millions

\*2012 total adjusted to CPI and total number of children in foster care (FY 2018 = 1.00)

Table 4 below includes accounts addressing prevention and special services, as well as numerous subaccounts discussed above. The total raw number appropriations here are close to alleged revenue neutrality subject to the so-called sequestration policy of fiscal conservatism. They are actually somewhat below that stay even principle, having fallen 4.2% over the past six years. But when properly adjusted, total funding for these accounts has been cut by 24.8%.

<sup>89</sup> Note that another source tracking spending from 1996 found substantial cuts starting in 2010, and that study does not use the inflators discussed above that are appropriate adjusters (see <http://www.childtrends.org/news/news-releases/survey-finds-decline-in-child-welfare-spending/>).

**TABLE 4. Adjusted Federal Child Welfare Funding, Selected Accounts**

	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>Change in Funding, FY 2012-2018</b>
CAPTA	\$93.7	\$87.9	\$93.8	\$93.8	\$98.1	\$97.8	\$157.6	
Stephanie Tubbs Jones Child Welfare Svcs	\$280.7	\$262.6	\$268.7	\$268.7	\$268.7	\$267.9	\$266.9	
Promoting Safe & Stable Families Program	\$408.1	\$387.1	\$379.8	\$379.6	\$381.3	\$520.6	\$381.6	
Family Connection Grants	\$15.0	\$14.2	\$15.0	\$0.0	\$0.0	\$0.0	\$0.0	
Child Welfare Research/ Training/Demo Grants	\$26.1	\$24.4	\$24.9	\$16.0	\$18.0	\$17.9	\$17.9	
Adoption & Legal Guardianship Incentives	\$39.3	\$37.2	\$37.9	\$37.9	\$37.9	\$38.0	\$37.7	
Children's Justice Act	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	
Tribal IV-E Plan Dev't and TA	\$3.0	\$3.0	\$3.0	\$3.0	\$3.0	\$3.0	\$3.0	
Chafee Foster Care Independence Program	\$185.2	\$182.3	\$183.3	\$183.2	\$183.2	\$183.0	\$183.3	
Victims of Child Abuse Act	\$24.0	\$24.7	\$26.5	\$26.5	\$31.0	\$31.9	\$31.0	
Adoption Opportunities	\$39.2	\$36.7	\$40.6	\$39.1	\$39.1	\$39.0	\$38.8	
Abandoned Infants Assistance Act of 1988	\$11.5	\$10.8	\$11.1	\$11.1	\$0.0	\$0.0	\$0.0	
Social Services Block Grant	\$1,700	\$1,613	\$1,578	\$1,576	\$1,584	\$1,583	\$1,588	
<b>TOTAL, Unadjusted</b>	<b>\$2,845.8</b>	<b>\$2,703.9</b>	<b>\$2,682.6</b>	<b>\$2,654.9</b>	<b>\$2,664.3</b>	<b>\$2802.1</b>	<b>\$2,725.6</b>	<b>-4.2%</b>
<b>TOTAL, Adjusted*</b>	<b>\$3,623.3</b>						<b>\$2,725.6</b>	<b>-24.8%</b>

*Dollars in millions**\*FY 2012 total adjusted to CPI and total number of screened-in child abuse/neglect reports (FY 2018 = 1.00)***C. The Lookback Provision Further Retracts Federal Support for Abused Children**

Exacerbating the Congressional failure to achieve true revenue neutrality for child welfare accounts is the retention — now for over 20 years — of the so-called lookback provision that makes ever-increasing numbers of foster children ineligible for federal assistance. By way of background, the 1996 Personal Responsibility Act (welfare reform) converted a safety net entitlement (Aid to Families with Dependent Children or AFDC) into a block grant to states administered as TANF with ceilings rather than floors. The moral mandate of foster children properly rejected their inclusion in those reductions and limitations, and reserved their receipt as a continuing entitlement. However, the reform statute included an anomaly: any foster child removed from a family earning over the poverty line as it existed in 1996 is

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not eligible for federal foster care funding. Even more troubling is the fact that the 1996 poverty line standard has never been adjusted to inflation — meaning that 1996’s \$12,980 poverty line for a family of three still applies to foster children in 2018 when determining their eligibility for federal contribution. By way of contrast, the 2018 poverty line for a family of three is \$20,780 — 60% higher than the 1996 level still applicable to this critical determination.<sup>90</sup>

Apparently, the purported rationale was that if parents with adequate resources to provide for a child are unfit and the state has to assume that task, those parents should then pay for their costs. This is an understandable concern. But the mechanism to do so already exists — child support collection. And the statute could mandate that every state seek recompense from any unfit parent whose children are being raised by others at public cost. They could be assessed to pay for all or part of that cost of care. That is what happens with the TANF money in the general safety net system, both before and after the 1996 alteration of the overall welfare system for impoverished children.

A single parent of a child is obligated to assist the state (as a condition of welfare receipt for her or the child) to identify the biological father. Those parents are tracked and assessed child support, including levies and wage garnishment, in all fifty states. A portion of the monies collected go to the state and federal treasuries providing the aid. The federal statute could follow that same pattern here — requiring courts to gather information about income and assets of unfit parents and assessing them costs as appropriate. But instead of following that constructive model, which maintains support for every impoverished child subject to public collection, here it would effectuate that purpose with the *non sequitur* cut-off of all federal contribution for the involved children.

Those parents earning below the current poverty line can hardly afford to contribute to the care of removed children. So an ever growing population of foster children are cut off from federal support based on an arbitrary criterion unconnected to any discernible justification. Ironically, as noted above, Congress in 1996 differentiated these monies to maintain their entitlement status. And that priority is based on the very different population at issue — not impoverished children generally, but adjudicated abused children seized by the state and subject to legal parenting by public officials. The lookback abdication chooses the one population properly retaining entitlement status and then fabricates a disingenuous formula to abandon them — not suddenly to cause attention, but in a gradual year to year format.

A 2015 study found that while DHHS substantially ignores states’ failures to comply with other Congressional floors protecting children, it actively enforces IV-E eligibility standards.<sup>91</sup> Among other factors it reviews, it tracks the incomes of families from whom children are taken, and for those earning over \$12,980, expends its enforcement resources to assure the cut-off of increasing numbers year after year — a process now nearing the end of two decades.

#### **D. Executive Branch Refusal to Ensure State Compliance with Federal Floors**

DHHS is responsible for implementing and enforcing an extremely varied and complex array of child welfare laws — no easy task. It must ensure that states meet and maintain eligibility requirements specific to several diverse programs — not only to ensure that states are entitled to billions of dollars of federal child welfare money, but also to ensure that states are adequately protecting children from abuse and neglect consistent with congressional intent. While the scope and importance of DHHS’ responsibilities and duties are significant, so are the consequences that children suffer when our child welfare system fails to protect them.

In order to ensure that states comply with federal law and achieve positive outcomes for children and families using the billions of dollars of federal tax money doled annually, DHHS has created a monitoring tool known as Child and Family Services Reviews (CFSR), periodic reviews of state child welfare systems conducted to assess

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<sup>90</sup> See federal register compilation at <https://aspe.hhs.gov/1996-poverty-guidelines-federal-register-notice>

<sup>91</sup> See *Shame On U.S.*, *supra* note 53, at 13–35. Statutes in most states delineate child neglect as a criminal offense (see, e.g., California Penal Code Section 270 *et seq.*). *Query*, does the state judgment of criminal liability for neglect imply a duty of compliance applicable to its own offices? Is the federal jurisdiction applying neglect standards at any level to itself or to the states receiving other federal funds?

state conformity with certain federal requirements for child protection, foster care, adoption, family preservation and family support, and independent living services. Federal law directs DHHS to withhold federal matching funds if a state's program fails to substantially conform to federal law and the approved state plan. However, after two and a half full rounds (covering 17 years), DHHS has yet to find a single state to be in full conformity with federal child welfare requirements, even with regard to the limited aspects of federal child welfare law that the CFSR review process encompasses — let alone with the plethora of federal child welfare requirements that the CFSR process omits altogether. And yet money keeps flowing to the states.

DHHS is derelict in other regards as well. For example, it allows states to in effect self-certify that they are in compliance with various federal child welfare provisions; it refuses to require states to provide reliable, consistent, and complete child welfare data as required by federal law; and it refuses to interpret and implement child welfare statutes via formal rulemaking.

### **E. System Need Failures**

The common failure of states to comply with federal floors includes the non-reporting of child abuse deaths and near deaths. As noted above, this is the major societal check on the failure to remove or otherwise protect children. In addition to reporting non-compliance, many jurisdictions do not even provide attorney representation for children who are under the complete control of a state judge; caseloads for those guardians ad litem (attorneys or not) are often above 200 and preclude basic representation as federally mandated. Related are excessive caseloads for counsel representing parents, and even unreasonable court caseloads — with some judges acting as the legal parents of over 1,000 children. Meanwhile, few of the underlying causes of abuse/neglect enumerated above are effectively addressed, or even seriously discussed.

### **F. Other Statutory Anomalies, Omissions**

Beyond the irrational lookback provision discussed above are a series of other irrational provisions and omissions in the current child welfare statutory framework — all of which detrimentally impact the ability of the federal child welfare system to appropriately ensure the well-being of children in foster care. For example,

- No foster child can receive any federal foster care benefits if he or she has more than \$10,000 in total assets. That limitation means that hard earned savings to afford a car to get to work and several thousand in the bank forecloses basic sustenance support. Certainly if the asset limit were \$100,000, or arguably \$50,000, it might be justified — but not a \$10,000 figure never adjusted to the CPI and hampering reasonable savings and success.<sup>92</sup> Responsible parents encourage their children to save their money — they do not cut off their children from financial assistance for doing so, nor do they tap their children's earned monies to pay for their room and board.
- No foster child can receive SSI benefits — even if disabled and otherwise qualified — if he or she has more than \$2,000 in total assets.<sup>93</sup> SSI benefits are currently tendered for about 7% of foster children and just under 10% of foster children at point of emancipation. However, given the characteristics of this population, a much higher qualification percentage is properly indicated. But beyond the failure of generic coverage is an exclusion — even where otherwise eligible — based on the meagre existence of \$2,000 or more in child assets. Such a child asset line, quite apart from its reduction every year from inflation, is not defensible. It is even more unreasonable and arbitrary than is the child asset limit for basic maintenance payments above.

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<sup>92</sup> Under Section 472(a) of the Social Security Act, foster children who receive Title IV-E foster care maintenance payments and do not receive SSI may accumulate no more than \$10,000 in assets to remain qualified.

<sup>93</sup> The SSI resource exclusions can be found in Section 1613 of the Social Security Act (42 USC §1382b) and in the Code of Federal Regulations at 20 CFR 416.1210-416.1239.

- Federal law allows states and counties to become representative payees for foster children who are eligible for Social Security Survivor Benefits (OASDI) and SSI payments. Flouting the fiduciary duty that accompanies this role, the states and counties almost universally expropriate these funds for their own budgets — with no consideration of the unique needs of the child beneficiary and no attempt to conserve any part of these funds for the beneficiaries’ future use.<sup>94</sup>

## VI. Counter-Productive Positions and Prescriptions

### A. The Acceptance of the “Revenue Neutral” Fiction

Some of the proposals for federal child welfare funding make the mistake of assuming that no increase in funding is possible. In point of fact, and as discussed above, revenue neutrality is a lie, and maintaining raw numbers without adjustment for inflation and relevant population change assures decreases that accumulate into unconscionable withdrawal within several years. Increases in child population, child poverty and mandated reports mandate an increase in federal expenditures merely to maintain response levels. Added to this is the CPI that increases each year.<sup>95</sup> Population, need, and inflation all accomplish a substantial annual effective reduction where appropriated amounts are held static. The number of taxpayers, and inflation fueled revenue, increase annually. To ignore this reality is to accept the python-like constriction of child protection.<sup>96</sup>

There is a reason that the federal 1996 Personal Responsibility Act welfare reform mechanism did not include payments to foster care providers. They were not subject to “block grants” (*e.g.*, AFDC–U and AFDC–FG,<sup>97</sup> now TANF) but have remained an “entitlement.” There are two reasons for this more exalted national commitment. First, we have an obligation borne of deep ethical sensibility, to protect helpless children from harm. Second, much of the federal expenditure has been for the provision of foster care. This is not a subsidy for some adult interest group, nor even for the protection of children generally. These are child victims who have been seized and are now in our charge. They are not our children in a metaphorical sense, but are literally parented by our appointed and elected state court judges. They are our children directly. And we are their legal parents, their only parents. We decide who cares for them, and how, in detail. How we treat them is a fair test of what conservatives properly characterize as our “family values.”

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<sup>94</sup> See Children’s Advocacy Institute, *The Fleecing of Foster Children* (2011) (available at [www.caichildlaw.org/Misc/Fleecing\\_Report\\_Final\\_HR.pdf](http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf)), documenting what is, in effect, the embezzlement of monies due foster children by counties and states for their own general fund purposes. In 2018 Congress enacted the Strengthening Protections for Social Security Beneficiaries Act to, among other things, eliminate a foster youth’s liability for overpayment of Social Security benefits when the state is the youth’s representative payee and require information sharing between SSA and states to better quantify the number of foster youth in care who are receiving Social Security benefits. The Act also requires the Comptroller General to evaluate and report on the number of represented minor beneficiaries in foster care under the responsibility of a state for each month during the previous year; whether the representative payee for each represented minor beneficiary is a governmental child welfare agency, an organizational payee that is not a governmental child welfare agency, a foster parent or child-care institution, or another individual; and whether funds were conserved, used for direct expenses of the minor beneficiary, or used to reimburse the State for foster care maintenance costs. While helpful, these provisions fall short of the necessary prohibition on diversion of monies due foster child beneficiaries and are unlikely to end the county/state as the representative payees receiving (and diverting) these monies.

<sup>95</sup> Were the CPI to decline, an adjustment in that direction is also justified. *E.g.*, in 2007 there was some deflationary movement. The adjustment for this dynamic in either direction accomplishes a more *bona fide* “revenue neutral” calculation. Similarly, if child impoverished child population declines or the number of mandated reports received diminish — indicating a lessening of need, that could also be a factor in either direction.

<sup>96</sup> The python winds around the respiratory system and constricts, tightening with every exhalation until asphyxiation occurs.

<sup>97</sup> These refer to the three pre-1996 groupings for safety net assistance: Aid to Families with Dependent Children Unemployed (AFDC – U, usually pertaining to two unemployed or underemployed parents), AFDC – Family Group (AFDC- FG, referring to single parent households), and AFDC–FC, or the monies matching state payments for the care of foster children in state custody. As discussed above, the last category’s entitlement status did not change with the passage of the 1996 PRA, nor do any of the arguments justifying its transformation to block grant status have reasonable application to a population of seized and victimized children subject to state control and care.

We can hardly make child neglect a criminal offense, as do most states, and then commit that very offense in providing for and protecting our own legal children — for whom every detail of their lives comes from public budgeted amounts. Nor is this nation in such critical straits that it is unable to provide the sums needed for those whose care we have so assumed. We have multiple military bases in Germany — doubtless able to finance its own defense, we approve weapons systems even the Pentagon does not promote, and we provide billions in subsidy to agricultural interests, to dozens of allied nations, and to corporations taking advantage of tax expenditures and avoidance.

It is indeed ironic that the argument for fiscal responsibility is sounded contrary to the interests of these children in need, while the federal budget is adding not only to a federal deficit, but committing unprecedented benefits for the baby boomer generation now in power, including unfunded liability for now retiring public employees, Social Security and Medicare. All such unfunded liability is at unprecedented levels for future obligation. It is our children who will bear the awful burden of that intergenerational taking, and the least the beneficiaries can do is commit a respectable amount to those most in need among the generation to be billed for it.

Those promoting responsible financial commitment to our children belie their stated concern for abused children where they begin their advocacy with the acceptance of an artificial and arbitrary resource limitation precluding responsible care. First, we determine what our children need for protection, and what those we remove and take custody of need for productive lives. Then we figure out how to get it. Certainly we do not continue to fund services that do not achieve results, and accountability is properly required. But we do not arbitrarily pick a number, particularly a current number demonstrably inadequate, and then frame our proposals under that self-defeating construct.

Budgeted amounts are appropriately evaluated year to year based on changes in mandated reports and population and other indices of need. They are then increased or decreased based on demonstrable outcomes in achieving protection and adult success.

## **B. The Proposed Federal Cut-off of Children in Foster Care**

One proposal for federal financial reform requires separate comment. It was advanced in 2013 by the Annie E. Casey Foundation, one of the major funders of child-related charitable work.<sup>98</sup> If the proposal had been advanced in a single document or hypothetically raised, this response would not be required. But it has been advanced repeatedly, and has even been the subject of solicited “responses” and criticism by experts in the field. This latter publication attempted to answer these criticisms, and the otherwise widely respected Foundation has not withdrawn the concept — notwithstanding its clearly negative consequences for involved children.<sup>99</sup> It even advanced this proposal in the form of a proposed federal bill authored by a longstanding and respected member of Congress in this field.

This proposal proceeds along the following lines: First, it recites the problems of initial removal and inadequate CPS investigative staff, the failure to support family foster care providers, and the failure to achieve “permanence” for too many foster children (citing movement between placements, lack of adoptions or kin placements, *et al.*) and then face aging out without a family and little other support. It notes that too many are in foster care for too long and that nearly 15% live in a group home setting.<sup>100</sup> These observations have merit. But it then makes two errors. The first is to declare: “we should start by reallocating existing federal funds....” In other words, the proposal accepts unconscionable and misleading revenue neutrality as its starting point. Second, it then proposes to generate new funds from this effectively shrinking sum by cutting off all federal IV-E matching funds (a) to any foster child in care after 36 total months in a child’s lifetime, (b) to any child in

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<sup>98</sup> Annie E. Casey Foundation, *When Child Welfare Works: A Working Paper* (Oct. 23, 2013) at 1–15 (available at [www.aecf.org/m/resource/doc/aecf-WhenChildWelfareWorks-2013.pdf](http://www.aecf.org/m/resource/doc/aecf-WhenChildWelfareWorks-2013.pdf)).

<sup>99</sup> Annie E. Casey Foundation, *When Child Welfare Works: A Proposal to Finance Best Practices: Discussions from the Field* (May 2014) at 1–34.

<sup>100</sup> *When Child Welfare Works: A Working Paper*, *supra* note 97, at 3–6.

group placement who is 13 years or older after one year, and (c) immediately for any child under 13 years of age in a group home.<sup>101</sup>

The stated rationale is as follows: What these children need most is permanence, whether through adoption or kinship guardianship placement. Hence, we need to give the states an incentive to move these children out of the generally counterproductive foster care system involving excessive movement between placements, group home parenting by employees, *et al.* By cutting off federal money at one or three years, we give them an incentive to do so, since they will have to pay substantially more after that initial term ends. And we can then use the savings from this retraction of federal monies to fund other aspects of child protection warranting additional funding.

Many of the alternative uses for this redirected money have merit, some more than others. But the proposal reflects a misunderstanding of: (a) the current financial incentives as applied to states and counties, (b) the reality that federal floors concerning help and services only effectively apply to children receiving federal funding, (c) the regrettable record of states to deprive foster children where floors are not applicable, (d) the effect of federal funding excision (and floor exclusion) on a defined, large population of foster children – those in care beyond the short term limits to be imposed and (e) the impact of care payment reductions, or their prospect, on family foster care supply. As explained below, the diminution of that supply is directly related to adoption success and other benefits.

The first problem with this proposal is its premise. States already have a strong financial disincentive to maintain these children in group homes or otherwise in foster care status. Every foster child who remains in that system has a *guardian ad litem* (GAL); although in some states the GAL is a volunteer, in others it is an attorney, who must be paid. All children under continuing foster care jurisdiction must be visited at least monthly by social workers who generally operate with relatively smaller caseloads and are also publicly employed. Periodic hearings are required in court, with a reporter, clerks and marshals. Counsel for the county, usually representing the social workers, remain involved as well. These caseload-related costs are momentous in total and are not generally subject to predominant federal contribution. Putting foster children into permanent placement and releasing them from foster care status is *already* in the substantial financial interest of states and counties. This is particularly true for those in group homes, which commonly cost 7 to 9 times more than family foster settings.<sup>102</sup>

The states already pay even more than half of this higher amount given the lookback-related federal abandonment of funding for almost half of them already. Further, contrary to the implicit assumption of this proposal, most of these public workers and officials are in favor of such permanence. They are generally well aware of the non-financial advantages — the more likely success of the children who most of them commit their careers to protect and to serve.

The second problem with the proposal has to do with its legal implications. Where states have children who do not receive federal funds, they are usually able to avoid the federal floors that may be applicable. These floors are not trivial. They require many of the elements discussed in this Paper. For example, they mandate that the compensation paid to family foster care providers must meet 8 enumerated out-of-pocket costs. If states are allowed to do so, they will sometimes pay a fraction of that minimum standard. In *California Foster Parents Association v. Lightbourne*, the Children's Advocacy Institute successfully argued for a 30% increase in California's

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<sup>101</sup> *Id.*, at 7.

<sup>102</sup> Admittedly the substantial political bargaining power of group homes in state capitals can have an impact. They are organized into trade associations and use part of their much higher revenues for political lobbying and influence. In contrast, family foster care providers lack the funding and organization for such influence. But the solution here is not to cut off federal funds for children in all group home placements. Some children (hopefully a small percentage) do require intensive and expert medical supervision. Moreover, such federal cut-offs will not undo their influence for the substantial state funds apart from federal contribution. A better approach, as outlined below, is to financially incentivize their placement in advantageous settings beyond their overall cheaper cost. Where federal money is provided, even as a 50% share, or as a bonus, for particular state practices, they tend to happen. And that re-prioritization does not come with the federal abandonment of large numbers of foster children.



foster care reimbursement rates because they failed to meet that federal standard. And there are numerous other examples of child advocates securing compliance of this and other minimum federal floors by this method.<sup>103</sup>

A related example is illuminating. Federal law, bolstered by a U.S. Supreme Court decision,<sup>104</sup> requires the states to not discriminate against the relatives of children who are removed from parents. Where Aunt Alice is the best placement, she cannot be arbitrarily denied placement or denied compensation available for that care otherwise payable to others. And that makes sense, for Alice may well be bereft of resources herself, and although providing the ideal placement and continuity, should not have to sacrifice all of her retirement or sink into TANF dependency while strangers are given cost compensation. But for the past twenty years, many states refuse to pay relatives where the child is a lookback foster child who is not eligible for a federal match. Those states disobey the federal requirement because it does not apply unless federal funds are being received. So the fact of federal funding means (a) federal floors will apply only for those children receiving it, and (b) states will take often advantage of their absence by plunging below them with particular impunity.

Nor are these examples exceptional. The Children's Advocacy Institute's *Shame on U.S.* report<sup>105</sup> describes over 30 such lawsuits, with most successfully requiring states to increase services for foster children, and they cover all or parts of California, Connecticut, Georgia, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Jersey, New Mexico, New York, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Washington and Wisconsin. They cover up to twelve areas of state deficiency. Few would be viable for enforcement as to any foster child under 13 in a group setting, or for the remainder after the one- or three-year period of federal contribution expires under this proposal.<sup>106</sup>

Exacerbating this problem is the relative ease of distinguishing such a defined group of foster children — all of those in care after one or three years. The current exclusion of lookback children is at least scattered throughout the population and makes their discriminatory treatment somewhat more difficult. The responsible reform in terms of federal minimum coverage is not to exempt a larger and more easily victimized grouping of foster children, but to remove the lookback abandonment so all children in care are subject to those minimums.

Finally, adding to the danger of the proposal is its inevitable effect on the supply of family foster care providers. That is one of the highest priorities for child advocates. A large supply means more choices — more children can be placed within their current school territory, with siblings and near other relatives. A larger supply also means more selectivity in terms of adoption candidates. A regime that provides an assured federal excision after several years means predictable state reduction in compensation at that point — one that will lack *any* cost floor.

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<sup>103</sup> Other illustrative cases include:

(a) *Missouri Child Care Association v. Martin* (2003): A federal district court in Missouri found that although the Child Welfare Act does not dictate how states should calculate foster care maintenance rates, Missouri had violated the Act by failing to use a calculation that considered the specific requirements set forth in 42 U.S.C. §675(4)(A).

(b) *Kenny A. v. Purdue* (2004): Facing federal litigation alleging failures to conform to Title IV-B and IV-E requirements, state and county officials in Georgia signed a consent decree mandating a plethora of reforms including caseload caps, improvements in training and retention of caseworkers as well as an adequate method for calculating foster care maintenance payments.

(c) *California Alliance of Child & Family Servs. v. Allenby*, 459 F.Supp.2d 919 (N.D. Cal. 2006): The federal district court, affirmed by the Ninth Circuit Court of Appeals, found that California had violated the requirements of its own state plan and the Child Welfare Act by failing to adjust foster care maintenance payments for inflation and increased cost of living. See details and citations at *Shame on U.S.*, *supra* note 53, at 51.

As discussed above, some recent court decisions have raised obstacles to court enforcement — including the invocation of abstention, and standing and remedy barriers. But the solution to those impediments is not the effective foreclosure of court enforcement, but Congressional clarification concerning the standing and remedy rights of those representing intended child beneficiaries.

<sup>104</sup> *Miller v. Youakim* 440 U.S. 125 (1979).

<sup>105</sup> *Shame on U.S.*, *supra* note 53, at Appendix D. The following examples of caseload violations are typical: Before Children's Rights filed suit, Michigan's foster care caseworker caseloads exceeded Child Welfare League of America (CWL) standards (of 12 to 15 children per caseworker), in some cases reaching 40 children per worker or more. In Mississippi, social workers "had some of the highest caseloads Children's Rights has seen across the country....[T]he statewide average caseload per worker was 48 children....In some counties, caseloads were found to exceed 100 children per worker."

<sup>106</sup> While several recent cases of concern have raised some limitations on standing and remedy facility to judicially enforce federal floors, the solution is to adjust the statutes involved to facilitate enforcement by their intended beneficiaries. The deprivation of federal financial involvement categorically relegates all of them to state discretion without federal floor as to any of the twelve categories of benefit and protection subject to historical court enforcement.

A large number of rational family foster care providers will not want to assume this profound duty with that risk, one that can jeopardize years of savings and other essentials for large numbers of prospective parents. In fact, one consequence of the family foster care supply decline will be more children relegated to group homes, commonly costing much more, as noted above, and where children are raised by employees who often lack the personal connection so important to all of us.

To be sure, the proposal would not apply cut-offs to Adoption Assistance Payments (AAP) nor to relative guardian parents. But those destinations often follow family foster care placements, and the up-front danger of collapsed compensation to a fraction of cost will create a catch-22 problem inhibiting the supply at point of entry into new homes, and thusly hindering the flow into permanence.

### **C. Turning Entitlement Programs into Capped Allocation Programs**

One of the most dangerous prospects which seems to be always lurking in the shadows of the child welfare finance reform debate is the idea to do away with the foster care entitlement altogether and transform it into a block grant. This coincides with the popular pendulum shift in favor of waivers and flexible funding. While waivers have indeed produced some impressive innovation and interesting case studies around the country, they are not a cure-all and have serious downsides as well. States operating under a waiver are essentially excused from providing children and families served with the legal protections in the law. Efforts to renew waivers, make them permanent, or allow more states to participate are thinly-veiled efforts to put an end to the foster care entitlement in favor of cementing flexible capped block grants. We believe that all efforts must be made to preserve the foster care entitlement.

The bills and reform proposals that suggest abandoning or scaling back the IV-E entitlement in favor of a block grant should be appraised with meticulous scrutiny. Historically, we know that transforming an entitlement into a block grant poses an existential risk to the longevity to the program. Two recent examples of this are the Social Services Block Grant (SSBG) and TANF. SSBG was converted into a block grant in hopes that it would provide improved outcomes for state systems, families, and children alike. Unfortunately, once its status was downgraded from entitlement, it was subject to cuts by Congress, lost further dollars due to the sequester, and incredibly, now sits on the chopping block to be eliminated entirely by finance reform proposals that would like to use this money to offset the cost of eliminating the lookback and other costs. Through the recent history in TANF, we can see a similar trajectory. Once TANF was converted from an entitlement to a block grant, funding was cut by Congress repeatedly, states had no ability to draw down federal dollars when needs increased, and as a result services were scaled back and the neediest families suffered.



## **VII. Federal Child Welfare Financing Reform Proposals**

Child advocates correctly distinguish spending for the protection and care of abused children from other appropriations — not merely from the tax shelters, military waste, corporate subsidies or other spending often criticized. Indeed, spending on children has a particular “pass it down the line” ethical sensibility absent from much of what is currently funded. In particular, the Social Security, Medicare and public pension costs accumulating unprecedented trillions in projected public deficits to be borne by our children and their children, increases the ethical obligation to invest in that generation that is the future victim of that profligate spending.<sup>107</sup>

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<sup>107</sup> Those deficits are now projected over the next generation at close to \$60 trillion — or \$60,000 billion. This pass-through translates to well over \$400,000 in deficit burdens per future family to carry in interest payments at 4% of \$16,000 per year per family — a child relevant fact rarely in public discourse. But that sum is primarily the result of social security, Medicare and public pensions and medical

But more important, within the world of social service spending, these accounts deservedly have disparate status. Fiscal conservatives do not properly view them as “big government liberal bail outs” or “welfare state promotion.” They concern abused children, who by law are to be protected by removal from parental authority. That authority is supplanted by public officials who become the new parents. That parental role is not metaphorical. Judges are their legal parents. They are literally our children, and the obligations we have to them as such occupy an entirely different category in public spending priority, albeit one that is little recognized or even discussed. To put the issue in the parlance of current culture wars — this is not social service spending, it is the care of children who are part of our legal family. These are literally our children.

Adding to this special legal and ethical priority is the current, documented record of their fate in terms of homelessness, prostitution, arrest and incarceration, poverty, *et al.* Indeed, most states have criminal statutes outlawing child neglect. If it were possible to arrest all persons legally responsible for providing and funding children who suffer the fate of this grouping, how many federal and state officials are properly the subject of grand jury inquiry?

On the other hand, *private* responsibility to intend and plan for a child is hardly a minor variable in child protection; perhaps its stimulation or recognition is appropriate as a part of governmental policy. Actual foster care (removal of children from homes) is a last resort, and any child raised by employees in a group home, or subject to continuous moves between providers is not the ideal. And politically conservative skepticism about government social service spending is prudent for the federal government — an authority able to impose mandatory taxation.

Indeed, conservative skepticism about a governmental structure controlling the parenting of children has important merit. The state is not amenable to effective parenting through its own offices. The “top down” system of caseworkers, guardians, attorneys, courts, providers, probation officers, counsellors — for whom each child is part of a “caseload” is not the optimum arrangement. Such structures, once begun, have a self-perpetuating energy. Although in theory, every profession optimally seeks to eliminate the need for its services, the reality does not always embody that sentiment.

So how do we reconcile the above conservative concerns with the concomitant special obligation that applies to these accounts? We propose the following:

#### **A. Adjust the Term Revenue Neutral to Its Proper Definition and End the Lookback**

The starting point of proposed federal funding should be the amount reflecting actual revenue neutrality from at least the prior four years, and as projected for the fiscal spending year. The current format arranges the gradual but inexorable strangulation of accounts to support these children parented by the state.

As discussed above, a provision that adds to that insult the arbitrary cancellation of support from what are now hundreds of thousands of children based on family incomes that exceeded \$12,900 per year at the point of removal cannot be ethically maintained. The failure to right this wrong is a continuing ethical lapse at a level warranting media coverage and confrontation. Despite the stark hypocrisy, it does not receive that attention.

#### **B. Require Evidence-Based and Funded Evaluation with Sunset Specifications.**

Most child advocates proposing new expenditures for child welfare include the stipulation that such investments be evidence-based. That point is reinforced where a large number of scattered programs interact. In the case of child protection, they emanate from federal programs from the Social Security Administration, DHHS, the Department of Justice, the Department of Education, and other agencies. Each program intersects with

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benefits for public employees, not the federal budget deficit. And that last contributor has been increased markedly by the 2018 tax measure from the allegedly fiscally responsible Republican party. Those endemic rate reductions, tax credit and deduction increases, off shore avoidance and other such avoidance are not part of any budget process that is annually examined, but continue unless affirmatively ended, and then only by supermajority vote. Most large contributors to federal deficits are NOT increases consistent with proper adjustment for inflation and population, but are unexamined takings by special interest lobbyists and campaign contributors without reference to impact on budgets or the deficits to be borne by our children. See Robert C. Fellmeth, *The Achilles Heel of Liberalism: Unfunded Liability for Future Generations* (Feb. 13, 2013) (available at <https://caichildlaw.wordpress.com/2013/02/13/the-achilles-heel-of-liberalism-unfunded-liability-for-future-generations-2/>).

sometimes fragmented state agencies receiving federal matching funds. The overall world of child welfare is confusing and complex, with Congress often responding with narrow programs addressing an acknowledged problem. There is often no “natural selection” process that winnows those that provide real benefit from those that primarily provide additional public employment.

One reasonable way to improve performance is not merely to invoke evidence-based phraseology, but to require two elements that are likely to provide it. First, allocate an adequate sum from the underlying grant for outcome measurement by an independent body without ties to program providers. That sum could be from 2% to 5% of the grant amount federally provided. That element could be federally provided or required by states as a condition of receiving the remaining amount. Further, that evaluation must include a major longitudinal element. These are children and youth where benefits may not inure immediately. Hence, each major program should be tied to a three to seven year longitudinal study, as appropriate, to gauge its effect. One particularly valuable result of the information adduced from these studies is to identify what works. States vary widely in their child welfare patterns. Although our system of federalism properly respects variations among the states, particularly as to how a result is to be achieved, children do not radically vary based on their geographic location. The results of such studies, given the wide variation in programs, allow more alternatives to be tested to help guide other states, as well as federal spending and incentivizing priorities.

The second element reinforces the first: Specify that every new program has a sunset date — *i.e.*, funding will expire at the end of a specific timeframe (*e.g.*, seven to ten years) unless affirmatively renewed, based on the evidence adduced from the studies above. These sunset mechanisms have been used for many years on the performance of regulatory agencies — with reforms often accomplished because of that format. This measure should logically win the support of thoughtful fiscal conservatives who decry government waste and the top down structure of social services.

### **C. Achieve Permanence Through a Federal Incentive**

Most experts and advocates agree that where children are removed from their homes for their own protection, the most desirable outcome is a permanent placement, as discussed above. That may involve reunification with parents, adoption by new parents — perhaps a relative known to the child, or a kin guardianship. All agree that the fate of many of the 400,000 now in foster care is not ideal — involving too many placement changes, too many raised by parents who have a “business orientation,” and too many housed in expensive group homes — where many are essentially raised by corporate employees — at seven to ten times the care amount received by families caring for the same children. While some youth may require a highly structured and even restrictive setting, the outcomes for most foster youth are better when placed with a committed, permanent parent.

Advocates have been grappling with the stimulation of more permanent placements. Some states, struggling to operate child welfare systems with ever-shrinking federal funds, are not placing enough emphasis on such permanency. The federal jurisdiction can incentivize such an emphasis by (in addition to cancelling the lookback exclusion discussed above to allow all foster children to benefit from federal matching assistance) doing the following three steps:

- First, mandate that states provide adequate, reliable recompense for family foster care providers.<sup>108</sup> Such recompense should be in the range of \$800 to \$1100 per month per child,<sup>109</sup> depending upon living expenses and special needs of the child<sup>110</sup> — and must be adjusted annually for inflation.

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<sup>108</sup> The current inadequate federal budgeted amount is just over \$1.1 billion for actual payments for the care of children. In contrast, almost double that amount is expended to assist states in administration. See Umar Moulta-Ali, *et al.*, *Child Welfare: Social Security and SSI Benefits for Children in Foster Care*, Congressional Research Service (9-28-2011) at 3-4.

<sup>109</sup> The average amount in payments made under IV-E is a higher amount of \$1,427 per child per month. *Id.* But that figure includes the approximately 15% of children in group homes, where compensation is commonly 5 to 10 times the amount paid to families.

<sup>110</sup> The grant amounts for care (maintenance) may vary based on the child’s age and other factors under a formula that is individually set by each state and is not federally influenced. There is no federal floor to assure reasonable care apart from the specification of eight cost elements that must be paid in the Child Welfare Act. However, that floor is ignored, as the MARC and other studies discussed above

- Second, stimulate permanence by increasing the direct financial incentives provided to states for adoptions and legal guardianships. Enhanced incentives could have some effect on state direction into desired permanent placement. A 2-to-1 ratio is now common for child medical coverage under the State Child Health Insurance Program nationally. These foster children have a much stronger claim on our resources than does the general population of children partaking of the child medical match. Because the current federal match for foster children varies by state and now averages 60% for the much-reduced number of foster children still eligible, a new formula should add 15% more to the current ratio applicable to each state for payments made to children who have achieved permanence through adoptions or legal guardianships.<sup>111</sup>
- Third, sequester half of that additional 15% premium above (7.5%) for assistance at the point where public monies terminate. That small premium for adoption and kinship guardianships would acknowledge the long-term commitment being made — one that will properly involve more expenditures and investment in those children post-18 years of age. Its sum total of \$5,000 to \$15,000 does not reach close to the median amount private parents provide to their children post-18. But providing it as a starting point, and creating the relevant account — with rules to assure its proper

expenditure over time post-adulthood — can have a major palliative effect on the disturbing outcomes of emancipating foster children.

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This carrot approach can be financed largely based on the expected diminution in group home placements. Placements in those facilities cost eight to ten times the per child family foster care costs (and are also federally matched for many children). The win-win of this approach accomplishes savings to the federal jurisdiction possibly in excess of the match increase given the extraordinary expense of group placements.

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#### D. Adopt Additional Statutory Changes

The following statutory adjustments are within the capacity and responsibility of Congress and will address many of the affirmative defects in current child welfare laws and/or their implementation and enforcement.

1. End the irrational impediments that undermine the ability of young adults to attain self-sufficiency after leaving foster care:
  - a) Eliminate the \$2,000 ceiling on foster youth assets for SSI and the \$10,000 ceiling for receipt of foster care costs. Quite apart from the longstanding failure to adjust these figures to inflation is the indefensible proposition that a 16-year-old foster child with a paper route, or receiving some funds from a grandparent, or carefully saving babysitting money, should be precluded from normal familial support — or have those assets confiscated. How are such policies for these children that we — as a democracy, as a parent — consistent with conservative values about parental responsibility?

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confirm. It requires individual litigation state by state to achieve compliance, with courts increasingly finding procedural barriers to that enforcement (discussed below), and with no DHHS administrative action to achieve compliance; see *Shame on U.S.*, *supra* note 53.

<sup>111</sup> The current federal match is guided by a complicated formula involving the Federal Medical Assistance Percentage (FMAP) demographics of each state (an indicator of need). Hence, actual IV-E matches vary from 50% in the wealthier states to 83% in the poorest, with an overall average of 60%. *Child Welfare: Social Security and SSI Benefits for Children in Foster Care*, *supra* note 107, at 3.

- b) Prohibit states or counties from using foster children's Social Security survivor (OASDI) and disability (SSI) benefits to reimburse themselves for the children's cost of foster care. SSA routinely designates state foster care agencies as the representative payee for foster child beneficiaries. A responsible payee would use such funds to provide additional services and benefits, as appropriate to the needs of each beneficiary, or conserve the funds for the future needs of the child. However, foster care agencies commonly and automatically confiscate the child beneficiaries' funds to repay themselves for expenses that are not the children's obligation to pay.<sup>112</sup>
  - c) Require the notification of juvenile courts, foster parents or relatives caring for the child, and the counsel and/or guardian ad litem for the child prior to SSA's appointment of a representative payee for a foster child beneficiary, to allow for the identification and consideration of an appropriate representative payee to fulfill this fiduciary role on behalf of the foster child.
  - d) Require the conservation of a fair and appropriate amount of a foster child's OASDI and/or SSI benefits for his/her use after leaving the foster care system.
- 2. Unify federal child welfare laws in order to create a comprehensive and cohesive framework that provides clear direction to DHHS and states, mandates robust oversight and enforcement by DHHS to ensure state compliance, requires Congressional monitoring of DHHS performance in enforcing child welfare statutory mandates and intent, and imposes consequences on DHHS for failing to follow through with such oversight and enforcement.
- 3. Revise federal child welfare statutes to explicitly:
  - a) Provide clear private remedies to allow the enforcement of all child welfare statutory mandates by the child beneficiaries.
  - b) Cross-reference all CAPTA and other child welfare statutory provisions to the Child Welfare Act so the full panoply of federal funding stands behind those requirements — making states' receipt of any child welfare funding contingent on their substantial compliance with the requirements set forth in *all* child welfare laws.
  - c) Require the appointment of attorney GALs for every foster child, consistent with the caseload standard set forth in *Kenny A. v. Purdue*,<sup>113</sup> in addition to the appointment of court appointed special advocates.
  - d) Require reasonable juvenile court caseloads, given their role as the legal parents of these children.
- 4. Address the underlying causes of child abuse and neglect, including unplanned children, the collapse of marital commitment, and financial and other abandonment by many fathers, including studies that educate public officials and the body politic of correlations and of possible incentivizing policies for child welfare.
- 5. Address child poverty and enact the conservative and prudent recommendations to that end by the Children's Defense Fund.<sup>114</sup>
- 6. Expend meaningful resources on limiting alcohol and drug abuse — particularly meth addiction — closely and increasingly related to serious child abuse.

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<sup>112</sup> See *The Fleecing of Foster Children*, *supra* note 93.

<sup>113</sup> *Kenny A. v. Sonny Purdue* 356 F.Supp. 2d 1353 (2005), note that this is a federal district court case specifying a maximum caseload of 100 per attorney following expert testimony and court findings. This decision is not followed in most states.

<sup>114</sup> See Appendix B.

7. Acknowledge the need for and subsidize basic parenting education in high schools so future parents will understand what children need, how to keep them safe and healthy, and the financial commitment required to provide for them.

Finally, federal policymakers must fully fund all federal child welfare programs at levels commensurate with the full and effective implementation of each provision.

## VIII. Conclusion

Accomplishing broad reform of the child welfare financing structure in this country is a daunting and complicated process. There are major systemic obstacles to hurdle on the way to reform:

- The inertia and bureaucracy of the current system is difficult to penetrate technically and politically.
- Congress has developed a perspective and policies that are fundamentally critical of social safety net programs and entitlements (Family First notwithstanding) and has exhibited an anathema to increased investments to human and social service programs, including those involving children. The mindset — and as we have expounded upon, the myth — of revenue neutrality is deeply ensconced in the mentality of lawmakers, staffers, and even the advocacy community and has been accepted by far too many as the only possible starting point. The demand of many federal policymakers that any new dollars to pay for social programs come from existing social spending dollars is not required by rule or law, but is entirely a political and procedural construct developed to limit spending in areas with little political attraction..
- Congress is continually unwilling to break down jurisdictional silos that prevent necessary and logical collaboration across committees.

For example, the Senate Finance Committee (which has jurisdiction over Title IV-E) is loathe to work closely with the Senate HELP Committee (which has jurisdiction over CAPTA) — for no better reason than that the respective committees do not wish to cede any of their territory to the other.

In theory, helping these children should bind the most strident ideologues from both parties. Liberal Democrats embrace state assistance for those with diminished opportunity, and conservative Republicans espouse basic family values as a core principle. These children are the legal children of the state — governed by both parties. Our nation's performance to date in protecting them from abuse and neglect, ensuring their well-being while in state custody and managing their transition to self-sufficiency as adults — will determine their respective legacies, and ours.

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## Appendix A: Major Federal Child Welfare Statutes

### A. Important Initial Statutes

The federal legislative landscape pertaining to child welfare involves a diverse and mostly unrelated array of laws and programs under the jurisdiction of several Congressional committees of jurisdiction.

The most significant initial child welfare statutes include the following:<sup>1</sup>

The 1974 **Child Abuse Prevention and Treatment Act (CAPTA)** (P.L. 93-247) provided assistance to states to develop child abuse and neglect identification and prevention programs. Among other things, it authorized limited government research into child abuse prevention and treatment; created the National Center on Child Abuse and Neglect (NCCAN) within the Department of Health, Education, and Welfare; created the National Clearinghouse on Child Abuse and Neglect Information; and established Basic State Grants and Demonstration Grants for training personnel and to support innovative programs aimed at preventing and treating child maltreatment.

The **Child Abuse Prevention and Treatment and Adoption Reform Act of 1978** (P.L. 95-266) sought to promote the healthy development of children who would benefit from adoption by facilitating their placement in adoptive homes, and to extend and improve the provisions of CAPTA. Among other things, the Act required NCCAN to develop a comprehensive plan for facilitating the coordination of activities among agencies, establish research priorities for making grants, and set aside funds to establish centers for the prevention, identification, and treatment of child sexual abuse. The Act also established the Adoption Opportunities Program to facilitate placement of children with special needs in permanent adoptive homes, promote quality standards for adoptive placement and the rights of adopted children, provide for a national adoption information exchange system, and provided for annual summaries of research on child abuse and neglect.

The **Adoption Assistance and Child Welfare Act of 1980** (P.L. 96-272) sought to establish a program of adoption assistance; strengthen the program of foster care assistance for needy and dependent children; and improve the child welfare, social services, and aid to families with dependent children programs. Among other things, the Act required states to make adoption assistance payments, which take into account the circumstances of the adopting parents and the child, to parents who adopt a child who is AFDC-eligible and is a child with special needs; required, as a condition of receiving federal foster care matching funds, that states make “reasonable efforts” to prevent removal of the child from the home and return those who have been removed as soon as possible; required participating states to establish reunification and preventive programs for all in foster care; required the state to place a child in the least restrictive setting and, if the child will benefit, one that is close to the parent’s home; required the court or agency to review the status of a child in any nonpermanent setting every six months to determine what is in the best interest of the child, with most emphasis placed on returning the child home as soon as possible; and required the court or administrative body to determine the child’s future status, whether it is a return to parents, adoption, or continued foster care, within 18 months after initial placement into foster care.

The **Child Abuse Amendments of 1984** (P.L. 98-457) sought to extend and improve provisions of laws relating to child abuse and neglect and adoption by requiring states to have in place procedures with state protective systems to respond to reports of medical neglect, including instances of withholding medically indicated treatment from disabled infants with life-threatening conditions; directing DHHS to develop regulations and to provide training and technical assistance needed by care providers to carry out the provisions of the Act; requiring state-level programs to facilitate adoption opportunities for disabled infants with life-threatening conditions; providing for the establishment and operation of a federal adoption and foster care data-gathering

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<sup>1</sup> See Child Welfare Information Gateway, *Major Federal Legislation Concerned with Child Protection, Child Welfare, and Adoption* (available at [www.childwelfare.gov/pubs/otherpubs/majorfedlegis/](http://www.childwelfare.gov/pubs/otherpubs/majorfedlegis/)).

and analysis system; and providing for a national adoption exchange to match special needs children with prospective adoptive families.

The **Child Abuse Prevention, Adoption, and Family Services Act of 1988** (P.L. 100-294) amended CAPTA, the Child Abuse Prevention and Treatment and Adoption Reform Act, and the Family Violence Prevention and Services Act to, among other things, establish the Inter-Agency Task Force on Child Abuse and Neglect, with responsibility for programs and activities related to child abuse and neglect; broaden the scope of research to include investigative and judicial procedures applicable to child abuse cases and the national incidence of child abuse and neglect; establish a national data collection system to include standardized data on false, unfounded, or unsubstantiated cases and the number of deaths due to child abuse and neglect; and expand the Adoption Opportunities program.

Congress enacted three additional statutes, one each in 1992, 1993, and 1994, dealing with domestic violence and adoption, family preservation and multiethnic placement, respectively.<sup>2</sup> Congress enacted several additional statutes in 1996 through 2003, including provisions intended to incentivize adoptions (rewarding states that increase the numbers of adoptions) and allow for more flexibility to provide front end services without (or instead of) removing children into foster care.<sup>3</sup> These statutes also added numerous provisions requiring collaboration, state plans, caseworker efficacy and other laudable goals.

## **B. Recent Statutes**

Over the last several years, Congress has made some improvements to our child welfare system by providing states the option of extending foster care until 21, allowing states to draw down federal funds to create subsidized guardianship programs, and delinking the Adoption Assistance Program from 1996 AFDC standards, so that all children adopted out of foster care are eligible for federal funding. However, each of these critical investments is threatened by proposals that time-limit or block-grant child welfare funding.

The major recent statutes include the following:

The **Deficit Reduction Act of 2005** (P.L. 109-171), among other things, reauthorized TANF, Healthy Marriage and Family funds, the Court Improvement Program, the Safe and Stable Families Program, and several others. It funded symbolic programs promoting responsible fatherhood, prescribed elements for Court Improvement Project grants (including better data collection and appropriated funds for 2006-2010 to stimulate more timely services for foster children), and provided limited funds for the training of judges and attorneys in dependency court. It also (in theory) required demonstration of “collaboration” in child welfare programs and of some importance, permitted states to allow greater transparency of certain child welfare proceedings. It also regrettably reaffirmed the irrational “look back” excision of children based on the income of the families from which children are removed.

The **Safe and Timely Interstate Placement of Foster Children Act of 2006** (P.L. 109-239) was intended to hold states accountable for foster children moving across state lines, generally pursuant to the often troubled Interstate Compact on the Placement of Children (ICPC) and otherwise. Provisions required state plans for foster care/adoption assistance to have procedures for the timely “interstate placement” of children; required states to complete “home studies” for the placement of children from another state within 60 to 75 days and accept such studies from another state within 14 days of receipt unless contrary to the child’s welfare; authorized grants for timely home study incentives; and increased the number of in-home visits by caseworkers in the new state. Importantly, it amended the “case review system” definition to require health and education information

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<sup>2</sup> See the Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992 (PL 102-295); the Family Preservation and Support Services Program Act of 1993 (PL 103-66); and the Multiethnic Placement Act of 1994 (PL 103-382).

<sup>3</sup> See Child Welfare Information Gateway, *Major Federal Legislation Concerned with Child Protection, Child Welfare, and Adoption* (available at [www.childwelfare.gov/pubs/otherpubs/majorfedlegis/](http://www.childwelfare.gov/pubs/otherpubs/majorfedlegis/)).

about a child for the foster care provider at time of placement and provide those records to the child at no cost at point of majority. Also of importance, it provided for relative caregivers, foster parents and pre-adoptive parents to be heard in certain judicial proceedings about the child — a right unrecognized in the regrettable U.S. Supreme Court case of *Smith v. OFFER*.<sup>4</sup>

The **Adam Walsh Child Protection and Safety Act of 2006** (P.L. 109-248) required fingerprint checks of the National Crime Information Database for prospective foster and adoptive parents as well as checks of child abuse and neglect registries of those parents and others living in the household. It required states to cooperate with other states seeking to complete such checks. At the same time it prudently required confidentiality of any such abuse and neglect registry apart from the above purpose. It directed DHHS to create a national registry of substantiated cases of child abuse or neglect to facilitate such checks.

The **Child and Family Services Improvement Act of 2006** (P.L. 109-288) reauthorized the Promoting Safe and Stable Families Act. It authorized \$325 million in grants each year from 2007 to 2011, plus discretionary grants of another \$200 million for each of those years. It also authorized \$80 million to support monthly visits to foster placements by caseworkers (federally required to monitor those children *in situ*), and for Regional Partnership Substance Abuse Grants. It also required reports on planned and previous spending, including numbers of families and children served; supported policies to retain social workers and enhance technology competence; and included some funds directed at the problem of meth addiction. It extended to 2011 the Court Improvement Program to train judges and counsel in dependency courts. Finally, it required that in crucial child protection hearings, courts consult in an age-appropriate manner with the children who are the subjects of the proceeding.

**Fostering Connections to Success and Increasing Adoptions Act of 2008** (P.L. 110-351), arguably the most important child welfare statute in the past decade, included seven major provisions important to foster children. For example, with regard to Kinship-Guardianship Assistance, the Act provides for IV-E coverage for matching federal foster care payments, usually at the family foster care rate, and including those placed children in Medicaid coverage; fingerprint record checks of prospective kin guardians; and extension of Chafee education vouchers and independent living services benefits to children so placed. And, critically, the federal matching funds will not be denied to those very same children who are excluded from federal matching funds under the irrational lookback exclusion discussed in the main White Paper. Although the percentage of foster children entering into Kin-GAP is under 20%, that reinstatement of a federal commitment has important symbolic meaning.

The Act allows states to extend foster care (*i.e.*, room and board type funding) for youth up to age 21. Thus, in participating states youth may receive a federal match similar to funds received below age 18 for basic care, so long as they meet eligibility criteria (*e.g.*, in school, employed, seeking employment, etc.). This change represented a major departure to the abandonment of foster children at age 18. Few non-state parents abandon their children at age 18, so this extension is significant. However, the median age of self-sufficiency of American children is age 26 — not 18, or even 21. Further, Chapin Hall studies of Illinois foster youth, commonly allowed to stay in care until age 21 even before enactment of Fostering Connections, indicated that while the serious economic troubles facing most foster children are abated for the three additional years, outcomes after age 21 then deteriorate to similar levels of poverty, unemployment, pregnancy, arrest, and homelessness (see discussion below). Nevertheless, some extension beyond age 18 represents at least the recognition of an obligation beyond a technical age of majority.

The Act also extended Adoption Assistance through 2013 and doubled incentive payments for special needs adoptions to \$4,000 and older child adoptions to \$8,000. And, critically, Adoption Assistance was delinked from

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<sup>4</sup> 431 U.S. 816 (1977).

the AFDC lookback exclusion, allowing additional children (those who are adopted) to win restoration of federal matching funds denied them in family foster care.<sup>5</sup>

The Act requires states to notify all adult relatives of a child of his/her availability for care within 30 days of the child's removal. This provision is important because most state statutes give relatives a measure of preference, and problems develop when a child is in a pre-adoptive home with foster parents who are expecting to become permanent parents, the child is bonding with them, and then relatives appear to belatedly claim their prerogative for placement preference —often claiming that the delay was caused by a failure to notify them, particularly where they reside outside the city or state where the child is located.

The Act requires placement preference be given where a child may live with his/her siblings, including placement for adoption or Kin-GAP.

The Act requires states to coordinate health care services, including mental health and dental care for children in foster care. That requirement is borne of a common exclusion of many children from all of the Medicaid services for which they were eligible.

The **Patient Protection and Affordable Care Act** (P.L. 111-148) included a number of provisions relevant to foster children, such as extending Medicaid coverage to former foster youth up to age 26, expanding the Maternal and Child Health Access Program to include grants for early childhood visitation — with a clearly preventive impact on child neglect; requiring a health care power-of-attorney where applicable to youth aging out of foster care; reauthorizing appropriations to improve emergency care for children in critical condition; establishing a Pregnancy Assistance Fund for state grants to help parenting teens; and increasing (from \$10,000 to \$13,170) the ceiling for the adoption tax credit, making the credit refundable, and significantly, pegging it to the CPI after 2010.

The **CAPTA Reauthorization of 2010** (P.L. 111-320) also subsumed the reauthorization of the Family Violence Prevention and Services Act, Community Based Grants for the Prevention of Child Abuse and Neglect, The Adoption Opportunities Program; and the Abandoned Infants Assistance Act. Additionally, it mandated that every child's court-appointed representatives have training in early childhood, child, and adolescent development; added newborns diagnosed with a fetal alcohol spectrum disorder as a new category for referral and safe care plan requirements; provided that no reunification is required if a parent commits sexual abuse against the child or another child of the parent, or if the parent must register with a sex offender registry under the 2006 Adam Walsh Child Protection and Safety Act; mandated criminal record checks for "other adult relatives and non-relatives residing in the household" of prospective foster and adoptive parents; required states to have systems of technology that support CPS's ability to track reports of child abuse and neglect from intake through final disposition; requested states voluntarily providing data to the National Child Abuse and Neglect Data System (NCANDS) to include new statistical information; required the involvement of family members and community-based child maltreatment prevention agencies in developing CAPTA state plans; required states to assure or certify to DHHS that they have programs and training for CPS personnel that address the unique needs of unaccompanied homeless youth, including access to (school) enrollment and support; and required two national studies, one on shaken baby syndrome and one on how immunity from prosecution might promote or inhibit professional reporting and consulting in child maltreatment cases.

**CAPTA Amendments.** Although CAPTA has not been reauthorized since 2010, it has been amended twice since then. The Justice for Victims of Trafficking Act of 2015 (P.L. 114-22) require states, as part of their CAPTA state plans, to have in place provisions and procedures requiring identification and assessment of all reports involving children known or suspected to be victims of sex trafficking and for training child protective services workers about identifying, assessing, and providing comprehensive services for children who are sex

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<sup>5</sup> However, the Family First Prevention Services Act of 2018 re-linked adoption assistance eligibility to the lookback formula for children from birth to age two.

trafficking victims, including efforts to coordinate with state law enforcement, juvenile justice, and social service agencies such as runaway and homeless youth shelters. It also expanded the federal definition of the terms “child abuse and neglect” and “sexual abuse” to include a child who is identified as a victim of sex trafficking or severe forms of trafficking in persons.<sup>6</sup>

CAPTA was also amended by the Comprehensive Addiction and Recovery Act of 2016 (P.L. 114-198), which modified the CAPTA state plan requirement for infants born and identified as being affected by substance abuse or withdrawal symptoms or Fetal Alcohol Spectrum Disorder by adding criteria to state plans to ensure the safety and well-being of infants following the release from the care of health-care providers, to address the health and substance use disorder treatment needs of the infant and affected family or caregiver, and to develop the plans of safe care for infants affected by all substance abuse (not just illegal substance abuse as was the requirement prior to this change).<sup>7</sup>

The **Child and Family Services Improvement and Innovation Act** (P.L. 112-34) amended SSA Title IV-B to extend the Stephanie Tubbs Jones Child Welfare Services Program through fiscal 2016.<sup>8</sup> Major provisions required coordination of health care services for foster children including treatment for maltreatment and removal, in addition to standards for psychotropic medications for foster children; required each state plan to include efforts to (a) reduce the length of time for kids under 5 to achieve permanence; (b) address child developmental needs, (c) identify the sources relied upon in compiling child deaths from abuse or neglect and if some are missing — to include them.

The Act also included a number of additional varied provisions. For example, it specified the tracking of compliance with the required monthly visits to foster children in placements; required a State and Stable Families Program to describe how the state identifies at-risk families; and added elements to stimulate successful reunification such as peer to peer mentoring and support for parents and facilitation of visits by parents and siblings.

Additionally, the Act revised specifications for grants to address meth addiction and other substance abuse; revised Court Improvement grants to increase broader participation of the entire family in the preservation/reunification process; required state education case plans not merely upon initial removal, but whenever there is a placement change (note that a geographical change can require transfer to a different school); and addressed a need of foster children transitioning to adulthood, *i.e.*, they are each to get a free credit report annually starting at age 16 to inhibit identity theft and other problems (a provision already enacted in some state laws).

The Act authorized demonstration project continuation, but presumptively limits them to five years each and does require those conducting such a project to obtain an independent evaluation of its efficacy by an independent contractor (see proposal below to generalize and specifically fund this measurement element).

States may elect to establish a program to permit IV-E care payments to a long-term therapeutic family treatment center, and to address child threatening domestic violence that endangers children.

Finally, the Act required states to implement at least two of ten specified “child welfare program improvement policies” (*e.g.*, establishing a bill of rights for infants, children, and youth in foster care, with specified elements; the development and implementation of a plan that ensures congregate care is used appropriately and reduces the placement of children and youth in such care; the development and implementation of a plan to improve the recruitment and retention of high quality foster family homes trained to help assist infants, children, and youth swiftly secure permanent families; and the establishment of procedures designed to assist youth as they prepare for their transition out of foster care, such as arranging for participation in age-appropriate extra-curricular activities, providing appropriate access to cell phones, computers, and opportunities to obtain a driver’s license,

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<sup>6</sup> Child Welfare Information Gateway, *About CAPTA: A Legislative History* (Aug. 2017) at 2 (available at [www.childwelfare.gov/pubPDFs/about.pdf](http://www.childwelfare.gov/pubPDFs/about.pdf)).

<sup>7</sup> *Id.* at 3.

<sup>8</sup> The Bipartisan Budget Act of 2018 (P.L. 115-123) further extended this program through 2021.

providing notification of all sibling placements if siblings are in care and sibling location if siblings are out of care, and providing counseling and financial support for post-secondary education).

However, while this measure reauthorized the Child Welfare Services and Promoting Safe and Stable Families (Title IV-B) programs, it reduced basic services by \$10 million by shifting the source of Court Improvement funding in that amount from that underlying account. This pattern of shifting and supplanting funds, while actually reducing net spending, is a consistent theme in Congressional decisionmaking.

The **Protect Our Kids Act of 2012** (P.L. 112-275) called for the establishment of a bipartisan Commission to Eliminate Child Abuse and Neglect Fatalities, which was charged with understanding the causes and circumstances of the intractable child abuse and neglect fatality scourge in the country and developing recommendations for a national comprehensive strategy to reduce such fatalities, including recommendations for appropriate legislative and administrative actions. Beginning in 2014, twelve Commissioners, appointed by the President and Congress, began a two-year process of holding public hearings in 10 jurisdictions to hear from state leaders, local and tribal leaders, child protection and safety staff, advocates, parents, and more.

In 2016, the Commission released its final report, *“Within Our Reach: A National Strategy to Eliminate Child Abuse and Neglect Fatalities”* which made a series of 114 recommendations that would stem the tide of fatal child abuse and neglect. Among other things, the report found that an estimated four to eight children a day, every day, die from abuse and neglect in the U.S.; children who die from abuse and neglect are overwhelmingly young; approximately one-half are less than a year old, and 75% are under 3 years of age; many states are out of compliance with federal reporting and disclosure mandates, and are not being held accountable for their performance by the federal government; current funding of federal and state child welfare laws is woefully inadequate to effectively serve the families and children the child welfare system is meant to protect; and a lack of federal and state investments lead to untenably high caseloads, a lack of family support services, and inadequate investigations all which contribute to the high rate of fatalities.

The Commission’s key recommendations included an immediate surge in which states immediately undertake a retrospective review of fatalities from the previous five years to identify systemic weaknesses and flaws, and to identify and reach out to children who may be at immediate risk of fatalities; at least a \$1 billion infusion into CAPTA, currently funded at just \$25 million per year for state grants; improved transparency and data collection efforts by creating more uniform definitions and tying state receipt of federal dollars to full and timely disclosure of fatalities; the elevation of the U.S. Department of Health and Human Services’ (DHHS) Children’s Bureau to report directly to the Secretary of DHHS who will report on fatalities regularly to the President; a call for Congress to conduct joint committee hearings on child safety, provide financial resources to support states, and encourage innovation to reduce fatalities; the convening of a standing Interagency Coordinating Council to focus federal efforts to prevent and reduce child abuse and neglect fatalities; and the establishment of a Federally Funded Research and Development Center (FFRDC) on Preventing Child Abuse and Neglect Fatalities to collect and share data with the states to inform policy and practice improvements.<sup>9</sup>

The **Preventing Sex Trafficking and Strengthening Families Act of 2014** (P.L. 113-183) amends the federal Title IV-E foster care program to require state child welfare agencies to develop and implement procedures for identifying, documenting in agency records, and determining appropriate services for certain children or youth who are victims of sex trafficking or at risk of victimization. State child welfare agencies must also report to law enforcement and DHHS about such victims. DHHS must establish a national advisory committee on child sex

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<sup>9</sup> In January 2018, the Children’s Advocacy Institute and the Within Our Reach Office at the Alliance for Strong Families and Communities released a report chronicling efforts at the local, state and federal levels to implement some of the Commission’s recommendations. See *Steps Forward: Progress Report on Within Our Reach, A National Strategy to Eliminate Child Abuse and Neglect Fatalities, the Final Report of the Federal Commission to Eliminate Child Abuse and Neglect Fatalities* (available at <http://www.caichildlaw.org/StepsForward.html>).

trafficking that, among other responsibilities, must develop policies on improving the nation's response to domestic sex trafficking. The Act also includes provisions to direct child welfare agencies to develop protocols on locating children missing from care.

This statute also seeks to ensure children in foster care have the opportunity to participate in activities that are appropriate to their age and stage of development. It requires changes in state foster home licensing law to enable foster caregivers to apply a “reasonable and prudent parenting” standard when determining whether a child in foster care may participate in activities and directs state child welfare agencies to provide training to caregivers on using this standard. Other provisions in the law seek to ensure permanent adult connections for older children and better aid for their transition to successful adulthood. Under the new law, states are not permitted to assign a permanency plan of “another planned permanent living arrangement” (APPLA) to any child under the age of 16, and must take additional steps to support permanency for children age 16 or older who are assigned that permanency plan. Further, children in foster care who are age 14 or older must be consulted in the development of, and any revisions to, their case and permanency plans. They must also be made aware of their rights while in care, including the right to receive critical documents (*e.g.*, birth certificate, Social Security card) when they age out of care.

The law extended funding authority for Adoption Incentive Payments for three years (FY2014-FY 2016),<sup>10</sup> renamed them as the Adoption and Legal Guardianship Incentive Payments, revised the incentive structure to allow states to earn incentive payments for both adoptions and exits from foster care to legal guardianship, and placed additional focus on finding permanent homes for older children. The new incentive structure, which was phased in, gauges state performance based on changes in the rate (or percentage) of adoptions and legal guardianships a state achieved (rather than numbers). Separately, the statute also required 30% of any state savings (resulting from broadening federal eligibility for Title IV-E adoption assistance) to be used for family strengthening services, including post-adoption services.

However, the Act also reduced funding by \$15 million a year in raw numbers because it allowed the Family Connection Grants to expire.

The **Uninterrupted Scholars Act** (P.L. 112-278) added child welfare agencies to those with direct access to foster child educational records. Some had contended that agencies with direct jurisdiction over such children were impeded from that access by the generally overbroad Family Educational Rights and Privacy Act (FERPA) notwithstanding the status of courts as legal parents. This clarification allows such access without court orders and somewhat more broadly.

The **Family First Prevention Services Act**, enacted as part of Division E in the Bipartisan Budget Act of 2018 (P.L. 115-123), represents the most significant shift in child welfare financing since the establishment of the Title IV-E entitlement in 1980. The primary feature of the Act is that it opens up the Title IV-E entitlement for the first time to pay for services outside of foster care in order to keep children safely at home while their parents get the support they need to care for them. This represents not only an expansion of the only entitlement program in child welfare, which is in and of itself nothing short of revolutionary in the political climate it was born into, but a remarkable shift in values as we move from fiscally incentivizing removals and foster care placements to promoting family preservation when parents can get needed services while having their children at home or with family members. But as unexpected, exciting, and promising as this legislation is, it is not comprehensive federal child welfare finance reform. It does not cure the chronic underfunding of most child welfare programs or other programs that support the children and families that end up in child welfare. And although the services it covers are not subject to the restrictive eligibility determinations of the rest of Title IV-E funding, it does not cure the arcane lookback which plagues the rest of the program and which has resulted in fewer and fewer families

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<sup>10</sup> The Bipartisan Budget Act of 2018 (P.L. 115-123) further extended this funding authority through 2021.



qualifying every year to draw down federal dollars to pay state child welfare costs. Family First participation is not required, but states are permitted to opt-in, and would begin to follow the new law in 2019 if they are ready.

The central provision of the Family First Act allows the use of Title IV-E entitlement dollars, historically limited to payments for foster care and adoption assistance, for three types of time-limited services for parents of children who are “candidates for foster care.” Specifically, approved evidence-based programs for substance abuse, mental health, and parenting skills can be accessed for up to twelve months. Children who would otherwise be removed from care may remain at home for the duration of these services if deemed safe. Services can also be provided to pregnant and parenting foster youth. The new law does not provide financial assistance to relatives who care for children while these services are provided, but does propose to match state spending on kinship navigator programs.

One of the Act’s main goals was to reduce the excessive use of congregate care for foster youth. These facilities are exorbitantly expensive, poorly supervised and regulated, and over-utilized for long periods of time which is unhealthy and damaging to children’s psyches. The Family First Act cuts off federal reimbursement for stays in these facilities after two weeks, with a few notable exceptions.

The Act has several other important provisions of note. It requires states to address child abuse and neglect fatalities by working towards compiling complete and accurate information on maltreatment-related deaths and describing their efforts to develop and implement a multidisciplinary fatality prevention plan. This provision reflects recommendations made by the federal Commission to Eliminate Child Abuse and Neglect Fatalities, as well as provisions in the Child Welfare Oversight and Accountability Act introduced in 2017.

Family First also has several important provisions relating to transition age foster youth. Eligibility for benefits through the Chafee Independent Living program was extended from 21 to 23, and the age limit to access Chafee Education Training Vouchers was extended from 23 to 26. These changes were made without any increases in funding for Chafee programs, which may result in states having to spread the same money around a now-larger group of students — and many states are rightfully concerned about this.

One of the primary funding mechanisms to pay for the preventive services opened up by the Family First Act came at the expense of adoption assistance spending. Federal adoption assistance payments under IV-E used to be subject to the same arcane lookback formula as foster care eligibility. However, a 2008 law began to sunset the adoption assistance limitations, and by 2019 would have resulted in adoption subsidies for all children adopted regardless of the income of their birth families. Regrettably, the Family First Act re-linked adoption assistance eligibility to the lookback formula for children from birth to age two.

The **Strengthening Provisions for Social Security Beneficiaries Act of 2018** (P.L. 115-165), among other things, requires SSA to establish a monthly data exchange between SSA and state foster care agencies to identify beneficiaries with payees whose foster care arrangements have changed so SSA can redetermine the payee; clarifies that state payees for minors in foster care are responsible for repaying overpayments incurred while the state acted as payee; and requires the Commissioner to study and provide opportunity for public comment on the appropriateness of the order of preference for selecting payees.<sup>11</sup>

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<sup>11</sup> This reform is relevant to (but does not correct) the consistent record of transmitting OASDI survivor benefits and SSI disability payments intended for foster children to the general funds of the counties where the child resides. This unconscionable diversion of funds is accomplished through the selection of state or local child welfare agencies as representative payees to receive these monies. While this new statute requires better tracking of who actually receive funds as a payee, it does not redirect funds to the child beneficiaries as intended by the underlying law assigning those benefits to them. For documentation, see Children’s Advocacy Institute, *The Fleecing of Foster Children* (2011) (available at [http://www.cachildlaw.org/Misc/Fleecing\\_Report\\_Final\\_HR.pdf](http://www.cachildlaw.org/Misc/Fleecing_Report_Final_HR.pdf)).

## Appendix B. Additional Federal Spending Related to Child Welfare

The term “child welfare” as a term of art refers to the somewhat narrow issue of the protection of children from abuse and neglect. It includes the creation of mandated reporters of such abuse, Child Protective Services (CPS) in every state and virtually every county to receive reports and investigate, a juvenile dependency court devoted to adjudicating parental rights, and where those rights are terminated, caring for a child or securing another permanent placement. Of course, it also includes efforts to provide services to children subject to abuse reports who remain in the home. But this limited meaning of the term does not remove the relevance of other safety net accounts that correlate with abuse mitigation or prevention.<sup>12</sup> Child poverty, child disability, parenting education, and youth education, drug enforcement and other accounts correlate to child protection incidence and causation. Although a detailed presentation is beyond the scope of this Paper, some major federal accounts having such an effect include the accounts discussed below. And there are even more than those discussed here, such as the Earned Income Tax Credit, Women, Infants and Children, subsidized school meal programs, Head Start, child care tax benefits, Supplemental Security Income for children with qualifying disabilities, and the Individuals with Disabilities Education Act. These latter accounts are pertinent to children generally and foster children particularly given their high disability incidence.

### A. Child Poverty

**Temporary Assistance for Needy Families (TANF).** Of great concern is the continuing retraction of safety net support in the TANF program. Grant levels have steadily fallen over the past two decades *vis-à-vis* inflation, particularly given the increases in housing costs until recently. Almost all of the federal government’s TANF funding takes place through a basic block grant (formerly the State Family Assistance Grant). Because the size of that grant has not been adjusted for inflation, its purchasing power has declined by about 25% since 1998, the first full year the program was in operation. Through the basic block grant and a smaller funding mechanism called the contingency fund, the federal government allocated about \$17 billion in TANF funds to states in FY 2017. The number of families receiving cash assistance, which had already fallen from 5 million in 1995 under the AFDC program that preceded TANF to 3 million in 1998 under TANF, has continued to fall to fewer than 1.4 million in 2016.<sup>13</sup> Currently, only 23% of families with income below the poverty threshold receive any TANF cash assistance.<sup>14</sup> The median monthly benefit is about \$400 — or roughly one-third of the poverty threshold for a family of two.<sup>15</sup>

Children are the listed beneficiaries for about 75% of all TANF assistance.<sup>16</sup> Roughly half of them live in families where the adults are ineligible for cash assistance, and most of the others live with a single parent recipient. The 1996 new requirements require work by adult recipients who are not disabled. In most years, only about a third of those adults have enough hours in what qualifies as “work” to count as such eligible participants.

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<sup>12</sup> For more information on the extent to which safety net programs actively support child welfare, see Angie Schwartz and Brian Blalock, *Child Welfare Funding in the New Federal Landscape: How to better support children and help create systemic reform* (available at <https://kids-alliance.org/wp-content/uploads/2017/09/Why-you-need-to-understand-child-welfare-funding-and-federal-safety-net-programs.pdf>).

<sup>13</sup> Center on Budget and Policy Priorities, *TANF Reaching Few Poor Families* (Dec. 2017) at 4 (available at [www.cbpp.org/sites/default/files/atoms/files/6-16-15tanf.pdf](http://www.cbpp.org/sites/default/files/atoms/files/6-16-15tanf.pdf)).

<sup>14</sup> *Id.* at 1.

<sup>15</sup> For a concise updated review of expenditures, numbers of beneficiaries, interaction with other anti-poverty programs, and state participation, see *Temporary Assistance to Needy Families: Spending and Policy Options*. Congressional Budget Office, Washington D.C. (Jan. 2015) (available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/49887-TANF.pdf>).

<sup>16</sup> Child Trends, *Child Recipients of Welfare (AFDC/TANF)* (Dec. 2015) at 2 (available at [www.childtrends.org/wp-content/uploads/2015/12/50\\_AFDC\\_TANF.pdf](http://www.childtrends.org/wp-content/uploads/2015/12/50_AFDC_TANF.pdf)).

The **Supplemental Nutrition Assistance Program** (SNAP, formerly food stamps) provides important nutritional support for low-wage working families, among other low-income populations.<sup>17</sup> The U.S. Department of Agriculture adjusts SNAP maximum allotments, deductions, and income eligibility standards at the beginning of each federal fiscal year; the changes are based on changes in the cost of living. The maximum SNAP allotment for a family of three is currently \$504 per month for the 48 contiguous states and the District of Columbia.<sup>18</sup>

The FY 2017 funding level for SNAP was \$75.6 billion, of which 43.5% directly benefits children.<sup>19</sup> However, the Trump Administration's 2019 budget proposal would cut SNAP by more than \$213 billion over the next ten years — nearly a 30% cut — through radically restructuring how benefits are delivered, cutting eligibility for at least 4 million people, and reducing benefits for many others.<sup>20</sup>

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### SIDENOTE

#### Child Poverty — A Modest Reform Proposal

The Children's Defense Fund (CDF) has proposed a commitment amounting to 2% of the national budget (\$77 billion) to reduce child poverty in the United States by 60%.<sup>1</sup> The Report lists numerous federal expenditures of marginal value and juxtaposes the long-term benefits of that result. Although its title "End Child Poverty Now" may imply an extreme prescription, its implementation would place the United States from near the bottom to close to the middle in child poverty incidence of the 41 nations analyzed by UNICEF — all of which lack the wealth of this nation.<sup>1</sup> The Report, despite its somewhat overstated title, is a relatively modest and easily achievable proposal.<sup>1</sup> The multiple elements of the proposal are not radical, and include nine marginal changes:

- Minimum wage increased to a level of \$10.10 in 2014 dollars for covered workers, and 70 percent of that level for tipped workers.
- Transitional jobs program for unemployed and underemployed people in families with children; CDF assumed a participation rate of 25% for unemployed individuals with the lowest family incomes.
- A full pass-through and disregard of child support income by TANF program, and a \$100 monthly child support disregard per child in SNAP.
- Expanded access to housing vouchers for low-income households with children: New vouchers would be available to any household with children with income under 150% of the poverty guideline that also satisfied a test of rent burden, with the assumption that 70% of those households would be able to use the voucher.
- Increased SNAP benefits for families with children: The maximum SNAP benefit for families with children would be based on the Low-Cost Food Plan levels computed by the US Department of Agriculture (USDA) rather than the Thrifty Food Plan currently used, increasing the maximum benefit by 30%.
- Expanded Earned Income Tax Credit: The parameters of the credit would be adjusted to increase the benefits; for example, the maximum credit for a single parent with two children would increase from \$5,036 to \$6,042.
- Fully refundable Child Tax Credit.
- Increased Child and Dependent Care Tax Credit (CDCTC).
- Expanded access to child care subsidies for low-income families with children under age 13: Specifically, child care subsidies would be available to any employed family with income under 150% of the poverty guideline wanting that subsidy.

Each of these proposals represents a slight change, often not so much involving an increase over present levels as they may be the moderation of decreases over the last two decades. For example, the minimum wage figure is substantially less than

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<sup>17</sup> Center on Budget and Policy Priorities, *Policy Basics: The Supplemental Nutrition Assistance Program (SNAP)* (Feb. 13, 2018) at 1 (available at <https://www.cbpp.org/research/policy-basics-the-supplemental-nutrition-assistance-program-snap?fa=view&id=2226>).

<sup>18</sup> U.S. Department of Agriculture, *SNAP—Fiscal Year 2018 Cost-of-Living Adjustments* (July 28, 2017) at 3 (available at [https://fns-prod.azureedge.net/sites/default/files/snap/SNAP\\_Fiscal\\_Year\\_2018\\_Cost\\_of\\_Living\\_Adjustments.pdf](https://fns-prod.azureedge.net/sites/default/files/snap/SNAP_Fiscal_Year_2018_Cost_of_Living_Adjustments.pdf)).

<sup>19</sup> First Focus, *Children's Budget 2017* at 5 (available at [www.dropbox.com/s/wwec7f3fhzxr2bw/Childrens-Budget-2017.pdf?dl=0#pageContainer81](http://www.dropbox.com/s/wwec7f3fhzxr2bw/Childrens-Budget-2017.pdf?dl=0#pageContainer81)).

<sup>20</sup> Center on Budget and Policy Priorities, *President's Budget Would Cut Food Assistance for Millions and Radically Restructure SNAP* (Feb. 15, 2018) at 1 (available at [www.cbpp.org/research/food-assistance/presidents-budget-would-cut-food-assistance-for-millions-and-radically](https://www.cbpp.org/research/food-assistance/presidents-budget-would-cut-food-assistance-for-millions-and-radically)).

previous minimum wage enactments, adjusted for inflation. In point of fact, it is not an increase but simply a partial correction of previous decreases.

The CDF poverty reduction proposal properly bears consideration as a part of any child welfare federal funding reform.<sup>1</sup> At the same time, those advocating for governmental assistance would be wise to depart from an apparent aversion to the legitimate judgment that adults should intend children, commit to a marriage bond as part of that commitment, and appreciate that any benefits received from other citizens through forced taxation imposes an ethical obligation on each of them to limit such assessments to the extent feasible, and to spend them for the protection and advancement of their children. Mistakes are made, but the acknowledgement that adult choices best assist the generation to follow us. That value is not intended as an unreasonable aspersion of any adult grouping but as what should be a common aspiration. It is what we strive to do and it should be so recognized. The dilemma here is an old one, with each side of the culture wars partially blocking the child beneficial policies of the other. One side refuses to acknowledge that underlying value and the other refuses to provide assistance to those who are thereby not viewed as respecting it. Children bear the price of the conflict.

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**B. Other Social Security Act Relevant Accounts.** Other accounts affecting child welfare under SSA Title IV-B, and as part of Promoting Safe and Stable Families, include Substance Abuse Partnership Grants and Workforce State Grants. The Maternal, Infant, and early Childhood Home Visiting Program received \$372 million in FY 2017, and the Maternal and Child Health Block Grant received \$642 million. These monies assist pregnant women and their infants, focusing on impoverished and at-risk populations, and providing education, assistance and services to prevent child neglect.

**C. Additional Health/Disability/Special Needs Accounts with Prevention Implications.** Other accounts are related to causative factors that also indirectly affect child welfare; WIC benefits, the State Child Health Insurance Program, SSI and IDEA disability benefits, and child care tax benefits are the largest. The IDEA (Individuals with Disabilities Education Account) is of particular importance to abused/neglected children. It provides special education for children with education related disability, a problem disproportionately affecting abused/neglected children. IDEA Part C, relevant to infants and toddlers, had a FY 2017 appropriation of \$459 million.

Two of the most relevant special needs accounts are the Consolidated Runaway and Homeless Youth Program at \$102 million, and the McKinney-Vento Homeless Assistance Act's Education for Homeless Children and Youths program, at \$77 million. These accounts are directed at children in particularly vulnerable situations and have obvious relevance to child welfare.

## **D. Child Care/ Education-Related Accounts**

### **1. Current Funding**

Beyond the disability and special circumstance education-related accounts discussed above are additional education spending accounts germane to child neglect prevention. They include Head Start, funded at \$9.3 billion for FY 2017, the 21<sup>st</sup> Century Community Learning Centers at \$1.19 billion, Preschool Development Grants at \$250 million and Promise Neighborhoods at \$73.3 million. Added to these is a federal child care tax

credit.<sup>21</sup> Finally, over twenty other specialized federal accounts are available to states and school districts for various purposes — although most are not directly applicable to child welfare.<sup>22</sup>

The Child Care and Development Fund, which makes funding available to states, tribes, and territories to assist qualifying low-income families obtain child care so that parents can work or attend classes or training, received a total of \$5.8 billion in FY 2017.<sup>23</sup>

## 2. Higher Education Opportunity

Higher education investment is pertinent to the transition of foster youth to self-sufficient adult status. Chafee grants discussed in the body of this white paper, as well as GI Bill benefits where applicable, account for much of the federal contribution for foster youth transitioning to adulthood. The median age of self-sufficiency in the United States is 26, not 18 or 21, and youth aging out of foster care generally lack parental support and receive only a fraction of the resources available to other young adults. Former foster youth enter the military at high rates and are generally a grouping vulnerable to the increasing predation of private, for-profit schools that market public subsidies and augment them with loans to students. Such schools tend to spend relatively little on instruction, with most revenue expended for mass media advertising, marketing, shareholder dividends, and CEO pay levels in the millions of dollars. The graduation rates are low, job placement results are often minimal and loan defaults are common. This last involves a type of loan that is not dischargeable, even in bankruptcy, resulting in the credit ruination of thousands of students. Former foster youth, either directly or as they are discharged from the military, are a particularly targeted victim grouping by many of these schools. Federal funds for youth opportunity for those in the system properly bar recipients unable to meet minimal performance standards for gainful employment. Some measures have been proposed in this area, but the predations, now amounting to almost half of GI Bill federal education spending, and substantial Chafee grants, have yet to be effectively policed.<sup>24</sup>

## 3. Omissions

Of special application are potential accounts lacking attention but with potential impact, *e.g.*, spending to lessen truancy and drop outs — both associated with problems for youth who may be involved, as well as to parents of abused or neglected children where there is some correlation.

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<sup>21</sup> Created in 1997 and expanded in 2009, the credit under current law is worth up to \$1,000 per child under age 17 at the end of the tax year, and is subtracted from the amount of income taxes the family owes. A portion of the credit is refundable, allowing it to be paid as a refund beyond tax forgiveness — called the Additional Child Tax Credit. A family can receive a refund worth 15 percent of earnings above \$3,000, up to \$1,000 per child. Note that families must have at least \$3,000 in earned income to claim any portion of the credit. The refund formula means that families with one child become eligible for the full credit with incomes of \$9,666 or more, families with two children when they have incomes of \$16,333 or more, and for each additional child the minimum income to receive the full credit increases by \$6,666.

<sup>22</sup> School meal subsidies and the WIC program are major accounts where neglect has hunger implications. The No Child Left Behind Act of 2001 subsumed 24 separate accounts over the past decade, including 6 ESEA Title 1 accounts (Grants, Even Start, 1<sup>st</sup> Grade Reading, Migrant, Neglected and Delinquent and comprehensive school reform). Four different “Impact Aid” accounts help schools with high percentages of military or other federal help justification — including payments for “children with disabilities.” Of the remaining fourteen No Child Left Behind accounts, “Education for Homeless Children and Youth,” “Indian Education,” “Safe and Drug Free Schools,” and “Language Acquisition” accounts are most relevant to child welfare. However, note that only “Grants to Local Education Agencies,” and “Improving Teacher Quality” are in significant amounts. In addition, thirteen other accounts have relevance. Three are subsumed in the IDEA monies discussed above. Small amounts are appropriated for Vocational Rehabilitation State Grants, Federal Work-study and Federal Supplemental Education Opportunity Grants. And three larger accounts may be relevant to foster youth opportunity beyond the Chafee program above: federal Pell Grants, the Direct Student Loan Program and the Federal Family Education Loan Program. For a discussion of programs extant in 2005 in California, including conditions, amounts, outcome measures and other features, see Children’s Advocacy Institute, *California Children’s Budget 2004-05* (2005) at 3-9 to 3-27 (nutrition) and 7-41 to 7-69 (education); see also Chapter 2 (Poverty) and Chapter 8 (Child Welfare) (available at <http://www.caichildlaw.org/childrens-budget.htm>).

<sup>23</sup> First Focus, *Children’s Budget 2017* at 26.

<sup>24</sup> For detailed documentation and information, see Children’s Advocacy Institute, *Ensuring Oversight of Private, For-Profit Postsecondary Educational Institutions* (available at [www.caichildlaw.org/PostSecondary.htm](http://www.caichildlaw.org/PostSecondary.htm)).

Another example is the lack of subsidy for parenting education in public schools. Subsidizing modules to teach basic parenting skills may be the single most cost-effective budgetary investment for child abuse and neglect prevention. Most children will become parents during their lifetime, and others are likely to become uncles, aunts, babysitters, etc. Most public schools offer music, physical education, trigonometry, and numerous courses of future utility arguably less significant than is knowledge about infants and children — including facts about development, hazards, and parenting tasks and difficulties. Indeed, such teaching may have some palliative effect on rather rampant unprotected sex in focusing attention on an issue that the American culture ignores in favor of exaggerated sexual preoccupation, flirtation and appeal. While the latter occupies a significant portion of American communications, from advertising to entertainment, the reality of child-rearing, including the less appealing aspects of crying, diapers, expenses, responsibilities, and dangers, do not. Many who oppose such basic education fear that it somehow puts societal approval on producing babies and encourages unprotected sex. An informed and effective module would have the opposite effect.

## Appendix C. Pending Legislation\*

The following list includes many of the child welfare-related measures currently pending in the 115th Congress (2017–18).

Bill No: **H.R. 1808**  
Bill Name: **Improving Support for Missing and Exploited Children Act of 2017**  
Sponsor: Rep. Brett Guthrie (R-KY)  
Date Introduced: 3/30/2017  
Status: Passed House (5/24/17). Received in the Senate and read twice and referred to the Committee on the Judiciary.  
Summary: This bill would amend and improve the Missing Children's Assistance Act in order to help the National Center for Missing and Exploited Children strengthen its recovery and prevention efforts.

Bill No: **S. 2680**  
Bill Name: **Opioid Crisis Response Act of 2018**  
Sponsor: Sen. Lamar Alexander (R-TX) and Sen. Patty Murray (D-WA)  
Date Introduced: 4/16/18  
Status: Placed on Senate Legislative Calendar under General Orders. Calendar No. 398. (05/07/2018)  
Summary: This bill would, among other things, reauthorize and improve grants to states and Indian Tribes for prevention, response, and treatment of the opioid crisis, authorized in 21<sup>st</sup> Century Cures, for three more years, and address the effects of the opioids crisis on infants, children, and families, including by helping states improve plans of safe care for infants born with neonatal abstinence syndrome and helping to address child and youth trauma.

Bill No: **S. 3120**  
Bill Name: **HEAL Act of 2018**  
Sponsor: Sen. Orrin Hatch (R-UT)  
Date Introduced: 6/25/18  
Status: 06/25/2018 Placed on Senate Legislative Calendar under General Orders. Calendar No. 484  
Summary: This bill would amend titles XVIII and XIX of the Social Security Act to help end addictions and lessen substance abuse disorders, and for other purposes.

Bill No: **S. 684 / H.R. 1650**  
Bill Name: **National Adoption and Foster Care Home Study Act**  
Sponsor: Sen. Kirsten Gillibrand (D-NY) / Rep. Jared Huffman (D-CA)  
Date Introduced: 3/21/2017  
Status: Referred to the Committee on Health, Education, Labor, and Pensions on 3/21/2017 (Senate).  
Referred to the House Committee on Education and the Workforce on 3/21/2017 (House).  
Summary: In an effort to improve the home study process for prospective foster and adoptive parents and create greater uniformity between states and Indian tribes, this bill would amend the Child Abuse Prevention and Treatment Act (CAPTA) to establish an evidence-based, voluntary National Home Study Process within the Adoption Opportunities Program. Includes the development of an evidence-based National Adoption and Foster Care Home Study assessment standard and demonstration program, the development and deployment of a National Home Study Database to allow foster care and adoption agencies across the nation to access information through a secure system about prospective families, and an independent evaluation of the study methodology and database deployment.

Bill No: **H.R. 1469**  
Bill Name: **Welfare Benefit Reform and Alignment Commission (BRAC) Act**  
Sponsor: Rep. Davidson Warren (R-OH)  
Date Introduced: 3/9/2017  
Status: Referred to the Subcommittee on Nutrition on 3/23/2017  
Summary: In an effort to consolidate and realign means-tested direct spending program outlays, this bill would establish the Welfare Reform and Alignment Commission to review and re-structure means-tested



welfare programs, including the foster care and adoption assistance program under Part E of Title IV of the Social Security Act, to identify changes in law and opportunities for modification, consolidation, elimination, cost reduction, efficiency improvement, and through other means.

Bill No: **H.R. 1345**  
Bill Name: **Protect Children from Theft Act of 2017**  
Sponsor: Rep. James Langevin (D-RI)  
Date Introduced: 3/2/2017  
Status: Referred to the House Committee on Financial Services on 3/02/2017  
Summary: In an effort to defend children in foster care from identity theft, this bill would amend the Fair Credit Reporting Act to create protected credit reports for minors and protect the credit of minors, and would require consumer reporting agencies to create a blocked credit file, or block an existing credit file for a child in foster care, upon request by a responsible, legal guardian, custodian, or state agency.

Bill No: **S. 439 / H.R. 1069**  
Bill Name: **Timely Mental Health For Foster Youth Act**  
Sponsor: Sen. Roy Blunt (R-MO) / Rep. Brenda Lawrence (D-MI)  
Date Introduced: 2/17/2017 / 2/15/2017  
Status: S. 439: Referred to the Committee on Finance on 2/17/2017. H.R. 1069: Referred to the Subcommittee on Trade on 2/24/2017  
Summary: To support the mental health and well-being of children in foster care, this bill would amend Part B of Title IV of the Social Security Act to ensure that mental health screenings are provided to children and youth upon entry into foster care and that mental health assessments are provided under certain circumstances.

Bill No: **H.R. 1188**  
Bill Name: **Adam Walsh Reauthorization Act of 2017**  
Sponsor: Rep. James Sensenbrenner Jr. (R-WI)  
Date Introduced: 2/16/2017  
Status: Passed House (5/22/17) Referred to Committee on the Judiciary (5/23/17)  
Summary: This bill would reauthorize certain programs established by the Adam Walsh Child Protection and Safety Act of 2006.

Bill No: **H. Res. 75**  
Bill Name: **Supporting Efforts to Protect and Support Sexually Exploited and Trafficked Girls in the U.S.**  
Sponsor: Rep. Rosa DeLauro (D-CT)  
Date Introduced: 1/31/2017  
Status: Referred to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations on 2/08/2017  
Summary: This measure would express support of efforts to provide protection and support for sexually exploited and trafficked girls in the U.S., some of whom are trafficked from the child welfare system, as well as establish criminal or civil penalties for anyone who buys or sells a child through a child trafficking system.

Bill No: **S. 705 / H.R. 695**  
Bill Name: **Child Protection Improvements Act of 2017**  
Sponsor: Sen. Orrin Hatch (R-UT) / Adam Schiff (D-CA)  
Date Introduced: Senate: 3/23/17 / House: 1/24/2017  
Status: Passed Senate (10/19/17) / Held at the desk of the House (10/19/17)  
Summary: This bill would amend the National Child Protection Act of 1993 to establish a national criminal history background check system and criminal history review program for certain individuals who, related to their employment, have access to children, the elderly, or individuals with disabilities, and for other purposes.

Bill No: **H.R. 482**  
Bill Name: **Local Zoning Decisions Protection Act of 2017**

Sponsor: Rep. Paul Gosar (R-AZ)  
Date Introduced: 1/12/2017  
Status: Referred to the House Committee on Financial Services on 1/12/2017  
Summary: This bill would reverse the Affirmatively Furthering Fair Housing Rule and is relevant to the issue of racial disproportionality in child welfare.

Bill No: **H. Res. 41**  
Bill Name: **Supporting a Uniform Adoption Process for Foster Youth**  
Sponsor: Rep. Brenda Lawrence (D-MI)  
Date Introduced: 1/10/2017  
Status: Referred to the Subcommittee on Regulatory Reform, Commercial and Antitrust Law on 1/23/2017  
Summary: This measure would express support for a uniform adoption process for foster youth and promotes enactment of the Interstate Compact for the Placement of Children by all states to ensure that more children are placed in safe, permanent homes.

Bill No: **H.R. 269**  
Bill Name: **Look-Back Elimination Act of 2017**  
Sponsor: Rep. John Lewis (D-GA)  
Date Introduced: 1/4/2017  
Status: Referred to the Subcommittee on Human Resources on 1/18/2017  
Summary: In an effort to treat all children equally, this bill would eliminate the requirement that, to be eligible for foster care maintenance payments, a child would have to have been eligible for aid under the former program of Aid to Families with Dependent Children at the time of removal from the home. It would also support the replacement of the requirement with income eligibility standards based on certain criteria and encourage the Secretary of Health and Human Services to collaborate with Members of Congress and child welfare advocates to develop modified standards.

Bill No: **S. 774 / H.R. 1757**  
Bill Name: **Trauma-Informed Care for Children and Families Act of 2017**  
Sponsor: Sen. Heidi Heitkamp (D-ND) / Rep. Danny K. Davis (D-IL)  
Date Introduced: 3/29/2017 (Senate) / 3/28/2017 (House)  
Status: Referred to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations. (4/12/17)  
Summary: In an effort to address the psychological, developmental, social, and emotional needs of children, youth, and families who have experienced trauma, this bill would establish the Interagency Task Force on Trauma-Informed Care, the National Law Enforcement Child and Youth Trauma Coordinating Center, and the Native American Technical Assistance Resource Center. It would amend the Public Health Service Act, Child Care and Developmental Block Grant Act, Social Security Act, and Elementary and Secondary Education Act to increase the amount of funding available for identifying and treating mental, behavioral, and biological disorders of children and youth resulting from witnessing or experiencing a traumatic event as well as to improve trauma support services and mental health care for children and youth in educational settings.

Bill No: **H.R. 2682**  
Bill Name: **Supporting Foster Youth in Successful Parenting Act of 2017**  
Sponsor: Rep. Danny Davis (D-IL)  
Date Introduced: 5/25/2017  
Status: Referred to the Subcommittee on Human Resources (06/08/17)  
Summary: This bill would support foster youth in successful parenting by reducing unintended pregnancies and promoting the well-being of expectant or parenting foster youth and their children.

Bill No: **S. 1257 / H.R. 2742**  
Bill Name: **Modernizing the Interstate Placement of Children in Foster Care Act**  
Sponsor: Sen. Todd Young (R-IN) / Rep. Jackie Walorski (R-IN)  
Date Introduced: 5/25/2017  
Status: Passed the House (6/20/17) / Received in the Senate (6/21/17)

Summary: This bill would amend part E (Foster Care and Adoption Assistance) of title IV of the Social Security Act to require the procedures a state must have in effect for the orderly and timely interstate placement of children in foster care to include an electronic interstate case-processing system.

Bill No: **H.R. 2681**  
Bill Name: **Foster EITC Act of 2017**  
Sponsor: Rep. Danny Davis (D-IL)  
Date Introduced: 5/25/2017  
Status: Referred to the House Committee on Ways and Means. (5/25/17)  
Summary: This bill would amend the Internal Revenue Code of 1986 to increase the age range at which the earned income tax credit is allowed to former foster children and other individuals without qualifying children.

Bill No: **H.R. 2512**  
Bill Name: **Foster Youth and Driving Act**  
Sponsor: Rep. Danny Davis (D-IL)  
Date Introduced: 5/18/2017  
Status: Referred to the Subcommittee on Human Resources (5/31/17)  
Summary: This bill would amend title IV of the Social Security Act to expand foster parent training and provide new appropriations to support the obtainment of a driver's license.

Bill No: **S. 937 / H.R. 2476**  
Bill Name: **Adoption Tax Credit Refundability Act of 2017**  
Sponsor: Sen. Robert Casey (D-PA) / Rep. Diane Black (R-TN)  
Date Introduced: Senate: 4/25/17 / House: 5/17/17  
Status: Referred to the Committee on Finance (Senate) (4/25/17) Committee on Ways and Means (House) (5/17/17)  
Summary: This bill would amend the Internal Revenue Code to make the tax credit for adoption expenses refundable.

Bill No: **H.R. 2236**  
Bill Name: **Foster and Homeless Youth Food Security Act of 2017**  
Sponsor: Rep. Danny Davis (D-IL)  
Date Introduced: 4/28/2017  
Status: Referred to the House Agriculture Subcommittee on Nutrition (5/19/17)  
Summary: This bill would amend the Food and Nutrition Act of 2008 to provide certain alternative eligibility requirements applicable to foster care youth, and homeless youth, who are enrolled at least half-time in an institution of higher education.

Bill No: **S. 885 / H.R. 2060**  
Bill Name: **Improved Employment Outcomes for Foster Youth Act of 2017**  
Sponsor: Sen. Robert Casey (D-PA) / Rep. David Weichert (R-WA)  
Date Introduced: 4/6/2017  
Status: Referred to the Committee on Finance (Senate) (4/6/17) and Ways and Means (House) (4/6/17)  
Summary: In an effort to improve employment outcomes among youth who are transitioning out of foster care, this bill would amend the Internal Revenue Code to include qualified foster care transition youth as members of targeted groups for the purpose of the work opportunity credit, which permits employers who hire qualified individuals to claim a tax credit equal to a portion of the wages paid to those individuals.

Bill No: **S. 1638 / H.R. 2069**  
Bill Name: **Fostering Stable Housing Opportunities Act of 2017**  
Sponsor: Sen. Chuck Grassley (R-IA) / Rep. Michael Turner (R-OH)  
Date Introduced: (Senate) 07/26/2017 / (House) 4/6/17  
Status: Read twice and referred to the Committee on Banking, Housing, and Urban Affairs. (Senate) (07/26/2017). Referred to House Committee on Financial Services (House) (4/6/17)

Summary: In an effort to help prevent homelessness among former foster youth, this bill would provide priority under certain federally assisted housing programs to assist youth who are aging out of foster care, and require the Secretary of Housing and Urban Development and the Secretary of Agriculture to submit joint reports to Congress regarding the status and outcomes of youth aging out of foster care who are provided preference for housing assistance.

Bill No: **S. 811 / H.R. 1881**  
Bill Name: **Child Welfare Provider Inclusion Act of 2017**  
Sponsor: Sen. Mike Enzi (R-WY) / Rep. Mike Kelly (R-PA)  
Date Introduced: 4/4/2017  
Status: Referred to the Committee on Finance (Senate) (4/4/17) / Referred to Referred to the Subcommittee on Human Resources (House) (4/17/17)

Summary: In an effort to ensure that organizations with religious or moral beliefs are allowed to continue to provide services for children, this bill would prohibit the federal government, and states receiving federal funding under Parts B or E of Title IV of the Social Security Act, from discriminating or taking an adverse action against a child welfare service provider that declines to provide, facilitate, or refer for a child welfare service that conflicts with, or under circumstances that conflict with, the provider's sincerely held religious beliefs or moral convictions.

Bill No: **S. 3234 / H.R. 1738**  
Bill Name: **Opening Doors for Youth Act of 2018**  
Sponsor: Sen. Tim Kaine (D-VA) / Rep. Bobby Scott (D-VA)  
Date Introduced: 7/18/2018 / 3/28/2017  
Status: Senate: 07/18/2018 Read twice and referred to the Committee on Health, Education, Labor, and Pensions. House: Referred to House Committee on Education and the Workforce (3/28/17)  
Summary: In an effort to improve employment and education outcomes for at-risk and disconnected youth, including young people involved in or aging out of the foster care system, this bill would authorize the Secretary of Labor to allocate funds to subsidize summer and year-round youth employment programs designed and implemented by local governments and, in consultation with the Secretary of Education, award grants on a competitive basis to assist local community partnerships in improving high school graduation and youth employment rates.

Bill No: **S. 1303 / H.R. 2640**  
Bill Name: **Every Child Deserves a Family Act**  
Sponsor: Sen. Kirsten Gillibrand (D-NY) / Rep. John Lewis (D-GA)  
Date Introduced: House: 5/24/17 / Senate: 6/7/17  
Status: Referred to the Committee Human Resources (House) (6/7/17) / Referred to the Committee on Finance (06/07/17) (Senate)  
Summary: This bill would prohibit discrimination in adoption or foster care placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

Bill No: **H.R. 1103**  
Bill Name: **Child Abuse Accountability Enhancement Act**  
Sponsor: Rep. Suzan DelBene (D-WA)  
Date Introduced: 2/16/2017  
Status: Referred to the Subcommittee on Military Personnel (3/23/17)  
Summary: This bill would amend title 10, United States Code, to provide for garnishment pursuant to a court order to satisfy a judgment against a retired member of the uniformed services for physically, sexually, or emotionally abusing a child.

Bill No: **S. 982**  
Bill Name: **Speak Up to Protect Every Abused Kid Act**  
Sponsor: Sen. Robert Casey (D-PA)  
Date Introduced: 4/27/2017  
Status: Referred to the Committee on Health, Education, Labor, and Pensions (4/27/17)

Summary: This bill would amend CAPTA to require mandatory reporting of incidents of child abuse or neglect, and for other purposes.

Bill No: **H.R. 2866**  
Bill Name: **Reducing Unnecessary Barriers for Relative Foster Parents Act**  
Sponsor: Rep. Lloyd Smucker (R-PA)  
Date Introduced: 6/8/2017  
Status: Passed the House (6/20/17), received in the Senate and referred to the Committee on Finance. (6/21/17)  
Summary: This bill would require the U.S. Department of Health and Human Services (DHHS) to identify reputable model standards for the licensing of foster family homes.

Bill No: **H.R. 2857**  
Bill Name: **Supporting Families in Substance Abuse Treatment Act**  
Sponsor: Rep. Kristi Noem (R-SD)  
Date Introduced: 6/8/2017  
Status: Passed the House (6/20/17), received in the Senate and referred to the Committee on Finance. (6/21/17)  
Summary: This bill would amend part E (Foster Care and Adoption Assistance) of title IV of the Social Security Act to provide that the removal and foster care placement of a child shall meet the requirements for foster care maintenance payments on the child's behalf if the child has been placed with a parent residing in a licensed residential family-based treatment facility under specified circumstances.

Bill No: **H.R. 2834**  
Bill Name: **Partnership Grants to Strengthen Families Affected by Parental Substance Abuse Act**  
Sponsor: Rep. Danny Davis (D-IL)  
Date Introduced: 6/8/2017  
Status: Passed the House (6/20/17), received in the Senate and referred to the Committee on Finance. (6/21/17)  
Summary: This bill would reauthorize the regional partnership grants to strengthen families affected by parental substance abuse.

Bill No: **H.R. 2824**  
Bill Name: **Increasing Opportunity through Evidence-Based Home Visiting Act**  
Sponsor: Rep. Adrian Smith (R-NE)  
Date Introduced: 6/8/2017  
Status: Passed House (9/26/17) Referred to Senate Committee on Finance (9/28/17)  
Summary: This bill would amend title V of the Social Security Act to extend the Maternal, Infant, and Early Childhood Home Visiting Program.

Bill No: **H.R. 2952**  
Bill Name: **Foster Youth Mentoring Act**  
Sponsor: Rep. Karen Bass (D-CA)  
Date Introduced: 6/20/2017  
Status: Referred to the House Subcommittee on Human Resources. (6/28/17)  
Summary: This bill would provide foster youth with the social capital, resources, and support they need to develop positive relationships and connections, and connect youth in foster care with adult volunteer mentors by providing support for mentoring programs for foster youth.

Bill No: **H.R. 3418**  
Bill Name: **Fostering Academic Information and Resources (FAIR) Act**  
Sponsor: Rep. Brenda Lawrence (D-MI)  
Date Introduced: 7/26/2017  
Status: Referred to the House Committee on Ways and Means (7/26/17)

Summary: This bill would require states to inform children in foster care under the responsibility of the state who have attained 14 years of age of all government programs under which the child may be eligible for financial assistance for expenses related to higher education.

Bill No: **S.1630 / H.R. 3381**  
Bill Name: **Child Poverty Reduction Act of 2017**  
Sponsor: Sen. Robert Casey (D-PA) / Rep. Danny Davis (D-IL)  
Date Introduced: 7/25/2017  
Status: Referred to the House Committee on Oversight and Government Reform and the HELP Senate Committee (House) (7/26/17). Referred to the Committee on Health, Education, Labor, and Pensions. (Senate) (7/25/17)

Summary: This bill would establish in the Administration for Children and Families of DHHS the Federal Interagency Working Group on Reducing Child Poverty to develop a national strategy to eliminate child poverty in the United States, and for other purposes.

Bill No: **H.R. 3491**  
Bill Name: **Protecting Adopted Children Act**  
Sponsor: Rep. James Langevin (D-RI)  
Date Introduced: 7/27/2017  
Status: Referred to the House Committee on Ways and Means (7/27/17)  
Summary: This bill would amend part E of title IV of the Social Security Act to provide incentives for improving support services for adopted children and families.

Bill No: **H.R. 3490**  
Bill Name: **Supporting Adopted Children and Families Act of 2017**  
Sponsor: Rep. James Langevin (D-RI)  
Date Introduced: 7/28/2017  
Status: Referred to the House Subcommittee on Health (7/28/17)  
Summary: This bill would amend the Public Health Service Act to authorize grants to eligible entities to develop and implement statewide or tribal post-adoption and post-legal guardianship mental health service programs for all children who are adopted or placed in legal guardianship, and for other purposes.

Bill No: **S. 1964**  
Bill Name: **Child Welfare Oversight and Accountability Act**  
Sponsor: Sen. Orrin Hatch (R-UT)  
Date Introduced: 10/16/2017  
Status: Referred to Committee on Finance (10/16/17)  
Summary: In an effort to improve the state and federal governments' ability to monitor child welfare practices and keep vulnerable children safe, this bill would enhance federal oversight of child welfare systems, promote family placements, create more accountability for foster care providers, increase the understanding of child fatalities in order to prevent them, and improve caseworker training.

Bill No: **S. 1797**  
Bill Name: **Health Insurance for Former Foster Youth Act**  
Sponsor: Sen. Robert Casey (D-PA)  
Date Introduced: 9/12/2017  
Status: Referred to Committee on Finance (9/12/17)  
Summary: This bill would ensure that foster youth who age out of foster care, or enter into a kinship arrangement at the age of 14 years or older, have Medicaid coverage until the age of 26 years, regardless of the state he/she lives in.

Bill No: **S. 1795 / H.R. 3740**  
Bill Name: **Higher Education Access and Success for Homeless and Foster Youth Act**  
Sponsor: Sen. Patty Murray (D-WA) / Rep. Katherine Clark (D-MA)  
Date Introduced: 9/12/2017

Status: Referred to House Committee on Health, Education, Labor, and Pensions (Senate) (9/12/17).  
Referred to the House Committee on Education and the Workforce. (House) (9/12/17)  
Summary: In an effort to make college more affordable for homeless and foster youth, this bill would improve FAFSA and eligibility for financial aid, provide housing options between terms, and designate a single point of contact to help provide valuable services for foster and homeless youth. It would require the U.S. Department of Education to help resolve questions about foster and homeless youth college students' independence, publish useable data, and ensure its programs identify, recruit, and prepare foster and homeless youth for college.

Bill No: **H.R. 3742**  
Bill Name: **Fostering Success in Higher Education Act**  
Sponsor: Rep. Danny Davis (D-IL)  
Date Introduced: 9/12/2017  
Status: Referred to the House Committee on Education and the Workforce. (9/12/17)  
Summary: In an effort to improve states' ability to help foster and homeless youth attend and graduate from college, this bill would create in-depth, hands-on programs to address the needs of foster and homeless youth to give them the resources and information they need as well as several grants to states dependent on their foster youth and homeless youth population.

Bill No: **S. 1829**  
Bill Name: **Strong Families Act**  
Sponsor: Sen. Chuck Grassley (R-IA)  
Date Introduced: 9/19/2017  
Status: Referred to the Committee on Finance (9/19/2017)  
Summary: This bill would re-authorize MIECHV, providing grants to states, territories, and tribal entities to develop and implement evidence-based, voluntary programs to improve maternal and child health, prevent child abuse, and promote child development and school readiness.

Bill No: **S. 2173**  
Bill Name: **COURTS Act**  
Sponsor: Sen. John Cornyn (R-TX)  
Date Introduced: 11/29/2017  
Status: Referred to the Committee on Finance (11/29/2017)  
Summary: This bill would amend subpart 2 of part B of title IV of the Social Security Act to extend state court funding for child welfare, and for other purposes.

Bill No: **S. 2571 / H.R. 5339**  
Bill Name: **Runaway and Homeless Youth and Trafficking Prevention Act of 2018**  
Sponsor: Sen. Patrick Leahy (D-VT), Sen. Susan Collins (R-ME) / Rep. Yarmuth (D-KY), Rep. Reichert (R-WA)  
Date Introduced: 3/19/2018  
Status: Referred to the House Committee on Education and the Workforce (House) (03/20/18). Referred to the Committee on the Judiciary (Senate) (03/19/2018)  
Summary: This bill would reauthorize the Runaway and Homeless Youth Act, which serves as the nation's key response to youth and young adults at risk of and experiencing homelessness.

Bill No: **S. 3074**  
Bill Name: **Focus on Children Act**  
Sponsor: Sen. Kamala Harris (D-CA)  
Date Introduced: 6/15/2018  
Status: Read twice and referred to the Committee on the Budget 06/14/2018  
Summary: This bill would amend the Congressional Budget Act of 1974 to require the Congressional Budget Office (CBO) to produce studies and reports regarding federal spending on children. The CBO must provide studies of legislation containing changes in spending on children, upon the request of a



congressional committee; an annual report regarding spending on children; and an annual report on the President's budget request for spending on children. The CBO may provide a warning report to Congress regarding a fiscal year in which outlays for interest on the public debt will exceed spending on children. The CBO must also develop and maintain a public website that includes the reports and studies required by this bill, a dashboard containing key indicators and visualization tools to assist the public in understanding trends in spending on children, and an open data portal that contains quantitative data on federal spending on children.

Bill No: **S. 2543**  
Bill Name: **Supporting Kinship Connections Act**  
Sponsor: Sen. Heidi Heitkamp (D-ND)  
Date Introduced: 3/13/2018  
Status: Introduced and referred to Committee on Finance (03/13/2018)  
Summary: This bill would amend part B of title IV of the Social Security Act to provide grants to develop and enhance, or to evaluate, kinship navigator programs, and for other purposes.

Bill No: **H.R. 5890**  
Bill Name: **Assisting States' Implementation of Plans of Safe Care Act**  
Sponsor: Rep. Thomas A. Garrett (R-VA)  
Date Introduced: 5/21/2018  
Status: Received in the Senate and referred to the Committee on Health, Education, Labor, and Pensions. (06/14/2018)  
Summary: This bill would require DHHS to provide states with guidance and technical assistance regarding their plans under CAPTA for assuring the safe care of infants affected by prenatal substance use.

Bill No: **S. 3039**  
Bill Name: **Using Data To Help Protect Children and Families Act**  
Sponsor: Sen. Todd C. Young (R-IN)  
Date Introduced: 6/7/2018  
Status: Referred to the Committee on Health, Education, Labor, and Pensions. (06/07/2018)  
Summary: This bill would provide funding for the development of a predictive analytics pilot program to help children and families who come to the attention of the child welfare system.

Bill No: **H.R. 5915**  
Bill Name: **Foster Youth Success in College Act**  
Sponsor: Rep. Paul Mitchell (R-MI)  
Date Introduced: 5/22/2018  
Status: Referred to the House Committee on Education and the Workforce. (05/22/2018)  
Summary: This bill would amend the TRIO programs to require priority to be given to homeless children and youth, and students in foster care.

Bill No: **H.R. 6115**  
Bill Name: **Safe Home Act of 2018**  
Sponsor: Rep. James Langevin (D-RI)  
Date Introduced: 6/14/2018  
Status: Referred to the Committee on Health, Education, Labor, and Pensions. (06/28/2018)  
Summary: This bill would amend CAPTA to include an act of unregulated custody transfer in the definition of child abuse and neglect, and for other purposes.

Bill No: **S. 2696**  
Bill Name: **Supporting Infant Plans of Safe Care Implementation Act**  
Sponsor: Sen. Robert P. Casey Jr. (D-PA)  
Date Introduced: 4/18/2018  
Status: Referred to the Committee on Health, Education, Labor, and Pensions. (04/18/2018)  
Summary: This bill would provide grants to states to improve and coordinate their response to ensure the safety, permanency, and well-being of children at high risk for abuse and neglect.

Bill No: **H.R. 4983**  
Bill Name: **Caring Homes and Improved Lives for Dependents (CHILD) Act**  
Sponsor: Rep. Mark Meadows (R-NC)  
Date Introduced: 2/8/2018  
Status: Referred to the Subcommittee on Human Resources. (02/14/2018)  
Summary: This bill would amend part E of title IV of the Social Security Act to require states to provide for the placement of a foster child in a cottage home, and to make a child so placed eligible for foster care maintenance payments.

Bill No: **H.R. 3092**  
Bill Name: **Permanency for Children Act of 2017**  
Sponsor: Rep. Vicky Hartzler (R-MO)  
Date Introduced: 6/28/2017  
Status: Referred to the Subcommittee on Human Resources. (07/12/2017)  
Summary: This bill would amend part D of title IV of the Social Security Act to require the Secretary of Health and Human Services to modify the Federal Parent Locator Service to improve search functions and include state responsible father registry search functions, and for other purposes.

Bill No: **H.R. 3525**  
Bill Name: **Home Visiting Works Act of 2017**  
Sponsor: Rep. Danny K. Davis (D-IL)  
Date Introduced: 7/28/2017  
Status: Referred to the Subcommittee on Health. (08/04/2017)  
Summary: This bill would reauthorize through FY2022 the Maternal, Infant, and Early Childhood Home Visiting program administered by the Health Resources and Services Administration.

Bill No: **S. 1067**  
Bill Name: **CONNECT Act**  
Sponsor: Sen. Gary C. Peters (D-MI)  
Date Introduced: 5/8/2017  
Status: Referred to the Committee on Finance. (05/08/2017)  
Summary: This bill would amend title IV of the Social Security Act to allow the Secretary of Health and Human Services to award competitive grants to enhance collaboration between state child welfare and juvenile justice systems.

Bill No: **H.R. 2024**  
Bill Name: **Stop Child Abuse in Residential Programs for Teens Act of 2017**  
Sponsor: Rep. Adam B. Schiff (D-CA)  
Date Introduced: 6/22/2017  
Status: Referred to the House Committee on Education and the Workforce. (06/22/2017)  
Summary: This bill would direct DHHS to require programs designed to modify behaviors of children in a residential environment (covered programs) to prohibit child abuse and neglect and meet other specified minimum standards.

Bill No: **S. 2926**  
Bill Name: **Improving Recovery and Reunifying Families Act**  
Sponsor: Sen. Robert Menendez (D-NJ)  
Date Introduced: 5/22/2018  
Status: Referred to the Committee on Finance. (05/22/2018)  
Summary: This bill would amend part B of title IV of the Social Security Act to require the Secretary of Health and Human Services to conduct a family recovery and reunification program replication project to help reunify families and protect children with parents or guardians with a substance use disorder who have temporarily lost custody of their children.

Bill No: **H.R. 4990**  
Bill Name: **Rehab and Ahmed Amer Foster Care Improvement Act of 2018**

Sponsor: Rep. Debbie Dingell (D-MI)  
Date Introduced: 2/8/2018  
Status: Referred to the Subcommittee on Human Resources. (02/14/2018)  
Summary: This bill would amend part E of title IV of the Social Security Act to require states to follow certain procedures in placing a child who has been removed from the custody of his or her parents.

Bill No: **S. 1268**  
Bill Name: **Child Protection and Family Support Act of 2017**  
Sponsor: Sen. Steve Daines (R-MT)  
Date Introduced: 5/25/2017  
Status: Read twice and referred to the Committee on Finance. (05/25/2017)  
Summary: This bill would amend parts B and E of title IV of the Social Security Act to allow states to provide foster care maintenance payments for children with parents in a licensed residential family-based treatment facility for substance abuse and to reauthorize grants to improve the well-being of families affected by substance abuse.

Bill No: **H.R. 6233**  
Bill Name: **The Family Poverty is Not Child Neglect Act**  
Sponsor: Rep. Gwen Moore (D-WI)  
Date Introduced: 6/26/2018  
Status: Referred to the House Committee on Education and the Workforce (06/26/2018)  
Summary: This bill would amend CAPTA to ensure that child protective services systems do not permit the separation of children from parents on the basis of poverty, and for other purposes.

\* Information compiled by Amy Harfeld with assistance from Moriah Denton, Steven Jessen-Howard and Kerah Lewis.



